No. 26-475

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

BRIEF OF AMICUS CURIAE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

The American Center for Law and Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *Pleasant Grove City v. Summum,* 555 U.S. 460 (2009). The ACLJ specializes in First Amendment litigation and has frequently litigated the line between government speech and private speech, the central concern of this case. *See, e.g.*, *Summum* (representing petitioner); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (representing petitioner); *Walker v. Tex. Div., Sons of Confederate Veterans*, 576 U.S. 200 (2015) (as amicus). This case concerns the same principles at stake in *Summum*: the ability of the government to choose the message it wishes to convey.

SUMMARY OF ARGUMENT

The decision below rests on a fundamental category error. The First Amendment constrains the government when it regulates private speech; it does not require the government to surrender control of its own message. That distinction applies with full force when a state operates a university and employs professors to deliver the courses it provides. A

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[1] Pursuant to Supreme Court Rule 37.2, amicus provided timely notice to counsel of record for all parties of its intent to file this brief. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

professor remains free to speak as a citizen, but classroom instruction delivered as part of a state course is speech the state has commissioned. The Constitution does not transform that official-duty speech into the employee's private expression merely because the employee is a professor.

This Court's precedents confirm the point from every relevant direction. *Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006), recognizes the government's authority over speech it has commissioned or created. *Rosenberger v. Rector of Univ. of Va.*, 515 U.S. 819, 833 (1995), explains that when a public university determines the content of the education it provides, the university is speaking. And *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000), specifically identifies "speech by an instructor or a professor in the academic context" as a setting "where principles applicable to government speech would have to be considered." The Eleventh Circuit avoided those holdings only by recasting *Garcetti* as a rule about office management and by treating a state university as constitutionally independent of the state that created it. Neither move can be reconciled with this Court's decisions.

The traditional government-speech factors lead to the same conclusion. From the Founding era forward, governments have established, supported, structured, and assigned public purposes to schools and universities. The public likewise understands a course offered for credit by a state university, taught by its employee under its authority, as the institution's instruction—not as a private forum for the instructor. And Florida controls the entire enterprise: it establishes education policy, operates

the university system, approves curricula, employs instructors, and defines the instruction. History, public perception, and control all identify the State of Florida as the speaker.

That does not leave public education beyond constitutional constraint. The Establishment Clause, the prohibition on compelled belief, Title VII religious accommodation requirements, equal-protection principles, and the protections afforded employees speaking as citizens, among others, remain fully operative. But the Free Speech Clause does not authorize federal judges to substitute their curricular judgments for those of the state. The decision below does exactly that, granting individual instructors a constitutional veto over the message the state's institutions convey. This Court should grant review and restore the basic distinction between government regulation of private speech and government control of its own.

ARGUMENT

I. SPEECH IN A CLASSROOM ON BEHALF OF THE GOVERNMENT IS GOVERNMENT SPEECH.

"The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." *Summum*, 555 U.S. at 467. Classroom instruction in a government school falls squarely in the category of government speech, not private speech.

The Free Speech Clause of the First Amendment protects against government restriction of private speakers. By contrast, when the government leaves private speakers alone and speaks for itself, this Court has made it very clear that the Free Speech

Clause does not prevent the government from selecting its own message. *See, e.g.*, *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 559 (2005) (compelled speech); *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion) (Establishment Clause); *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 765–66 (1995) (plurality opinion) (same).

In particular, when the government restricts private speech, an array of constitutional free speech protections comes into play. By contrast, when the government speaks, it generally can select the precise message or messages it wishes to deliver. *See generally Rust v. Sullivan*, 500 U.S. 173, 194 (1991); *Rosenberger v. Rector of Univ. of Va.*, 515 U.S. 819, 833 (1995); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541–42 (2001). "[T]he Government's own speech . . . is exempt from First Amendment scrutiny." *Johanns*, 544 U.S. at 553; *see Walker*, 576 U.S. at 207–09.

A. The Government May Control Its Own Message.

The Constitution recognizes that Florida can speak in its own voice, without any concomitant constitutional duty to incorporate private speech into its message. Indeed, the general rule is that, when the government speaks, "it is entitled to say what it wishes." *Rosenberger*, 515 U.S. at 833; *see also Columbia Broad. Sys. v. Democratic Nat'l Comm.*, 412 U.S. 94, 139 n.7 (1973) (Stewart, J., concurring) ("Government is not restrained by the First Amendment from controlling its own expression"). The government's autonomy of expression remains

subject to independent constitutional constraints on the *effects* of specific messages, like the Establishment Clause, *see, e.g.*, *Mergens*, 496 U.S. at 250 (plurality opinion), or the Free Exercise Clause, *see Mahmoud v. Taylor*, 606 U.S. 522, 530 (2025).

A government that could not choose its message could not function. "When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others. The Free Speech Clause does not require government to maintain viewpoint-neutrality when its officers and employees speak about that venture." *Matal v. Tam*, 582 U.S. 218, 234 (2017). A state that runs a campaign against drunk driving need not run an equal campaign in favor of it. A city that accepts a monument need not accept its opposite. *Summum*, 555 U.S. at 470–72. And a state that issues a specialty license plate with a message need not issue the contrary one. *Walker*, 576 U.S. at 207–09.

When government conveys messages in its own voice, as Florida has done here, it has no obligation to provide an equivalent platform for private speech. To hold otherwise would wrest control of the message from the hands of the speaker—the government—and into the hands of "any contingent . . . with a message," with the result that what originated as speech of Florida would, in the end, "be shaped by all those . . . who wished to join in with some expressive demonstration of their own." *Hurley v. Irish-American GLIB*, 515 U.S. 557, 573 (1995). But the First Amendment does not force the government to choose between cacophony and silence. *Ark. Educ. TV Comm'n v. Forbes*, 523 U.S. 666, 681 (1998); *see id.* at 675 ("[T]he First Amendment of its own force does not

compel public broadcasters to allow third parties access to their programming."). To the contrary, when the government itself is speaking, it can "ensure that [the government's] message is neither garbled nor distorted." *Rosenberger*, 515 U.S. at 833.

The government speaks only through people. The government-speech doctrine therefore necessarily covers speech delivered by the government's agents in the course of their work. A press secretary who describes the Administration's position is not exercising a personal First Amendment right; neither is a prosecutor who argues the state's case, nor a diplomat who delivers the Nation's message abroad. The same is true of a professor whom a state university employs to deliver instruction in a state course: the professor supplies the human voice, but the instruction is the state's message. That is the speech at issue here.

That principle is reflected in this Court's public-employee cases. In *Garcetti*, the Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The Court explained why: "Restricting 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. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." *Id.* at 421–22. Supervisors, the Court observed, must be able to

ensure that official communications promote the employer's mission. *Id.* at 422.

The Eleventh Circuit treated *Garcetti* as a narrow doctrine about "managerial concerns" and "workplace management," and reasoned that the State's interest in controlling classroom content is not of that kind. Pet. App. 19a–21a, 40a. But *Garcetti* did not limit employer control to workplace logistics. Its rule turns on whether the government commissioned or created the speech and whether the speech exists because of the employee's professional responsibilities. 547 U.S. at 421–22. Teaching is not merely incidental to a professor's work; it is the work the state commissioned. If the rule covers a prosecutor's memorandum, it covers a lecture the state hired a professor to deliver. And treating curricular direction as illegitimate unless it is "managerial" cannot be squared with this Court's repeated recognition of the states' substantial interest in the content of public education. *See Epperson v. Arkansas*, 393 U.S. 97, 104, 107 (1968); *Bd. of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (plurality opinion).

Garcetti reserved whether its public-employee analysis applies "in the same manner" to scholarship or teaching. 547 U.S. at 425. That reservation did not create a professor's personal right to control classroom instruction or displace *Rosenberger* and *Southworth*, discussed below. It means only that the Court left open whether some academic expression may implicate additional constitutional interests not fully captured by the ordinary public-employee framework. The reservation thus cautions against mechanically applying *Garcetti* to every statement related to scholarship or teaching; it does not answer

who speaks when a public university determines the content of an assigned course. Nor does it erase the distinction between scholarship undertaken in a professor's own voice and instruction delivered as part of the education the state has commissioned. Whatever protection the reservation may preserve for independent research, publication, or other academic expression outside the classroom, it does not subject the state's curriculum to the professor's private preferences.

That conclusion does not collapse the distinction between an employee's official speech and his own expression. To the contrary, *Garcetti* protects the latter by defining the former. The employee remains free to speak as a citizen, in his own name, on his own time, and through his own channels. *See Lane v. Franks*, 573 U.S. 228, 240 (2014) ("The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties."); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 529–31 (2022) (a coach's private prayer was not speech the government had commissioned). The rule is thus two-sided: the same line that leaves official-duty speech to the government leaves everything outside the job to the employee. The same distinction resolves this case. Florida has not regulated what professors say as private citizens; it has directed what its employees may convey while delivering instruction the state has commissioned. The professor remains free to speak elsewhere, but the state retains control over the message delivered in its classroom.

B. This Court Has Already Applied the Principle to Public Education.

This Court has already answered the question in the education context: when a public university determines the content of the instruction it provides, the university is speaking.

Start with *Rosenberger*, which arose at a public university. This Court held that the University of Virginia could not exclude a student publication from a fund that supported student groups because the fund was a forum for private speech. But the Court drew the precise distinction presented here. When the university "determines the content of the education it provides, it is the University speaking," and the government may "regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message." *Rosenberger*, 515 U.S. at 833. The Court explained that the university's "own speech . . . is controlled by different principles." *Id.* at 834. That distinction maps directly onto this case. A professor delivering a state course is not a private speaker seeking access to a forum created for private expression; the professor is the person the state has employed to provide the education whose content the state has determined. *Rosenberger* therefore confirms the premise that the instruction a public university provides is the university's—and thus the government's—speech.

The Eleventh Circuit tried to distinguish *Rosenberger* on the ground that it involved a university's control of its classrooms, whereas the Act reflects a legislature's mandate; in the panel's view, "it is the university's view of the curriculum that is privileged, not the legislature's." Pet. App. 26a; *see id.*

at 42a n.14. That reverses the relationship between a State and the public university it created. A public university is an arm of the state, established by it and "under the control of the state." *Waugh v. Bd. of Trs. of Univ. of Miss.*, 237 U.S. 589, 596 (1915). When *Rosenberger* said that the University was speaking when it determined the content of its education, its premise was that the University speaks *for the government*; the rule was one about when "the government" may "regulate the content of what is or is not expressed." 515 U.S. at 833. This Court has likewise described the state as the speaker when it "attempts to direct the content of speech at public educational institutions." *Univ. of Pa. v. EEOC*, 493 U.S. 182, 198 n.6 (1990).

The panel cited nothing establishing that a state's universities possess First Amendment rights against the state that created them. An agent has no constitutional claim against its principal over the content of the principal's message. A state may delegate substantial curricular judgment to university officials and faculty without surrendering ultimate responsibility for the education its institutions provide. The scope of that delegated discretion is itself a matter for the state to define; it does not become an individual First Amendment entitlement that disables the state from directing its own institutions.

Southworth confirmed the point. In rejecting a challenge to a student-fee system, this Court again distinguished a university's own speech from the private speech it facilitates. The university's speech is not subject to the viewpoint-neutrality rules governing private-speech forums, and the Court

specifically recognized that, in the case of "speech by an instructor or a professor in the academic context," "principles applicable to government speech would have to be considered." *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000). That observation is especially significant here. The Court identified an instructor's academic speech—not merely administrative statements or institutional publications—as a setting in which the government itself may be the speaker. Read together, *Rosenberger* and *Southworth* establish that when a public university employs a professor to deliver the education the university provides, the resulting classroom instruction may be attributed to the university rather than treated as the professor's private speech.

These cases reflect a broader principle: this Court has regularly emphasized the ability of government to select its own message when it is doing the educating. This Court has noted the role of governmental discretion in "a university selecting a commencement speaker, a public institution selecting speakers for a lecture series, . . . a public school prescribing its curriculum," and "a public broadcaster exercis[ing] editorial discretion in the selection and presentation of its programming." *Forbes*, 523 U.S. at 674. Similar observations of this common-sense proposition appear in other cases. *See, e.g.*, *United States v. Am. Libr. Ass'n*, 539 U.S. 194, 208 (2003) (plurality opinion) (noting library's "traditional role in identifying suitable and worthwhile material"); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 585–86 (1998) (noting government agency's role in selecting certain expressive works).

The elementary and secondary cases are to the same effect. In *Hazelwood School District v. Kuhlmeier*, the Court held that educators may control school-sponsored expression that bears the school's imprimatur, to ensure that participants learn the lessons the activity is designed to teach. 484 U.S. 260, 270–73 (1988). The plurality in *Pico* described the authority of local boards "to establish and apply their curriculum in such a way as to transmit community values." 457 U.S. at 864 (plurality opinion) (citation omitted). *Ambach v. Norwick* described public schools as institutions "inculcating fundamental values necessary to the maintenance of a democratic political system." 441 U.S. 68, 77 (1979).

In *Epperson*, this Court stated that "public education in our Nation is committed to the control of state and local authorities," and that courts must exercise "care and restraint" before interposing in it. 393 U.S. at 104. *Epperson* recognized the "State's undoubted right to prescribe the curriculum for its public schools," even as it held that the right does not extend to prohibitions that violate the Establishment Clause. *Id.* at 107. While public universities are certainly different in mission, structure, and the maturity of their students, those differences do not alter the relevant principle: when the state determines the content of instruction offered through its public institutions, the state is directing its own educational message.

II. CLASSROOM INSTRUCTION AT A STATE UNIVERSITY IS GOVERNMENT SPEECH UNDER *WALKER* AND *SHURTLEFF*.

Whether speech is the government's own does not turn on labels. This Court asks a practical question, looking to "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022); *see Walker*, 576 U.S. at 209–14; *Summum*, 555 U.S. at 470–72. Applied to classroom instruction at a public university, each factor points the same way. And the doctrine's own boundaries identify what the State has *not* sought to control.

History. Founding-era law treated public education as an instrument of republican government and placed responsibility for its direction in public institutions. The Northwest Ordinance, adopted by the Confederation Congress in 1787, declared that "[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Northwest Ordinance of 1787, art. III. Congress thereby linked publicly encouraged education to the ends of government itself—not to the autonomous expression of individual teachers.

Georgia acted even more directly. In 1785—before ratification of the Federal Constitution—the Georgia General Assembly chartered the University of Georgia, the Nation's first state-chartered university. Act of Jan. 27, 1785, 1785 Ga. Laws 560. The charter declared it among the first objects of those concerned

for national prosperity "to encourage and support the principles of religion and morality, and early to place the youth under the forming hand of society, that by instruction they may be moulded to the love of virtue and good order." *Id.* The state thus created a public university precisely because it understood organized instruction as a means by which society forms citizens.

North Carolina's founding law reflects the same understanding. Its 1776 Constitution directed that "all useful learning shall be duly encouraged, and promoted, in one or more universities." N.C. Const. of 1776, art. XLI. In 1789, the General Assembly implemented that constitutional command by chartering a state-supported university and assigning its governance to public trustees. Act of Dec. 11, 1789, 1789 N.C. Sess. Laws 15. Public higher education was not treated as a collection of constitutionally autonomous instructors; it was an institution established under state law to advance learning selected and organized through the state's governing structure.

The Massachusetts Constitution of 1780 is still more explicit about public responsibility for the content and ends of education. It charged "legislatures and magistrates, in all future periods" to support "the university at Cambridge, public schools and grammar schools," and to "countenance and inculcate the principles of humanity and general benevolence," along with other civic virtues. Mass. Const. pt. 2, ch. V, § 2. The same constitution preserved the legislature's authority to make alterations in Harvard's government conducive to the university's advantage and "the interest of the republic of letters." *Id.* § 1, art. III.

These enactments span national territorial policy and the constitutional and statutory law of three states. They show governments establishing, supporting, structuring, and assigning purposes to educational institutions—including universities—and treating instruction as a means of advancing public ends. Nothing in that tradition suggests that an individual teacher was understood to possess a constitutional claim against the state over the content of the curriculum. The tradition runs the other way: public education was understood as a means of forming citizens, and government directed that enterprise through the institutions and officers it created. This Court's modern decisions describe the same tradition. *See Epperson*, 393 U.S. at 104, 107; *Ambach*, 441 U.S. at 76–77; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (public education must "inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government" (citation omitted)); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (education is "the very foundation of good citizenship").

Public perception. The question is who the public "likely" understands to be speaking. *Shurtleff*, 596 U.S. at 252. In *Walker*, the Court observed that license plates are, by long convention, understood as identifying the state, and that the public therefore treats their messages as the state's. 576 U.S. at 212. The same is true of a course offered by a state university. The student enrolls in a state institution, pays tuition to it, takes a course listed in its catalog, taught by its employee, in its building, for credit toward its degree. No one thinks the lecture is the

private expression of a stranger who happens to be standing in the room. As the dissent below put it, professors at public universities "teach 'the State's curriculum, in the State's classrooms, on the State's time, in return for a State paycheck.'" Pet. App. 83a (Lagoa, J., dissenting) (quoting Petitioners' briefing).

That perception is also why the State's interest in the classroom is acute. A student who hears a state instructor endorse an idea hears the voice of the institution. And because the instructor "maintains authority over the students' grades," Pet. App. 77a–78a (Lagoa, J., dissenting), the endorsement carries a weight a private speaker's opinion does not. That is precisely why the state, which answers for what its classrooms teach, has a legitimate interest in what is endorsed there.

Control. The state controls instruction at every level. The Florida Legislature is vested with authority to "establish education policy, enact education laws, and appropriate and allocate education resources." Fla. Stat. § 1000.03(2)(a). The Board of Governors, a body created by the Florida Constitution, *see* Fla. Const. art. IX, § 7, operates the State University System and adopted the regulation implementing the Act. Pet. 10 & n.1. The universities, as Judge Lagoa explained, "speak and act subject to the State's control and administration." Pet. App. 81a, 83a. The state, through its universities, hires the instructor, assigns the course, approves the curriculum, determines the course credit, and pays the salary. The Act does not extend that control to anything the state has not itself commissioned; it applies to "instruction," defined by the Board's regulation as teaching "by a university employee" or by a person authorized by the

university to provide instruction within a course, and it does not reach guest speakers or invitees who do not speak for the state. Pet. 9. The state has regulated what it hired employees to say, and nothing more.

The contrast with *Rosenberger* is instructive. There, the university had created a fund to support the private speech of student groups; it had opened a forum for others' expression and could not discriminate by viewpoint in administering it. 515 U.S. at 828–34. A professor teaching a course is in a different position. The classroom "is not an open forum," Pet. App. 54a (Lagoa, J., dissenting), and the professor is not a student group applying for access to it. The professor is the state's instructor, delivering the state's course. A state university's course on the Holocaust need not give equal time to Holocaust denial, and no one supposes that the state has thereby violated the First Amendment. Viewpoint neutrality is the rule for forums created for private speech. It is not the rule for the government's own message.

III. THE QUESTION WARRANTS THIS COURT'S REVIEW.

Having set the government-speech and public-employee precedents aside, the panel announced that restrictions on professors' curricular speech "must be reasonable and related to legitimate pedagogical concerns," guided by "the context of the speech," the state's role "as a public employer," and "the strong predilection for academic freedom." Pet. App. 37a. The phrase "legitimate pedagogical concerns" comes from *Hazelwood*, but *Hazelwood* used it to *uphold* a school's authority over school-sponsored speech. 484

U.S. at 273. Instead, the panel used it to authorize a federal court to second-guess a state.

The panel also acknowledged the limits of its own rule. The state remains free, it said, to "exclude speech that veers outside of well-understood parameters," such as "personal tangents irrelevant to the subject matter, conspiracy theories, and the like." Pet. App. 38a–39a. That concession is revealing. The reason a state may keep a professor's conspiracy theory out of its classroom is that the classroom is the state's to curate. That reason does not depend on whether a federal court agrees that the theory is a conspiracy theory. Once the premise is admitted, the line is the state's to draw, and the panel's retention of the authority to review it is unexplained.

The consequences are concrete. Under the panel's reasoning, the question whether a state may bar a professor from teaching that the Holocaust was a hoax, or that one race is morally superior to another, does not turn on the state's judgment but on a court's view of whether the idea falls within "well-understood parameters." As Judge Lagoa observed, the majority "removes that decision from the elected representatives of the State of Florida and vests it instead in the judiciary." Pet. App. 85a n.11. This Court has cautioned that "[j]udicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint." *Epperson*, 393 U.S. at 104. It warned in *Garcetti* that a contrary rule for official-duty speech would commit the courts to "a new, permanent, and intrusive role." 547 U.S. at 423. The Eleventh Circuit's rule does exactly that, in the setting where the intrusion is least justified: the content of the state's own instruction.

Ultimately, the panel's rule does not leave the dissenter, the student, or the minority viewpoint better off. A court-supervised curriculum is still a curriculum, and every dispute over what it may include becomes a federal lawsuit over what is "well understood." The protections that actually safeguard individual liberty in this setting are the ones the government-speech framework already preserves: the Establishment Clause, *Epperson*, 393 U.S. at 103–07; the bar on compelled student belief, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); Title VII; the Equal Protection Clause; the protection of employees speaking as citizens, *Lane*, 573 U.S. at 240; and the political process that holds the State accountable for what it says, *Summum*, 555 U.S. at 468–69. Those protections apply whatever the viewpoint of the speaker or the message. But under the Eleventh Circuit's rule, federal judges, not elected officials, decide curricular content and what students will be taught.

Every state operates a system of public higher education, and every state has an interest in what its institutions teach with public funds. The Eleventh Circuit's rule takes that choice from the legislature and the state's governing boards and gives individual instructors, subject to federal-court supervision, a constitutional right to depart from the state's directions. That is a significant intrusion on a core state function, in an area in which this Court has long counseled "care and restraint." *Epperson*, 393 U.S. at 104.

This Court should grant review and reaffirm the authority of the government to choose its own message.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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