

No. _____

In the Supreme Court of the United States

FLORIDA BOARD OF GOVERNORS, ET AL.

Petitioners,

v.

LEROY PERNELL, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CHARLES J. COOPER
JOHN D. OHLENDORF
JOHN D. RAMER
RILEY W. WALTERS
COOPER & KIRK, PLLC
1523 New Hampshire
Ave., NW
Washington, DC 20036
(202) 220-9600

JAMES UTHMEIER
Attorney General
RYAN D. NEWMAN
Chief Deputy
Attorney General
DAVID M.S. DEWHIRST
Solicitor General
**Counsel of Record*
JASON J. MUEHLHOFF
Chief Deputy
Solicitor General

OFFICE OF THE
ATTORNEY GENERAL
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 414-3300
david.dewhirst@
myfloridalegal.com

Counsel for Petitioners

QUESTION PRESENTED

Whether public university professors have a special status under the First Amendment, such that the speech they express in the course of their official duties, unlike the official-duty speech of all other public employees, is protected by the First Amendment from regulation by their employer, the state.

PARTIES TO THE PROCEEDING

Petitioners are Manny Diaz, Jr., Brian Lamb, Eric Silagy, Timothy M. Cerio, Richard Corcoran, Aubrey Edge, Patricia Frost, Nimna Gabadage, Edward Ellis Haddock, Jr., Kenneth Jones, Darlene Luccio Jordan, Alan Levine, Charles Lydecker, Craig Mateer, Steven Scott, Deanna Michael, William Self, and Kent Stermon, all in their official capacities as members of the Florida Board of Governors of the State University System; Julie Leftheris, in her official capacity as the Inspector General of the Florida Board of Governors of the State University System; and Timothy L. Boaz, Sandra Callahan, Michael Carrere, N. Rogan Donelly, Michael E. Griffin, Oscar Horton, Lauran Monbarren, Nithin Palyam, Shilen Patel, Fredrick Piccolo, Melissa Seixas, Jenifer Jasinski Schneider, and William Weatherford, all in their official capacities as members of the University of South Florida Board of Trustees. Petitioners were the defendants before the district court and the defendants-appellants in the Court of Appeals.

Respondents are Leroy Pernell, Dana Thompson Dorsey, Sharon Austin, Shelley Park, Jennifer Sandoval, Russell Almond, Marvin Dunn, Johana Dauphin, Adriana Novoa, Samuel Rechek, and the First Amendment Forum at the University of South Florida. Respondents were the plaintiffs before the district court and the plaintiffs-appellees in the Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

This case is directly related to the following proceedings:

- *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, No. 22-13992 (11th Cir. July 7, 2026)
- *Novoa v. Diaz*, No. 22-13994 (11th Cir. July 7, 2026)
- *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, No. 23-10616 (11th Cir. Oct. 30, 2023)
- *Pernell v. Lamb*, No. 4:22-cv-304-MW-MAF (N.D. Fla. Nov. 17, 2022)
- *Novoa v. Diaz*, No. 4:22-cv-324-MW-MAF (N.D. Fla. Nov. 17, 2022)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit’s opinion (Pet. App. 1a–85a) is reported at 181 F.4th 1135. The District Court’s opinion (Pet. App. 86a–224a) is reported at 641 F. Supp. 3d 1218.

JURISDICTION

The Eleventh Circuit entered judgment on July 7, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the First Amendment to the United States Constitution, Florida Statutes §§ 1000.03 and 1000.05, as well as Florida Board of Governors Regulation 10.005, are reproduced in the appendix beginning at Pet. App. 225a.

INTRODUCTION

“Members of one race . . . are morally superior to members of another race.” This proposition is invidiously discriminatory. So the Florida Legislature enacted a law prohibiting public school teachers and university educators from subjecting students to “instruction” that espouses or otherwise endorses that proposition, along with seven other “concepts” of similar ilk, such as “[a] person’s moral character . . . is necessarily determined by his or her race,” and “[a] person, by virtue of his or her race . . . is inherently racist” FLA. STAT. § 1000.05(4)(a). Even so, the State still permits classroom “discussion” of these ideas “in an objective manner without endorsement of the concepts.” *Id.* § 1000.05(4)(b). And public educators may promote the concepts outside the classroom—in publications, speeches, or other media. But *in* the classroom and other state-sponsored instructional settings, Florida has determined that the teachers it employs should not be teaching the next generation to accept these odious ideas as truth.

In overriding Florida’s sovereign judgment, a divided Eleventh Circuit panel below both deepened an existing circuit split and created a new one. The circuits are sharply divided over whether public university professors have a special status under the First Amendment, such that the speech they express in the course of their official duties, unlike the official-duty speech of all other public employees, is protected by the First Amendment from regulation by their employer, the states. *Compare, e.g., Edwards v. California Univ. of Pennsylvania*, 156 F.3d 488, 491 (3d Cir. 1998) (Alito, J.) (unprotected); *Urofsky v. Gilmore*, 216 F.3d 401, 407–10 (4th Cir. 2000) (en banc)

(unprotected); *Renken v. Gregory*, 541 F.3d 769, 773–75 (7th Cir. 2008) (unprotected), *with Demers v. Austin*, 746 F.3d 402, 412 (9th Cir. 2014) (protected); *Meriwether v. Hartop*, 992 F.3d 492, 504–06 (6th Cir. 2021) (protected); *Heim v. Daniel*, 81 F.4th 212, 223–28 (2d Cir. 2023) (protected).

This conflict only intensified after this Court’s landmark decision in *Garcetti v. Ceballos*, which held that the First Amendment does not protect the speech of public employees made pursuant to their official duties—but reserved the question whether the same rule applies in the public education context for “speech related to scholarship or teaching.” 547 U.S. 410, 421, 425 (2006). The Court has not revisited that question, leaving it to the circuits to sort out over the last 20 years. *See Heim*, 81 F.4th at 225 (noting “the uncertain implications of *Garcetti*’s academic carveout”); *Demers*, 746 F.3d at 406 (noting “the uncertain state of the law in the wake of *Garcetti*”); *Gorum v. Sessoms*, 561 F.3d 179, 186 n.6 (3d Cir. 2009) (noting that *Garcetti*’s effects on speech “related to scholarship or teaching’ are not clear”). The result has been a dizzying array of decisions, with some courts holding that speech by state employees from the classroom lectern is government speech, but others (including the majority below) blowing a university-sized hole in this Court’s government-speech precedent.

But that is not all. In the decision below, the panel majority injected still more uncertainty when, after taking the professors’ side in the existing circuit split over *whether* the First Amendment applies to classroom instruction, the court created a new split over *how* it applies. Rather than rely on this Court’s pre-*Garcetti* precedent for public-employee speech—

as other circuits have—the Eleventh Circuit declared that those cases are largely inapposite in the university setting. Pet. App. 19a–22a. So the court devised a bespoke rule that turns on “the context of the speech; the state’s position as a public employer; and the strong predilection for academic freedom as an adjunct of the free speech rights of the First Amendment.” Pet. App. 37a (quotation marks omitted). This rule is foreign to other circuits, and eviscerates a state’s substantial interest in regulating the instruction that is offered in its own classrooms.

The panel’s decision cannot be squared with this Court’s government-speech precedent, which establishes that the speech of public employees, when made “pursuant to their official duties,” is not protected by the First Amendment at all. *Garcetti*, 547 U.S. at 421. The leading First Amendment case in the area of public higher education is *Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819 (1995), where this Court made clear that “when the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker.” *Id.* at 833. Then-Judge Alito understood this language to mean what it plainly says: that “a public university professor does not have a First Amendment right to decide what will be taught in the classroom.” *Edwards*, 156 F.3d at 491. Likewise, the government speech cases in which the government provides public funds to private entities or permits them to use public property to communicate the government’s own message lead to the same destination. But the panel majority’s decision joins the circuits marching in the opposite direction.

The question presented is both recurring and exceptionally important. For one, the decision below claimed the mantle of academic freedom—a value this Court has repeatedly celebrated—yet it reasoned that public university professors hold that freedom *against their employer* and thus have (virtually) unfettered, constitutionally protected discretion to decide what is and is not to be taught in the State’s classrooms. That is wrong. Judge Easterbrook, expressly endorsing Judge Lagoa’s *dissent* below, recently opined that “academic freedom belongs to the university[,]” not individual professors, and “[a] university has the right to insist that professors *provide* the sort of education that the school *promises* . . . but can deliver only through agents.” *McDonald v. Trs. of Indiana Univ.*, 186 F.4th 917, 930 (7th Cir. 2026) (Easterbrook, J., concurring). The decision below turns academic freedom on its head and undermines the principle in the name of defending it.

Worse still, the decision below wrests authority over education from the states and transfers it to federal judges. Even the panel majority could not stomach the full logic of its reasoning, so it gerrymandered its ruling to include the gauzy reassurance that states retain power to “exclude speech that veers outside of well-understood parameters.” Pet. App. 38a–39a. Florida, of course, thought it was doing just that—excluding from its public classrooms state-sponsored endorsement of racist concepts. The panel simply disagreed with Florida’s “parameters” and reserved for individual professors—and ultimately itself—the prerogative to decide what is “well-understood.” The result: federal judges, not states, will determine what curricular speech falls inside and outside the academic Overton window.

That result is untenable and in fact contrary to the very principles of free speech and academic freedom that the panel majority purported to vindicate. It is also incompatible with the Nation’s “[h]istory, tradition, and precedent” regarding educational formation. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 472 (2025). The decision below requires the State’s education system to be scrupulously neutral on foundational principles such as equality and human dignity: “The ideas Florida targets may well be noxious. Or maybe not. Either way, in this context the First Amendment trusts students to figure it out for themselves.” Pet. App. 5a.

The Framers thought otherwise. Far from constitutionally mandated agnosticism, the Framers understood that the very purpose of education was to instill civic virtues and ideals into its citizenry. George Washington explained that “the *assimilation* of the principles, opinions, and manners of our country-men by the common education of a portion of our youth from every quarter well deserves attention.” President George Washington, Eighth Annual Address to Congress (Dec. 7, 1796), <https://perma.cc/EEU7-QHKN> (emphasis added). Benjamin Franklin also framed education as forming individuals: “[t]he idea of what is true merit should also be often presented to youth, explained and impressed on their minds[.]” BENJAMIN FRANKLIN, PROPOSALS RELATING TO THE EDUCATION OF YOUTH IN PENNSYLVANIA 29–30 (Phila., U. Penn. Press 1749).

And most tellingly, an early University of Virginia Board of Visitors—including Thomas Jefferson and James Madison—passed the following resolution:

Whereas it is the duty of this board . . . to pay especial attention to the principles of government which shall be inculcated therein, and to provide that none shall be inculcated which are incompatible with those on which the Constitutions of this state, and of the US. were genuinely based[.]

Meeting Minutes of University of Virginia Board of Visitors, FOUNDERS EARLY ACCESS (Mar. 4–5, 1825), <https://perma.cc/A5N8-GQFL>.

The Eleventh Circuit’s order cannot be reconciled with this history. And given the persistent nature of the issue and the conflicts among the courts that have addressed it, the time is ripe for the clarity and uniformity that only this Court can provide.

The Court should grant the writ.

STATEMENT OF THE CASE

I. The Individual Freedom Act

In 2022, pursuant to its authority to “establish education policy, enact education laws, and appropriate and allocate education resources,” FLA. STAT. § 1000.03(2)(a), the Florida Legislature passed and Governor DeSantis approved the Individual Freedom Act (the “Act”). *See* 2022 Fla. Laws 72. The Act took effect on July 1, 2022. *See id.* § 8.

As relevant here, the Act amended the Florida Education Code to enumerate actions that constitute “[d]iscrimination on the basis of race, color, national origin, [or] sex” and are thus prohibited under Section 1000.05(2). *Id.* § 2. Specifically, the Act prohibits any “training or instruction that espouses, promotes,

advances, inculcates, or compels” students at Florida’s public primary, secondary, and post-secondary schools to believe the following eight concepts:

1. Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
2. A person, by virtue of his or her race, color, national origin, or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
3. A person’s moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
4. Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
5. A person, by virtue of his or her race, color, national origin, or sex, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, national origin, or sex.
6. A person, by virtue of his or her race, color, national origin, or sex, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
7. A person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because

of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex.

8. Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.

FLA. STAT. § 1000.05(4)(a)(1)–(8).

The Act, however, draws a sharp distinction between *indoctrination* and *discussion*. Although the Act prohibits subjecting a student to instruction that advocates these concepts, it makes clear that it does not “prohibit discussion of the concepts . . . as part of a larger course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.” *Id.* § 1005.05(4)(b). Along these same lines, because the Act applies only to “instruction,” *see id.* § 1000.05(4)(a), it does not prevent Florida’s educators from advocating the concepts, or any other personal views they may hold, in publications, speeches, or other activities outside the classroom. Nor does the Act reach speeches or debates by guest speakers or other invitees who, unlike the State’s own instructors in the classroom, do not speak on behalf of the State. *See 10.005, Prohibition of Discrimination in University Training or Instruction*, BD. OF GOVERNORS, STATE UNIV. SYS. OF FLA. (Aug. 26, 2022), <https://perma.cc/W9NF-7DPE> (“Regulation 10.005”) (defining “instruction” as teaching “by a university employee” or person “authorized to provide instruction by the university within a course”).

The Florida Board of Governors has adopted Regulation 10.005 to implement the Act.¹ Under the Regulation, the Board takes enforcement action only against a university that “willfully and knowingly failed to correct a violation of the university regulation.” Regulation 10.005(4)(a).

II. The Proceedings Below

Respondents in these consolidated cases include professors at Florida’s public universities. They challenged the Act as applied to Florida’s public universities on grounds that (among other things) it violates their free speech rights under the First Amendment and their rights under the Fourteenth Amendment Due Process Clause’s vagueness doctrine. They sought preliminary injunctive relief. Petitioners opposed the motions and also moved to dismiss all claims under Rule 12(b)(1) and (6) for lack of standing and failure to state a claim.

The district court granted Respondents’ request for a preliminary injunction.² The court held that at least one Respondent had adequately alleged an injury traceable to the Act’s prohibition on each of the eight enumerated concepts, such that the entire Act was properly before the court. Pet. App. 162a–63a. On the merits, the court applied a balancing test it purported to draw from Eleventh Circuit precedent and concluded that the Act restricts the First Amendment rights of the State’s professors. Pet. App. 171a–75a, 178a–93a. Finally, it concluded that two of the Act’s provisions are unconstitutionally vague,

¹ See Fla. Const. art. IX, § 7.

² The court had jurisdiction under 28 U.S.C. § 1331.

including the Act’s exception allowing “objective” classroom discussion of the eight enumerated concepts—which, the court determined, “commands the entire statute” and thus “renders the [Act] as a whole unconstitutionally vague.” Pet. App. 210a. The court thus entered a preliminary injunction barring any further enforcement of the Act or of the Board’s regulation implementing it. Pet. App. 221a–24a.

A divided panel of the Eleventh Circuit affirmed. After summarily agreeing with the district court that at least one Respondent had standing, the panel majority framed the inquiry as “whether the law is constitutional as it applies to one group of people (college professors) in one context (college instruction).” Pet. App. 10a. In answering that question, the panel majority first reviewed this Court’s public-employee speech cases—*Pickering v. Board of Education*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983); and *Garcetti*—and concluded that “the rationale underlying [those] cases does not apply with equal force to curricular speech by university professors.” Pet. App. 19a. That rationale, the panel majority said repeatedly, is limited to the “managerial concerns” of office administrators: “An interest in banning disfavored viewpoints is not in line with the workplace management concerns that give the government extra leeway in the employee speech cases.” Pet. App. 20a–21a. And “the university professors here,” the majority asserted, are not “civil servants . . . administering government programs.” Pet. App. 21a.

The panel majority further distinguished this Court’s public-employee speech cases on grounds that the Act’s speech restriction was imposed by “the

Florida legislature and the Governor . . . who are not the professors' employers and who exercise no direct supervision or control over their employment"; the Act imposes "a wide-ranging, ex ante restriction" on speech rather than an ex post penalty for "a single employee who had already spoken"; and the Act renders academic freedom a "nullity." Pet. App. 21a–22a. The panel majority then rejected wholesale the applicability of this Court's government-speech cases. Pet. App. 25a–34a.

Having cast aside this Court's public-employee speech and government-speech strands of First Amendment precedent, the panel majority determined that the Act triggers First Amendment scrutiny and devised its own First Amendment standard for university classroom speech. The majority took as its "starting point" the "baseline balancing test" from this Court's public-employee speech cases, whereby "government interests" are weighed against "a government employee's First Amendment rights." Pet. App. 36a. Then it announced its own standard to guide the analysis: Restrictions on the curricular speech of public university professors "must be reasonable and related to legitimate pedagogical concerns." Pet. App. 37a. In applying that test, the court relied on "three general factors" pulled from circuit precedent: "the context of the speech; the state's position as a public employer; and the strong predilection for academic freedom as an adjunct of the free speech rights of the First Amendment." Pet. App. 37a (quotation marks omitted).

The panel majority determined that all three factors weigh against the Act. Starting with "context," the panel majority reasoned that restrictions on

speech are “‘especially’ dangerous in the classroom.” Pet. App. 38a. Next, it considered “the State’s interests as an employer” and concluded that the Act, by barring faculty from endorsing certain racist views in the classroom, does not further “ordinary workplace management concerns, much less a legitimate pedagogical interest.” Pet. App. 40a. Finally, it determined that the “strong predilection for academic freedom” in First Amendment caselaw compelled rejection of the Act, especially given the Act’s “lack of clear definitions.” Pet. App. 42a, 45a. Finding that “the State’s interests are insufficient to support the Act’s restrictions,” the court held that “[t]he Act violates the First Amendment’s guarantee of freedom of speech.” Pet. App. 47a–48a.

The majority was quick to reassure the State that the professors’ constitutional right to teach what they want to teach rather than what their employer, the State, wants them to teach is not absolute. “[U]niversities, and even sometimes state governments,” may “make ordinary curriculum decisions (like which majors or courses to offer), or otherwise ensure competent academic instruction” and “exclude speech that veers outside of well-understood parameters,” such as a professor’s “personal tangents irrelevant to the subject matter, conspiracy theories, and the like.” Pet. App. 16a, 38a–39a. But, in the panel majority’s judgment, the curricular speech prohibited by the Act did not fit into that box. The panel majority also distinguished public universities from state governments, asserting that “a *state*’s authority to control curriculum” is on different footing from “a *university*’s authority to control the curriculum.” Pet. App. 42a n.14. “[I]t is the university’s view of the curriculum that is privileged, not the legislature’s.” Pet. App. 26a. That distinction

was also the panel majority’s basis for distinguishing then-Judge Alito’s decision in *Edwards*, which squarely held, as noted above, that the First Amendment does *not* protect a public university professor’s classroom speech. Pet. App. 26a–27a n.10.

Judge Lagoa dissented, explaining that “[a] public university’s classroom is not an open forum” and that the First Amendment, though it “protects all viewpoints in the public square,” “does not compel all viewpoints to be worthy of state-sponsored endorsement.” Pet. App. 54a (quotation marks omitted). She rejected the notion that academic freedom is an individual right held by public university professors. Pet. App. 61a–65a.

Judge Lagoa also rejected the panel majority’s distinction between “restrictions on one professor’s speech” and restrictions of “general application,” because what matters is simply a state’s interest in classroom instruction. Pet. App. 75a. She noted that a state’s interests are “substantial” in this context, because “a professor’s endorsement of a particular viewpoint carries weight that can distort genuine academic exchange” and even “carry a coercive effect” given that “the professor maintains authority over the students’ grades.” Pet. App. 77a–78a (cleaned up).

As for the “supposed distinction” between the curricular authority of public universities and of their sponsoring state governments, Judge Lagoa explained that Florida law and circuit precedent “make clear that Florida’s public universities speak and act subject to the State’s control and administration.” Pet. App. 81a, 83a. Quoting Petitioners’ briefing, she noted that public university professors “teach ‘the State’s curriculum, in the State’s classrooms, on the

State’s time, in return for a State paycheck.” Pet. App. 83a.

In closing, Judge Lagoa criticized the panel majority for “endors[ing] its own form of viewpoint discrimination” by appointing itself arbiter of whether a “professor’s viewpoint is within the range of permissible views[.]” Pet. App. 83a–84a. “At bottom, the majority acknowledges that some speech may permissibly be excluded in Florida’s classrooms, but it removes that decision from the elected representatives of the State of Florida and vests it instead in the judiciary.” Pet. App. 85a n.11. The panel majority’s “judge-made test” is “unworkable,” Judge Lagoa maintained, and “reduces the First Amendment to a reflection of judicial preference, regardless of the State’s interests in its classroom instruction.” Pet. App. 53a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Both Deepens and Creates Splits of Authority over First Amendment Protection for Curricular Speech at Public Universities.

The Eleventh Circuit’s decision both deepens and creates splits of authority on the question presented. First, it *deepens* an existing circuit split over whether restrictions on the speech of public university professors expressed in the course of their official teaching duties trigger First Amendment scrutiny. Second, assuming that the First Amendment applies, uniquely, to official-duty speech of academic employees, the decision below *creates* a circuit split on the legal standard for analyzing First Amendment claims of such speech. The Eleventh Circuit expressly rejected the *Pickering-Connick* balancing test used by other

circuits that have applied First Amendment scrutiny, opting instead for its own ad hoc balancing test that all but guarantees that states will lose.

A. The Decision Below Deepens a Circuit Split over Whether the First Amendment Applies.

The circuits are sharply divided over whether the First Amendment offers any protection for speech by public university professors in the course of their official teaching duties. The Third, Fourth, and Seventh Circuits have all held that such speech receives no First Amendment protection, though later decisions in the Fourth and Seventh Circuits reveal significant confusion over the state of the law post-*Garcetti*. On the other hand, the Eleventh Circuit now joins the Second, Fifth, Sixth, and Ninth in holding that public university professors, unlike all other public employees, have special First Amendment rights. This entitles them, so the reasoning goes, to indoctrinate their students in whatever “germane” views they please, no matter how noxious those views are to the state’s legislators and the people they represent, or how antithetical those views are to the state’s foundational educational interest in forming its students to become virtuous and upright citizens. Pet. App. 39a.

Third Circuit. Start with the Third Circuit’s decision in *Edwards*, authored by then-Judge Alito. There, a public university restricted a professor’s choice of classroom materials and then suspended him after learning that he was advancing his religious beliefs in class and using an unapproved syllabus. 156 F.3d at 489–90. Relying on this Court’s “jurisprudence concerning the state’s ability to say what it wishes when it is the speaker,” the court rejected the

professor’s First Amendment claim, unambiguously holding that “a public university professor does not have a First Amendment right to decide what will be taught in the classroom.” *Id.* at 491 (citing *Rosenberger*, 515 U.S. at 833–34).

Moreover, contrary to the Eleventh Circuit’s claim that *Edwards* distinguished the university from the state, the Third Circuit relied on this Court’s *government-speech* precedent (which, recall, the Eleventh Circuit cast aside) and reasoned that the *state* was the speaker. *Id.* (explaining that its holding “is consistent with the Supreme Court’s jurisprudence concerning *the state’s* ability to say what it wishes when it is the speaker” (emphasis added; citing *Rosenberger*, 515 U.S. at 833–34)). The Third Circuit also rejected the professor’s argument that the principle of academic freedom somehow changed the analysis, noting that it is “a university’s freedom.” *Id.* at 492 & n.2. Accordingly, the decision below not only clashes with *Edwards* on the threshold First Amendment question—it also collides with the Third Circuit’s reliance on government-speech caselaw, its equating of the university and the state, and its understanding of academic freedom as an institutional right.

Fourth Circuit. Next up is the Fourth Circuit’s *en banc* decision in *Urofsky v. Gilmore*, 216 F.3d 401 (4th Cir. 2000), which involved a Virginia statute restricting state employees from accessing sexually explicit material on state computers. Public university professors challenged the law on First Amendment grounds, arguing that it unconstitutionally restricted “access to sexually explicit materials for work-related purposes,” including for “teaching and research.” *Id.* at 405–06, 409 n.9.

Because the speech at issue was “speech of state employees in their capacity as employees,” the challenged statute “d[id] not infringe the First Amendment.” *Id.* at 409. The court explained that “speech by public employees undertaken in the course of their job duties will frequently involve matters of vital concern to the public, without giving those employees a First Amendment right to dictate to the state how they will do their jobs.” *Id.* at 407. After all, “in order to pursue its legitimate goals effectively, the state must retain the ability to control the manner in which its employees discharge their duties and to direct its employees to undertake the responsibilities of their positions in a specified way.” *Id.* at 409.

Nor did the professors’ invocation of academic freedom make a difference—after a comprehensive survey of the history and precedents concerning that principle, the court held that insofar as it is a right at all, it is a right that “inheres in the University, not in individual professors.” *Id.* at 410; *see also id.* at 414 (observing that “the [Supreme] Court has never recognized that professors possess a First Amendment right of academic freedom to determine for themselves the content of their courses and scholarship”).

Here, too, the decision below breaks from another circuit not only on the threshold First Amendment issue, but on two subsidiary issues as well—whether a state legislature may enact generally applicable *ex ante* restrictions on the speech of public university professors, and whether the principle of academic freedom exalts a professor’s First Amendment rights above all other public employees.

Over a decade later, the Fourth Circuit confronted the issue again, this time post-*Garcetti*. *See*

Adams v. Trs. of the Univ. of N.C. Wilmington, 640 F.3d 550 (4th Cir. 2011). In *Adams*, a professor alleged that the university denied his application for promotion based on his extracurricular political and religious writings and expressions. The court acknowledged that “whether the *Garcetti* analysis applies in the academic context of a public university” is an open question. *Id.* at 561. And despite suggesting that *Garcetti* should not apply in this context, the court ultimately applied *Garcetti* anyway and held that the professor’s speech was not made “pursuant to his official duties as intended by *Garcetti*” because it was “unrelated” to his *official* teaching and scholarship duties. *Id.* at 563–64 (cleaned up); *see also id.* at 562 (“*Garcetti* would not apply in the academic context of a public university *as represented by the facts of this case.*” (emphasis added)); *id.* at 564 (same). Had the professor’s expression been made pursuant to his official teaching duties, the Fourth Circuit’s binding *en banc* decision in *Urofsky*, which itself established a *Garcetti*-like rule, would have compelled the court to reject the First Amendment claim.

Two recent Fourth Circuit decisions, however, underscore the post-*Garcetti* confusion. In one, a panel misinterpreted *Adams* (and ignored *Urofsky*) and announced that *Garcetti*’s “official duties” test “does not extend to speech by public university faculty members, acting in their official capacity, that is ‘related to scholarship or teaching.’” *Porter v. Bd. of Trs. of N.C. State Univ.*, 72 F.4th 573, 582 (4th Cir. 2023). In the other, a different panel applied *Pickering-Connick* to a public university professor’s free speech claim, without even citing *Garcetti* or attempting to square its analysis with *Adams* or *Urofsky*. *See*

Kashdan v. George Mason Univ., 70 F.4th 694, 702–03 (4th Cir. 2023).

Seventh Circuit. The Seventh Circuit’s decision in *Renken v. Gregory*, 541 F.3d 769 (7th Cir. 2008)—decided post-*Garcetti*—held that the First Amendment does not protect a public university professor’s speech related to his official teaching duties. There, a university terminated a professor’s grant and reduced his pay after he criticized the school’s proposed use of grant funds. The court evaluated the professor’s First Amendment claim under *Garcetti* and concluded that the grant, as well the professor’s speech related to it, “were a means to fulfill his employment requirements, namely *teaching and research*.” *Id.* at 774 (emphasis added). So, under *Garcetti*, the professor’s speech was “pursuant to his official duties as a University professor” and therefore “not protected by the First Amendment.” *Id.* at 775.

Like the Fourth Circuit, though, the Seventh Circuit has not been faithful to its precedent. In *Kilborn v. Amiridis*, the court declined to “extend” *Garcetti* to speech that fell within a professor’s “teaching responsibilities.” 131 F.4th 550, 557–58 (7th Cir. 2025). The court purported to distinguish *Renken* on the claim that the speech there “did not involve scholarship or teaching,” *id.* at 558, but that is plainly wrong—the *Renken* court emphasized repeatedly that the speech had everything to do with the professor’s responsibilities for teaching and scholarship. *See* 541 F.3d at 773 (stressing that the grant “aided in the fulfillment of his teaching responsibilities”); *id.* at 774 (“*Renken* was speaking as a faculty employee, and not as a private citizen, because administering the grant . . . fell within the teaching and service duties that he was

employed to perform.”); *id.* (“his efforts related to the grant, including his complaints, were a means to fulfill his employment requirements, namely teaching and research”).

More recently, Judge Easterbrook expressly endorsed Judge Lagoa’s dissent below and reaffirmed his long-held view that the First Amendment does *not* give public university professors the right to determine “what shall be taught” in public classrooms. *McDonald*, 186 F.4th at 930 (Easterbrook, J., concurring). To the contrary, the state itself is the speaker in this setting and thus “has a right to convey its own message” and require its teachers to “present the course of instruction it specifies.” *Id.* Citing *Garcetti*, Judge Easterbrook explained that public university “[p]rofessors’ speech in class has not been regulated; it has been hired.” *Id.*

Judge Easterbrook also emphasized that “academic freedom belongs to the university,” not to professors. *Id.* This means that questions over what may be taught (and how) are for a “state university to answer, rather than for judges and juries to prescribe in the name of the First Amendment.” *Id.* at 931.

Second, Fifth, Sixth, and Ninth Circuits.

Four other circuits (five, counting the decision below) have either held or assumed that the First Amendment protects the official-duty speech of university educators. *See Heim*, 81 F.4th at 226 (the First Amendment protects speech “involving scholarship and teaching by professors at public universities”); *Buchanan v. Alexander*, 919 F.3d 847, 852–53 (5th Cir. 2019) (assuming that the First Amendment protects classroom speech by a public university professor, without citing *Garcetti*); *Meriwether*, 992 F.3d at 505

(“professors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship”); *Demers*, 746 F.3d at 412 (“We conclude that *Garcetti* does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing that are performed ‘pursuant to the official duties’ of a teacher and professor.”).

B. The Decision Below Creates a Circuit Split over How the First Amendment Applies.

Even as the Eleventh Circuit joined four others in holding that *Garcetti* does not apply to a professor’s curricular speech, it diverged from those courts in its choice of constitutional standard. This divide is more than just a detail—it is likely to yield different results in similar cases.

Every other circuit that has applied the First Amendment in this context has turned to this Court’s pre-*Garcetti* employee-speech cases—*Pickering* and *Connick*. See *Heim*, 81 F.4th at 228–34 (applying the *Pickering-Connick* balancing test); *Buchanan*, 919 F.3d at 853 (same); *Meriwether*, 992 F.3d at 507–12 (same); *Demers*, 746 F.3d at 412 (same). Under that framework, courts first consider whether the public employee’s speech addressed “a matter of public concern.” *Connick*, 461 U.S. at 146. If so, then courts balance the employee’s interest “in commenting upon matters of public concern” against “the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering*, 391 U.S. at 568.

The decision below expressly rejected that framework. *See* Pet. App. 19a–22a. In its place, the court cobbled together language from its prior cases and fashioned a bespoke balancing test unknown to any other circuit: State regulation of public university professors’ curricular speech “must be reasonable and related to legitimate pedagogical concerns,” considering “the context of the speech[,] the state’s position as a public employer[,] and the strong predilection for academic freedom as an adjunct of the free speech rights of the First Amendment.” Pet. App. 37a (cleaned up).

This difference matters. To see why, consider the Second Circuit’s decision in *Heim*, 81 F.4th 212. There, a public university refused to promote an adjunct professor based on his support of Keynesian economics, explaining (among other things) that he was not qualified “to teach and train students” given his commitment to that school of thought. *Id.* at 222–23. As noted, the court rejected *Garcetti* because the speech at issue “relate[d] to scholarship or teaching” and then balanced each side’s interests under *Pickering-Connick*. *Id.* at 226–28. Even so, the court determined that the university’s interests outweighed the professor’s, so it held that there was no First Amendment violation. *Id.* at 232–34. The court reasoned that the First Amendment “*must* operate differently” in this setting because public universities’ ordinary faculty employment decisions require “content-based judgments that are normally anathema to the First Amendment.” *Id.* at 232–33 (cleaned up). It further explained that such content-based judgments are “permissible academic reasons for declining to hire or promote a candidate,” and that “[e]valuations of the quality of academic work” is not the responsibility of judges. *Id.* (quotation marks omitted).

Now plug those same facts into the Eleventh Circuit’s new test. The first factor is context, and although *Heim* involved a hiring decision, the case ultimately turned, at least in large part, on how the professor would “teach and train” students in the classroom. *Id.* And the majority’s decision below emphasized that “suppressing” ideas is “especially dangerous in the classroom context.” Pet. App. 38a (quotation marks omitted); see *Heim*, 81 F.4th at 222 (stating that the hiring decision was “soaked in hostility to Keynesianism”). The next factor—the state’s interests as an employer—would not have supported the university, because it was narrowly defined by the court below as confined to the “managerial concerns” of university administrators. Moreover, the university’s interest in promoting a particular school of thought would have, according to the panel majority, “run headlong into bedrock First Amendment principles” against suppressing disfavored viewpoints. Pet. App. 42a. The majority below did not share the Second Circuit’s commonsense appreciation that content- and viewpoint-based employment decisions are at times *necessary* in the academic context. Finally, the university’s conduct in *Heim* would have transgressed the panel majority’s understanding of academic freedom below because the university’s actions were not based on any “discrete misconduct” by the professor but on the school’s disapproval of his scholarly viewpoint. Pet. App. 44a.³

³ To be sure, *Heim* involved regulation by a public university alone, while this case involves regulation by public universities at the direction of the State. According to both *Heim* and the decision below, that difference may matter, though neither

So *Heim* would almost surely come out differently under the Eleventh Circuit’s test. As the law now stands, then, the First Amendment *permits* ex post adverse employment action against a professor based on the content of his speech (*Heim*) but *prohibits* ex ante restrictions on that same speech (decision below). It is very hard to see how both could be true.

II. The Decision Below Conflicts with this Court’s Precedent.

The decision below flouts this Court’s precedent. To repeat: This Court made clear in its leading government-speech case in the area of public education that “[w]hen the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker.” *Rosenberger*, 515 U.S. at 833. Nearly a decade before *Garcetti*, then-Judge Alito correctly read this language to mean that “a public university professor does not have a First Amendment right to decide what will be taught in the classroom.” *Edwards*, 156 F.3d at 491.

So too here. The Court’s government-speech precedent compels reversal of the decision below even before one gets to the seminal *Garcetti* decision. And although the *Garcetti* Court reserved the question whether its holding governs with full force in the context of classroom instruction—a question that was not before it—the decision’s reasoning is squarely

decision explains why or how much. 81 F.4th at 234; Pet. App. 26a–27a. As discussed below, the notion that the state cannot control the curriculum of its public universities is patently untenable. See *infra* Part II.A.

applicable, and squarely contrary to the panel’s decision below. Finally, even if the Act were subject to First Amendment scrutiny under *Pickering-Connick*, the State’s interests here far outweigh the interests on the other side.

A. The Speech at Issue Is Government Speech and Thus Unprotected by the First Amendment.

Under this Court’s precedent, in-class instruction by state-employed educators is *the government’s own* speech, and the First Amendment gives federal judges no authority to control it. As this Court explained unequivocally in *Rosenberger*, because the state is speaking when it “determines the content of the education it provides,” it may “regulate the content of what is or is not expressed,” including by imposing “viewpoint-based restrictions.” 515 U.S. at 833–34. The Court confirmed this point in *Board of Regents of University of Wisconsin System v. Southworth*, stating that “speech by an instructor or a professor in the academic context” implicates the “principles applicable to government speech.” 529 U.S. 217, 235 (2000).

Here, the State of Florida is regulating “what is or is not expressed” in “the education it provides.” *Rosenberger*, 515 U.S. at 833. It is thus regulating its own speech when it restricts “speech by an instructor or a professor in the academic context.” *Southworth*, 529 U.S. at 235. And when the “government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.” *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015).

The court below dispensed with *Rosenberger* on two grounds. First, it emphasized that *Rosenberger* discussed “a university’s decision” to exercise control over classroom speech, rather than a state legislature’s, and concluded that a university’s curricular authority is purportedly on different constitutional footing from “a state legislature’s mandate.” Pet. App. 26a.

That distinction inverts the State’s organization chart. For one thing, as Judge Lagoa explained in dissent, Florida law, not to mention common sense, demolishes any suggestion that the authority of the State’s universities is somehow legally superior to the Florida Legislature’s. See Pet. App. 81a–83a. For another, the idea that “[u]niversities, as subordinate organs of the State, have First Amendment rights against” or above “the State or its voters” is antithetical to any proper understanding of state sovereignty. *Coal. to Def. Affirmative Action v. Granholm*, 473 F.3d 237, 247 (6th Cir. 2006) (Sutton, J., for the panel). Moreover, *Rosenberger* itself equated public university speech with government speech, see 515 U.S. at 833, and this Court has elsewhere recognized that the *state* is the “speaker” when it “attempts to direct the content of speech at public educational institutions[.]” *Univ. of Pennsylvania v. EEOC*, 493 U.S. 182, 198 n.6 (1990); cf. *Waugh v. Bd. of Trs. of Univ. of Miss.*, 237 U.S. 589, 596 (1915) (“It is to be remembered that the University was established by the state, and is under the control of the state[.]”); see also *Edwards*, 156 F.3d at 491 (Alito, J.). Against this authority, the decision below fails to muster a single citation in support of the fictional line it draws. See Pet. App. 26a, 42a n.14.

Second, the decision below insisted that *Rosenberger* is beside the point because its holding concerned “the government’s ability to impose speech limitations on student groups.” Pet. App. 27a. True enough. But the reasoning this Court employs in reaching a holding is just as binding—lower courts can’t divorce a result from its rationale. And in saying that the university went too far in regulating student speech, *Rosenberger* also made clear that “the University’s own speech . . . is controlled by different principles.” 515 U.S. at 833–34. The court below was not at liberty to zero-in on *Rosenberger*’s facts and disregard its reasoning. It instead should have faithfully applied that reasoning here. Cf. *Edwards*, 156 F.3d at 491–92 (Alito, J.) (relying on *Rosenberger*).

This Court’s precedent concerning speech of private parties funded by the government or occurring on government property reinforces the above analysis. The Court has consistently “refused to hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program” to the exclusion of other viewpoints. *Walker*, 576 U.S. at 208 (cleaned up). This refusal stems from the Court’s recognition “that when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes.” *Rosenberger*, 515 U.S. at 833.

Similarly, the Court has made clear that the government may “express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.” *Pleasant Grove City v. Summum*, 555 U.S. 460, 468 (2009). *Pleasant Grove* held that “even when ‘accepting a privately donated monument and placing it on city

property,” the government “had ‘engaged in expressive conduct’” and was thus entitled to control the content, including the viewpoint, of its message. *Walker*, 576 U.S. at 209 (quoting *Pleasant Grove*, 555 U.S. at 476 (cleaned up)). The Court applied these principles again in *Walker*, holding “that license plate designs proposed by private groups also amounted to government speech” and thus were not subject to First Amendment scrutiny. See *Shurtleff v. City of Bos.*, 596 U.S. 243, 252 (2022) (describing *Walker*).

These cases render the decision below completely untenable. For if the speech of private individuals proposing license plate slogans is government speech, then surely the classroom speech of state-employed educators at state universities is too. Indeed, the State of Florida “appropriates public funds” to support public education at the State’s universities, and it is thus “entitled to say what it wishes” and to specify the “viewpoint” that is taught in the education that it provides. *Rosenberger*, 515 U.S. at 833.

B. The Speech of University Professors Is Made Pursuant to Their Official Duties and Thus Unprotected by the First Amendment under *Garcetti*.

The panel’s departure from this Court’s precedent is thus clear before one even gets to *Garcetti*. But *Garcetti* is the clincher. In *Garcetti*, again, this Court explained that when “public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes.” 547 U.S. at 421–22. And “[r]estricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”

Id. So a public employer may punish or otherwise regulate an employee’s official-duty speech, and “the employee has no First Amendment cause of action.” *Id.* at 418. Unless university professors occupy a First Amendment pedestal unique in public employment, their classroom speech clearly falls within that rule because such speech is the quintessential example of speech made “pursuant to their official duties.” *Id.* at 421–22.

Although *Garcetti* left the question open, the court below erred in exempting public university professors from the same rule that applies to every other government employee. Indeed, this is “an easier case . . . than *Garcetti*” itself because there, “speech was not what the employee was being paid to create.” *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479 (7th Cir. 2007) (Easterbrook, J.). What is more, to hold that the First Amendment protects a public university professor’s official “speech related to scholarship or teaching,” *Garcetti*, 547 U.S. at 425, is irreconcilable with this Court’s recognition that “the government” may “regulate the content of what is or is not expressed when it is the speaker,” *Rosenberger*, 515 U.S. at 833. Simply put, a plurality of circuits, including now the Eleventh, has placed this Court’s government- and public-employee speech precedents in direct conflict.

C. Even if the Act Were Subject to First Amendment Scrutiny, the State’s Interests Here Outweigh Any Burden on Professors’ Speech.

Even if the panel majority were justified in sweeping all this Court’s government-speech cases to the side, it still should have upheld the Act. For the

majority should have evaluated, and upheld, the Act under the *Pickering-Connick* framework.

As the Ninth Circuit has held, educational statutes that, among other things, prohibit teaching classes that “[p]romote resentment toward a race or class of people” or “[a]dvocate ethnic solidarity instead of the treatment of pupils as individuals” are “reasonably related to the state’s legitimate pedagogical interest in reducing racism.” *Arce v. Douglas*, 793 F.3d 968, 973, 985 (9th Cir. 2015) (cleaned up). After all, “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Univ.*, 600 U.S. 181, 230 (2023) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

The State of Florida thus has an obvious and overriding interest in preventing its own employees from using public classrooms to promote a contrary view—that is, in preventing *government* employees from spurning “the Constitution’s guarantee of equal protection” against *government-sponsored* invidious discrimination by using their authority and influence to indoctrinate their students in the belief that they are “simply components of a racial, religious, sexual or national class.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (cleaned up).

The panel majority below downplayed this interest, insisting, remarkably, that “[a] professor who espouses a particular idea does not stand in the same shoes as one who ridicules a student, threatens a student, or targets a student.” Pet. App. 40a. But a professor is not merely “espous[ing] a particular idea,” *id.*, when he instructs students of one race, for

example, that they are morally inferior to students of a different race, that they are “inherently racist,” that they are morally obliged to “feel guilt” for the sins of their ancestors, and that they “should be discriminated against” on account of their race. FLA. STAT. § 1000.05(4)(a)(1)–(8). Such odious racist speech is on par with the Eleventh Circuit’s hypothetical professor who “ridicules” or “targets” a student; at the very least, the State could reasonably conclude as much. And the statements are all the more troubling given the authoritative standing professors typically enjoy in the classroom. *See* Pet. App. 78a (Lagoa, J., dissenting).

Respondent Professors’ interests, by contrast, are comparatively insignificant. They are free to discuss the discriminatory concepts in class, objectively without endorsement. They can introduce the concepts to students, assign readings on the concepts, and even subject the concepts to the crucible of the Socratic method. What they really claim is an *additional* interest in affirmatively *endorsing* the concepts and advocating them as truth to Florida’s public university students. But that marginal *personal* interest—as well as any students’ claimed *personal* interest in hearing such endorsements—is far outweighed by the State’s interests in stamping out race discrimination in its public-university classrooms.

Florida’s system of public education is committed to forming upright, virtuous citizens, not discriminatory malcontents with ahistorical and immoral axes to grind. That goal is consistent with the traditional function of higher education—to instill in students good character and civic responsibility. No principle in American law—including the First Amendment—

requires the State's institutions of higher learning to be hotbeds of the type of moral relativism imposed by the court below.

III. The Question Presented Is Exceptionally Important and Likely to Recur.

The stakes in this case are high: whether states and their public universities have the authority to determine what type of educational experience to provide. The decision below dealt a decisive blow to that authority, and ironically, it did so through repeated incantations of “academic freedom”—a concept it described as “imprecise,” “murky,” and “defined with only the haziest of lines,” Pet. App. 4a, 12a, 24a, and yet weaponized to annihilate the State's ability to supervise what is espoused by the professors it hires to teach the curriculum it offers in the classrooms it pays for.

In doing so, the Eleventh Circuit got academic freedom precisely backwards. “[A]cademic freedom belongs to the university.” *McDonald*, 186 F.4th at 930 (Easterbrook, J., concurring); *accord Urofsky*, 216 F.3d at 410; *Johnson-Kurek v. Abu-Absi*, 423 F.3d 590, 593 (6th Cir. 2005). It is a university's freedom “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring). Moreover, the *institutional* right of academic freedom is best understood as one commanding *judicial* deference to the university's academic decisions. *See Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (noting the *Court's* “reluctance to trench on the prerogatives of state and local educational institutions”). It does not empower individual

professors to operate as universities unto themselves, at liberty to indoctrinate college students in whatever views they please, no matter how contrary to the university's curricular viewpoint or how noxious to the People of Florida. Were it otherwise, states and their public universities would be "powerless" to "provide students with a particular kind of educational experience," making it harder for students to get what they, and the state's taxpayers, are paying for. *McDonald*, 186 F.4th at 931 (Easterbrook, J., concurring). And more than that, public universities would be constitutionally hamstrung in making hiring, tenure, and other basic employment decisions, which necessarily turn on content-based evaluations of the quality of teaching and scholarship. See Kermit Roosevelt III, *Not as Bad as You Think: Why Garcetti v. Ceballos Makes Sense*, 14 U. PA. J. CONST. L. 631, 657–58 (2012).

But the troubling implications of the majority's decision below do not end there. Under the panel's reasoning, for example, a state could *not* prohibit a public university professor from claiming that the Holocaust was a hoax, that the Nazis were the good guys, or that Jim Crow laws were justified because white people are "morally superior" to black people. If the decision below is right, then the State of Florida is utterly powerless—in fact, prohibited by *the Constitution*—from doing anything to stop its own employees from promoting such noxious views in its classrooms.

The majority below would likely resist these abhorrent implications, pointing to its dictum that a state can still prohibit the inculcation of views that "veer[] outside of well-understood parameters." Pet. App. 38a–39a. But that ipse dixit only deepens the

problem. For the upshot of this unprincipled and amorphous escape-hatch is that it empowers unelected judges to decide whether a “professor’s viewpoint is within the range of permissible views[.]” Pet. App. 84a. It thus ushers in a new form of “viewpoint discrimination under exceptions created, interpreted, and enforced by the judiciary.” Pet. App. 48a. Or in this Court’s words, the decision below “would commit . . . federal courts to a new, permanent, and intrusive role” in managing a public university curriculum that is contrary to “sound principles of federalism.” *Garcetti*, 547 U.S. at 423. Not only do the First Amendment and “academic freedom” not justify that result, they cannot tolerate it. *Cf. Morrison v. Olson*, 487 U.S. 654, 712 (1988) (Scalia, J., dissenting) (“Evidently, the governing standard is to be what might be called the unfettered wisdom of a majority of this Court, revealed to an obedient people on a case-by-case basis.”).

IV. This Case Is an Ideal Vehicle for Resolving the Question Presented.

This case presents an ideal vehicle for answering the question presented. The issue often arises in a fact-intensive context where parties may dispute whether speech was expressed pursuant to official duties, whether speech motivated an adverse action, and a host of other subjects. Not so here. The question presented comes to the Court as a pure issue of law, without any factual disputes that could affect the analysis.

Moreover, further percolation is unnecessary. Lower courts have long been grappling, inconsistently, with the question, and nearly all have weighed in. The Court should settle the dispute here and now.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

CHARLES J. COOPER
JOHN D. OHLENDORF
JOHN D. RAMER
RILEY W. WALTERS
COOPER & KIRK, PLLC
1523 New Hampshire
Ave., NW
Washington, DC 20036
(202) 220-9600

JAMES UTHMEIER
Attorney General
RYAN D. NEWMAN
Chief Deputy
Attorney General
DAVID M.S. DEWHIRST
Solicitor General
**Counsel of Record*
JASON J. MUEHLHOFF
Chief Deputy
Solicitor General
OFFICE OF THE
ATTORNEY GENERAL
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 414-3300
david.dewhirst@
myfloridalegal.com

Counsel for Petitioners

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