

No. 26-8

In the Supreme Court of the United States

KIMBERLY ANN POLK,

Petitioner,

v.

MONTGOMERY COUNTY PUBLIC SCHOOLS, et al.,

Respondents.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit**

**BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY,
THE NATIONAL ASSOCIATION OF EVANGELICALS, AND
THE ETHICS AND RELIGIOUS LIBERTY COMMISSION
IN SUPPORT OF PETITIONER**

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INTERESTS OF *AMICI CURIAE*¹

Christian Legal Society (CLS) is a nonprofit, nondenominational association of Christian attorneys, law students, and law professors. For 50 years, through its Center for Law & Religious Freedom, CLS has worked to defend the First Amendment rights of all Americans—including students, student organizations, and teachers—in the context of public schools. CLS regularly seeks to protect religious speech from discriminatory treatment.

The National Association of Evangelicals is the largest network of evangelical churches, denominations, colleges, and independent ministries in the U.S. It serves 40 member denominations, as well as numerous evangelical associations, missions, social-service charities, refugee and humanitarian aid agencies, colleges, seminaries, and independent churches.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and ethics entity of the Southern Baptist Convention (SBC). The SBC is the nation's largest Protestant denomination, with approximately 13 million members in more than 45,000 churches across the U.S. The SBC charged the ERLC with addressing moral, ethical, and cultural issues of importance to Southern Baptists, such as religious freedom, marriage and family, the sanctity

¹ Pursuant to Rule 37.2, all parties' counsel of record received timely notice of intent to file this brief. Pursuant to Rule 37.6, this brief was prepared and funded entirely by *amici* and their counsel. No other person contributed financially or otherwise.

of human life, and human dignity. As those who believe “God alone is Lord of the conscience,” Southern Baptists contend that free speech is an essential component of worship that is unhindered by the state, our first freedom.

SUMMARY OF ARGUMENT

The petition for certiorari should be granted to correct a dangerous reduction of teachers’ freedom of speech. The Fourth Circuit’s broad reading of the government employee speech doctrine under *Garcetti v. Ceballos*, 547 U.S. 410 (2006), is inconsistent with how free speech doctrine has regularly been applied in the K-12 context. For over five decades, this Court has emphasized its “repeated promise that teachers do not ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.’” *Kennedy v. Bremerton*, 597 U.S. 507, 531 (2022) (quoting *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969)).

The facts in this case raise the question of whether a teacher whose speech is religiously motivated may be forced to choose between compromising her faith and keeping her job. Nuances are at play, exposing the unresolved cracks in First Amendment and Title VII jurisprudence left by *Kennedy* and *Garcetti*.

Uncorrected, the Fourth Circuit’s shrinking of free speech for public school teachers will harm the teaching profession itself—and the next generation of students. Reducing teachers solely to mouthpieces of government ideology will drive away passionate people who love students.

Ms. Polk successfully served as a substitute teacher in Montgomery County until she realized she couldn't comply with unyielding policies involving student preferences around their gender identity without violating her religious convictions. Pet. App. 6a. She requested an accommodation for her religious beliefs. The school district denied her request and revoked her status to substitute teach. Pet. App. 7a. Polk filed suit, claiming violations of free speech, free exercise, and failure to accommodate. She was denied a preliminary injunction, pet. app. 9a, and the Fourth Circuit affirmed. Pet. App. 17a.

This Court should grant the petition and reverse the circuit court's decision to clarify that the Fourth Circuit incorrectly applied this Court's free speech precedents in the context of K-12 public school teachers' First Amendment interests. Working for the government does not mean a person loses all free speech rights. *See, e.g., Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) (rejecting the idea that public employment can be denied based on unreasonable speech restrictions); *Tinker*, 393 U.S. at 506 (saying teachers do not shed their constitutional rights); *Kennedy*, 597 U.S. at 527 (describing the “complexity associated with the interplay between free speech rights and government employment”); *Lindke v. Freed*, 601 U.S. 187, 197 (2024) (noting that public employees' speech rights require fact-specific analysis and “turn on substance, not labels”).

An individual should not be compelled to choose between her faith and her job. Yet the Fourth Circuit completely sidelined the teacher's free speech and religious exercise rights by broadly defining “official

duties” under *Garcetti*. The Fourth Circuit’s decision allows the government to create and apply policies that effectively marginalize individuals with sincere religious convictions, barring them from an entire sector of government work unless they compromise their convictions.

This case is not just another culture war battle: the legal path taken by the Fourth Circuit is dangerous for all teachers regardless of their views on gender identity issues. The Fourth Circuit incorrectly held that a public school teacher has no First Amendment rights whatsoever because the dispute arose in relation to policy choices by the school district that implicate the teacher’s job duties. Instead, this Court should clarify the various threads of free speech doctrine involving the K-12 public school setting.

This Court has long grappled with delicate issues in the K-12 public school setting and has consistently balanced both preserving individual rights and deferring to administrators’ expertise to cultivate a learning environment. Amici respectfully urge the Court to follow that pattern here and clarify once again that the K-12 public school setting is not a First Amendment free zone and that it requires a nuanced application of First Amendment freedoms. It is consistent with *Garcetti* to apply a practical approach in the school setting and weigh the unique factors the Court has weighed in other First Amendment school cases. In such balancing (similar to the framework in *Pickering*), the Court may apply familiar considerations such as whether (1) the speech is disruptive (*Tinker*); (2) whether there are “legitimate pedagogical concerns” underlying such restrictions

(*Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988)); and (3) deference to the school acting “within its permissible authority” is warranted in this area (*Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 685 (1986)).

ARGUMENT

I. The Court Below Erred as a Matter of Law When it Broadly Applied *Garcetti* to Hold That Ms. Polk’s Objection to District Policy was not Protected Speech.

Ms. Polk was a substitute teacher in Montgomery County schools during the 2021-22 school year and received positive reviews. Pet. App. 6a. She looked forward to increasing her hours the next school year. Pet. App. 7a. Ms. Polk was concerned when she found out that the school board had instituted new guidelines requiring teachers to address students by the pronoun corresponding to their asserted gender identity and not to disclose information about the student’s transgender status to parents. She could not in good conscience affirm that she understood and would comply with the guidelines. Pet. App. 6a. Starting in the 2022-23 school year, therefore, she submitted a request for a religious accommodation based on her “sincerely held religious beliefs.” Pet. App. 7a. The school district discussed possible accommodations but rejected them all. Pet. App. 7a-8a. Ms. Polk sought judicial protection for her freedom of speech and religious exercise, as well as her right under Title VII to accommodation for her religious exercise.

In denying Ms. Polk’s motion for injunctive relief, the Fourth Circuit recognized the sweeping nature of its decision, acknowledging that by interpreting

“official duties” to include every action and speech taken at school, Ms. Polk would have no option to live according to her convictions while working as a public school teacher. The court simply responded that no one *forced* her “to become a substitute teacher,” and that she could simply find a different job. Pet. App. 37a.

As Judge Wilkinson’s dissent wisely pointed out, such a broad interpretation ignores the many nuances involved. First, the situation involves religious speech, which the First Amendment contemplates as involving intertwined rights. Pet. App. 46a. Second, “noncurricular matters” could reasonably be treated differently under the Court’s analysis in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), because they are less tied to educational standards. Pet. App. 50a. Third, the standard provides “no limit to the words the state [could] put in teachers’ mouths.” Pet. App. 48a.

The Fourth Circuit’s “just get another job” mentality ignores the principled approach that other courts have taken as they have wrestled with employment demands that employees agree to ideological commitments that violate their beliefs. For example, this Court struck down a loyalty oath requirement because “[f]ree speech may not be so inhibited” by the government requiring teachers to swear that they were not subversive. *Baggett v. Bullitt*, 377 U.S. 360 (1964). More recently, the Ninth Circuit required further analysis of an employee’s claim that a loyalty oath requirement conflicted with her religious beliefs. *Bolden-Hardge v. Office of Cal. State Controller*, 63 F.4th 1215 (9th Cir. 2023) (based

on Title VII and whether “business necessity” justifies such a standard).

It is not right to put a teacher to a Hobson’s choice where no option involves keeping her job while remaining faithful to her religious convictions. The government should not be able to avoid important First Amendment questions by simply tying a policy to a behavior that it considers a job duty. Protecting religious speech, association, and exercise rights requires a framework that allows actually acknowledging and weighing them.

II. This Case Is an Important Opportunity to Clarify the Complexity and Layering of First Amendment Rights in the Public School Setting.

In the school setting, this Court has consistently balanced respect for free speech with deference to schools that are inculcating values in students. It has acknowledged the need to avoid substituting its judgment for that of schools and has recognized the need to adjust First Amendment analysis accordingly while still providing a meaningful First Amendment analysis. *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 514 (1969) (schools can restrict speech based on reasonably forecast substantial disruption); *Bd. of Ed., Island Trees Sch. Dist. v. Pico*, 457 U.S. 853, 864-65 (1982) (plurality opinion) (confirming that schools must have broad discretion in establishing curriculum and choosing library books but must also respect First Amendment interests); *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189 (2021) (acknowledging that it is challenging to create rigid standards around when a school’s interest in

preventing disruption will overcome First Amendment rights, but considering factors).

Amici urge this Court to apply that same practice here. In *Kennedy v. Bremerton*, the Court distinguished *Garcetti* by saying the coach was not performing official duties at the time of his prayers. *Kennedy*, 597 U.S. 507, 529 (2022). Yet *Kennedy* applied constitutional principles that an overly broad interpretation of *Garcetti* effectively undermines.

First, like this case, *Kennedy* involved a combination of free speech and religious exercise interests, which the Court indicated work together to protect teachers’ religious expression. *Id.* at 523. Instead, “[t]hese clauses work in tandem” and “doubly protect[] religious speech.” *Id.*

Second, *Kennedy* spoke about the “delicate balancing of the competing interests surrounding the speech and its consequences” in the school setting. *Id.* at 527-28. The school context is not just about efficiently running government programs but about training and educating individuals in holistic ways. See, e.g., *Tinker*, 393 U.S. at 512 (emphasizing that “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth”). This Court has repeatedly confirmed the importance of speech in the school setting. For example, in *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967), the Court emphasized that the employment of faculty should not be conditioned on surrendering their constitutional rights, holding that states could not require public university teachers to sign loyalty oaths disavowing communist beliefs. The Court was concerned that

when such conditions are placed on employment, “liberties of religion and expression may be infringed.” *Id.* at 606.

The Fifth Circuit has rightly emphasized that “[t]he protections of the First Amendment have been given special meaning when teachers have been involved. Simply because teachers are on the public payroll does not make them second-class citizens in regard to their constitutional rights.” *Pred v. Bd. of Pub. Instruction*, 415 F.2d 851, 855 (1969) (reversing a dismissal of a claim by junior college teachers who alleged they were terminated because they disagreed with views of the school authorities). It emphasized the importance to teaching of the marketplace of ideas and rejected the claim that a teacher could just find another job if they wished “to propagandize” and give up being public school teachers. *Id.* at 856.

Third, courts are accustomed to applying principles of deference in the K-12 setting and are able to find the right balance. They often weigh school district decisions with a presumption that schools know better than the courts what it takes to ensure a healthy educational environment. *See Fraser*, 478 U.S. at 680. Courts are particularly inclined to defer when facts involve provocative situations or topics likely to result in disruption. *See, e.g., Morse v. Frederick*, 551 U.S. 393, 406 (2007) (deferring to the administrator’s view in the school environment that the student speech could reasonably be viewed as promoting illegal drug use); *Thompson v. Cent. Valley Sch. Dist.*, 163 F.4th 654, 666 (9th Cir. 2025) (holding that racist slurs by an assistant principal were disruptive and merited deference to the school district

about how disruptive); *B.W.A. v. Farmington R-7 Sch. Dist.*, 554 F.3d 734, 740 (8th Cir. 2009) (holding that a school could restrict speech that it reasonably believed would lead to unrest and disruption based on clear tension, such as a student wearing clothing with a Confederate flag on it).

Even with high deference, however, courts recognize First Amendment limits. It is not enough if a school has an undifferentiated fear of disruption, though it might meet the threshold if there is a specific history of prior incidents. *See, e.g., Saxe v. State College Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001) (Alito, J.) (holding that the school’s harassment policy was unconstitutionally broad); *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 317-18 (3d Cir. 2013) (en banc) (holding that a school cannot have a standard that allows it to eliminate “all student speech touching on sex or merely having the potential to offend”).

Courts are able to analyze specific facts and details as they balance First Amendment interests, considering the needs of the school environment and weighing how much deference to apply. *See, e.g., West v. Denby Unified Sch. Dist. No. 260*, 206 F.3d 1358 (10th Cir. 2000) (upholding a school’s harassment policy based on numerous factors and concluding there was more than “undifferentiated fear” behind the policy because of the history of racial tension); *Hardwick v. Heyward*, 711 F.3d 426, 439 (4th Cir. 2013) (evaluating the situation and stating that “school officials reasonably forecasted that” allowing the wearing of a Confederate flag “could cause substantial disruption”).

It makes sense to consider employee teacher rights with similar care to what is given to student rights. The framework in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), rather than *Garcetti*, allows for awareness of the educational environment and balancing it with First Amendment values. *Pickering* includes the goal to “arrive at a balance between the interests” of the teacher and the school district. 391 U.S. at 568. Such balancing allows courts to find that an employee’s behavior on and off campus “interfered with his ability to do his job.” *Thompson*, 163 F.4th at 661. The application of *Garcetti* was not at issue in *Thompson*, but the Ninth Circuit wisely wrestled with the complexity of the school setting, noting that “the role of an employee and his impact on the employer’s operations” could reasonably impact the “sliding scale” of how “First Amendment interests” are weighed in that setting. *Thompson*, 163 F. 4th at 665.

Broadly applying *Garcetti* in the education setting ignores the nuanced educational context. In applying *Garcetti*, the Fourth Circuit here concluded with minimal analysis that Polk’s speech will “interfere with the effective operation” of the schools in Montgomery County. Pet. App. 37a.

It makes the most sense to limit *Garcetti*’s application in the K-12 setting to curricular content and standards. Defining “official duties” within the parameters of speech about curricular content would still allow the *Pickering* framework to apply in cases involving other aspects of teacher speech. It would allow needed curricular control in the K-12 space. See, e.g., *Hazelwood*, 484 U.S. at 269; see also *Lee v. York Cnty. Sch. Div.*, 484 F.3d 687, 695-96 (4th Cir. 2007)

(applying principles based on *Hazelwood* rather than *Garcetti* to teacher speech, asking whether something is “curricular in nature” as a framing principle). Schools could focus on whether teachers are acting consistently with the school’s mission as they teach the material. But teachers would also have freedom to bring passion and individuality into how they teach and engage with students, even as they adhere to curricular content standards and expectations. In the nuanced spaces around how teachers choose to engage relationally with students, parents, and the community, courts would still recognize that teachers do not automatically lose their First Amendment rights inside the schoolhouse. *Tinker*, 393 U.S. at 506.

III. Preserving Protection for Teacher Speech in the K-12 Public School Setting Is Consistent with This Court’s Precedent.

It is consistent with *Garcetti* to provide a different government employee speech standard in the school setting. *Garcetti* acknowledges that “[t]he First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens.” 547 U.S. at 419. *Garcetti* assumes its principle has limitations, stating that everything an employee says in the office is not “automatically exposed to restriction.” *Id.* at 421. “Many citizens do much of their talking inside their respective workplaces,” so it would overly restrict government employees to deny them all protection for speech made in the workplace. *Id.* at 420-21. The government employer simply needs “sufficient discretion to manage their operations,” *id.* at 422, not absolute control.

This Court in *Garcetti* foresaw that the “official duties” label might cause problems, warning against broad job descriptions saying, “The proper inquiry is a practical one.” *Id.* at 424. It also recognized that “additional constitutional interests” might be in play in a classroom context. *Id.* at 425. In contrast, *Pickering* took place in the education setting, where the Court considered the school’s needs and weighed them but ruled for the teacher, noting that his “proper performance of his daily duties in the classroom” had not been impeded. 391 U.S. at 572.

Balancing is particularly important when teacher cases involve layered First Amendment rights. It will help confine *Garcetti* and lead to more cases that apply *Pickering* balancing if the Court limits the definitions of “official duties” and “work product,” *Garcetti*, 547 U.S. at 422. The Court can narrow these definitions by asking: What is necessary to provide operational and curricular needs? For example, it makes sense that lesson plans formed based on curricular requirements would qualify as work product in the K-12 setting and would constitute government speech. But if “official duties” include everything a teacher speaks while she does any ‘teacher-related’ work, then it will erase almost all First Amendment protections for teachers. The definition of “curriculum” is generally understood to mean “the subjects studied in a school, college, etc. and what each subject includes.” *Curriculum, Cambridge Advanced Learner’s Dictionary & Thesaurus*, Cambridge University Press, <http://dictionary.cambridge.org/us/english/curriculum> (last visited July 27, 2026). Curriculum would therefore logically include the illustrations a teacher

uses to teach a particular skill, but it would not logically include every word she utters in the classroom or every conversation she has with parents of students. An overly broad definition prevents any consideration of teachers' speech rights and effectively turns teachers into robots, undermining personality and individuality.

A broad application of *Garcetti* can and has resulted in significant burdens on teachers on different sides of sensitive ideological and cultural issues like the one at issue in this case. *See*, Pet. App. 4a-8a; *Wood v. Fla Dep't of Ed.*, 142 F.4th 1286 (11th Cir. 2025) (holding that a teacher's self-identification choices in the context of her job were merely government speech). *Wood* set a bad precedent by applying *Garcetti* to mean a teacher has no voice apart from what the government dictates. *Wood*, 142 F.4th at 1291-92. Taken to its logical conclusion, that broad application could mean a school might punish a teacher for speaking words the district does not like if they occur proximate to a responsibility the teacher has based on her role. A school could then punish speech whether or not it is related to teaching content.

The *Kennedy* Court acknowledged the complexity of applying *Garcetti*, saying it should be applied "practically." *Kennedy*, 597 U.S. at 529. *Kennedy* did not have to address the more nuanced situation like the one presented here by Polk, because it concluded that Coach Kennedy's speech qualified as private speech and that he was not acting in his job duties when he prayed on the field. The Court said his prayer was not speech "the District paid him to produce as a coach." *Id.*

Kennedy nevertheless emphasized the importance of providing protection for the coach's religiously motivated speech by asserting that "[t]o hold differently would be to treat religious expression as second-class speech and eviscerate this Court's repeated promise that teachers do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" 597 U.S. at 531 (quoting *Tinker*, 393 U.S. at 506). That principle is no less applicable under these facts.

Line drawing games should not dictate constitutional rights. *Kennedy* protects the First Amendment rights of a teacher to pray at a football game in a way that is not coercive to students. It is nonsensical to then say a teacher does not have a First Amendment interest in refusing to speak words that violate her faith just because a school policy requires her to agree with and speak those words, making it a job duty. The line between religious speech being strongly protected or not being protected at all should not come down to whether a school administrator can draw a line that fits speech or behavior either "inside" or "outside" of job duties. It would be better to draw the line based on whether or not important constitutional interests are in play.

Narrowing *Garcetti*'s application for teachers in the K-12 context to curricular topics would not undermine the school's ability to control the educational environment nor give teachers free reign to ignore policies involving other matters. Rather, it would mean that other speech would receive consideration of both the teacher's rights and the school's needs. Within that balancing, courts consider

school decisions in the K-12 setting with reasonable—but not mechanical—deference, as they have regularly done in student speech cases. That balancing may be based on considerations such as whether the speech is disruptive (*Tinker*); there are “legitimate pedagogical concerns” underlying such restrictions (*Hazelwood*); and deference to the school acting “within its permissible authority” is warranted in this area (*Fraser*).

A. Courts Have Carefully Grappled With the Unique Implications of Free Speech Doctrine Related to Education in the Public University Setting.

Based on *Garcetti*’s clarification that it may apply differently in educational settings, several courts have agreed that the university teaching context clearly fits that exception. See *Pernell v. Lamb*, __ F.4th __, 2026 U.S. App. LEXIS 19799 (11th Cir. Jul. 7, 2026) (affirming a preliminary injunction against a state law restricting content decisions by professors); *Meriwether v. Hartop*, 992 F.3d 492 (2021) (concluding *Garcetti* does not apply in the university environment); *Vlaming v. West Point Sch. Bd.*, 302 Va. 504 (2023) (rejecting *Garcetti*’s application).

Pernell provides a useful application of these principles in higher education. There, the Eleventh Circuit acknowledged that “universities and even other government entities have crucial authority to shape curricular content, discipline teachers, and take other steps to guide and govern postsecondary education.” 2026 U.S. App. LEXIS 19799, at 7. The court rejected Florida’s claim that all teacher speech is the state’s speech, saying this reasoning would

“evade any First Amendment limitations,” *id.* at 17, and would result in “puppeteering.” *Id.* at 19. It said *Garcetti*’s reach is to ensure the government has adequate authority “to effectively manage its workplaces, not drive out speech it disfavors.” *Id.* at 14. It then looked to *Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991), as a line drawing guide, noting that it sought a balance between academic freedom and employer authority. *Pernell*, at 15. It proposed weighing three factors: (1) “the context of the professor’s speech”; (2) “the university’s rights, both as a public employer and as an arbiter of curricular offerings”; and (3) academic freedom considerations. *Id.* at 15-16.

The Virginia Supreme Court also cabined *Garcetti*’s application when a professor’s speech was involved. *Vlaming*, 302 Va. at 571-73. It distinguished *Garcetti* because Professor Vlaming’s situation was about compelled speech and involved “an ideological topic that has engendered fierce public debate.” *Id.* The court also recognized *Garcetti*’s acknowledgement that teaching might involve an exception. *Vlaming*, 302 Va. at 572.

While academic freedom doesn’t apply as directly to the lesson content of K-12 teachers—meaning curricular restrictions can apply in a more significant way—the purpose of education remains unique, and similar considerations should apply. For example, the first two *Pernell* factors directly apply across teaching levels because they focus on the educational context and the government’s need to control curriculum.

**B. A Broad Application of *Garcetti* Will
Damage Religious Freedom in This
Country.**

A broad definition of “official duties” in the education setting that allows a school district to force teachers into ideological conformity apart from curricular standards is highly likely to exclude religious people from the teaching profession. It effectively collapses the multifaceted reality about what makes a good teacher into narrow ideological qualifications unrelated to many valuable qualities of teachers that our communities have celebrated for centuries. It therefore would not matter if someone meets every other qualification; they must look for work elsewhere if they don’t share the school district’s worldview in a few ideological categories.

The Ninth Circuit recently addressed a similar conflict involving the licensing of foster parents in Oregon. *Bates v. Pakseresht*, 146 F.4th 772 (9th Cir. 2025). Although not about government employment, *Bates* involved government licensing. Oregon excluded Bates, who was otherwise qualified to be a foster parent, because she did not conform to its requirement of ideological conformity to the state’s views of LGBTQ+ identities. *Id.* at 783-84. The court stated that Oregon intruded on the “overlapping protection” that free speech and free exercise provide “for expressive religious activities.” *Id.* It said that the government “may not insist upon [] adherence to state-favored orthodoxies.” *Id.* In applying strict scrutiny, the Court then said that “the state no doubt could achieve its ends in most cases through actions well short of this” *Id.* at 800.

School policies that demand orthodoxy are also likely to have alternatives. Schools are much more likely to find such options, however, if the First Amendment legal structures informing those frameworks involve balancing of individual rights and government interests.

Complex disagreements will remain. The First Amendment is all the more important to protect in this ideologically divided time. Amici respectfully ask the Court to further clarify how to protect layered First Amendment rights, particularly free speech and free exercise.

First, the Court should once again affirm the critical foundational principle that the government must not be in the business of forcing orthodoxy or demanding confession of ideological belief. *West Vir. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). This Court has acknowledged the types of complexities raised in this case and has stated that “[t]he First Amendment ensures that religious organizations and persons are given proper protection” to believe and live out the religious principles they hold dear, even if they aren’t the dominant view. *Obergefell v. Hodges*, 576 U.S. 644, 679-80 (2015). This does not mean a particular religious view should become the dominant view, but that such views merit protection. *See, e.g., Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025) (emphasizing the importance of allowing people “to live out their faiths in daily life”).

Second, the Court should further bolster its consistent emphasis that the First Amendment acts to confront government efforts to silence views it does

not like. *See, e.g., Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 72 (1963) (involving efforts to use government regulation to intimidate book and magazine distributors and stifle protected speech); *Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175, 188 (2024) (holding it violated the First Amendment when a government official tried to silence speech indirectly through manipulation); *First Choice Women’s Resource Centers, Inc. v. Davenport*, 146 S. Ct. 1114, 1130 (2026) (holding an organization has established present injury to its First Amendment associational rights when the government targets it to interfere with its protected activity).

Third, we urge the Court to apply *Garcetti* to K-12 public school teachers less broadly than the Fourth Circuit. Under the latter, a “no free speech at all” standard will hinder positive education outcomes. Outside of curriculum-focused content, we urge the court to clarify the balancing needed to address important First Amendment concerns. *See supra*, pp. 15-16.

C. A Broad Application of *Garcetti* Will Likely Damage Education in This Country.

Undermining First Amendment rights of teachers could have a broader negative impact. Teachers meet a critical need in society. Their job is uniquely relational because they advance humans toward adulthood. Many teachers see teaching not only as a job, but also as a calling that demands their heart, mind, and hands; therefore, they need flexibility to be able to relate to and serve students without fear.

As a society, we learned during the COVID-19 pandemic that an impersonal, transactional approach to learning is inadequate. Teachers must be able to connect with students in individualized ways. See Brian A. Jacob & Cristina Stanojevich, *Did COVID-19 Shift the “Grammar of Schooling”?* (EdWorkingPaper: 24-1021), at 18, <https://doi.org/10.26300/8gy9-b516> (noting teachers are often most aware of students’ needs and often turn to “individualized instruction”). Another study about teachers and students coming out of the pandemic also described the importance of authentic teacher-student connection and further emphasized that administrators need to care for teachers’ well-being:

School leaders can support educators’ authentic care practices by modeling what caring relationships look like with their own teachers, who also need to experience belonging and school connectedness, and by making relationships an institutional value.

Karyn E. Miller, *A Light in Students’ Lives: K-12 Teachers’ Experiences (Re)Building Caring Relationships During Remote Learning*, *Online Learning* (2021), 25(1), at 128 (citation removed) <https://doi.org/10.24059/olj.v25i1.2486>. Such support is not possible if teachers are constantly worried they can be disciplined if they stray outside of scripted sentences. Teacher burnout is a problem nationwide, Jacob & Stanojevich, *supra*, at 39-41. Treating teachers as merely school district mouthpieces will only exacerbate it.

The practice of education involves “complex practices of leadership and instructional practice that can only be learned through deep, daily immersion in guided practice.” Richard F. Elmore, “*Getting to scale...*” *it seemed like a good idea at the time*, 17 *Journal of Educational Change* 529, 530 (2016). It is a profoundly human endeavor that relies on individualized, relational giftings rather than scripts and compelled speech. Calls for a “shift in mindset” include moving away “[f]rom universal prescriptions for learning to multiple, diverse, and promising adaptations to diverse populations.” *Id.* at 533. For teachers to adapt and engage in ways that help diverse populations, they must be seen as unique individuals who have different beliefs and backgrounds and who can use their different gifts to serve students. Support, not ideological demands, are what teachers most need.

IV. This Court Should Consider Revisiting its Free Exercise Doctrine in *Employment Division v. Smith*, as it is Unhelpful to Dismiss Burdens on Free Exercise Instead of Balancing Them Against Government Interests.

Amici fervently but respectfully urge the Court to revisit *Employment Division v. Smith*, 494 U.S. 872 (1990). The current doctrine around free exercise forces its legal analysis into a box. Free exercise challenges often receive very little examination of the initial question of what constitutes a burden on free exercise. Courts instead jump to analyze whether the language is neutral and generally applicable. *See, e.g., Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (focusing on whether comparable secular activities are treated

more favorably); *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (noting any “mechanism for individualized exemptions” undoes general applicability). No matter how devastating the burden is, the outcome in free exercise cases predictably comes down to how convincingly (and sometimes creatively) the government can characterize its policy as neutral and without exceptions. It would be helpful to clarify how courts should consider and analyze the “burden” component of free exercise analysis instead of glossing over it. *See, e.g.*, Christopher C. Lund, *Essays: Answers to Fulton’s Questions*, 108 Iowa L. Rev. 2075, 2089 (2023) (proposing that the level of burden should matter and that “difficulties that are sufficiently limiting should trigger protections for the free exercise of religion”); Douglas Laycock & Thomas C. Berg, *First Amendment: Protecting Free Exercise under Smith and after Smith*, 2020-2021 Cato Sup. Ct. Rev. 33, 38-39 (clarifying that the Free Exercise Clause’s original purposes include “protecting individual conscience and preventing . . . persecution,” which cannot be accomplished if burdens are ignored under neutral and generally applicable laws).

The *Smith* free exercise framework also provides fodder for attacks on the Court’s fairness and the legitimacy of its jurisprudence. *Smith*’s focus on “neutral and generally applicable” standards as a threshold question instead of identifying and directly addressing significant burdens on free exercise with a burden-shifting framework has resulted in misguided critiques that characterize the Court as manipulating free exercise doctrine to favor religious individuals and voices and give them an advantage. *See, e.g.*, Richard Schragger, Micah Schwartzman, & Nelson

Tebbe, *Reestablishing Religion*, 92 U. Chi. L. Rev 199, 208 (2025) (describing a “structural preferentialism” in favor of religious speakers). Such scholars see a “special solicitude toward religion” in how the doctrine plays out. *Id.* at 202. They claim the Court is “exploiting exceptions and boundaries to the rule of [] *Smith*.” *Id.* at 213-214. While we emphatically disagree with such accusations of preferentialism, they highlight yet another defect of *Smith*.

In addition, the gap left when little analysis is given to burdens means there is little room in the legal process to acknowledge how significantly the government sometimes undermines individuals’ ability to live out their faith. And faith convictions are rarely just about personal preferences; it is a matter of being right with God or not. *See, e.g.*, James Madison, *Memorial and Remonstrance Against Religious Assessments*, reprinted in *Everson v. Bd. of Educ.*, 330 U.S. 1, 66 (appendix to dissent of Rutledge, J.) (recognizing religious beliefs as “precedent” because they involve “a duty towards the Creator”).

Smith has shifted the First Amendment’s leverage from valuing religious citizens to instead favoring state and local bureaucrats who find religious freedom inconvenient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (“the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I’ll have to make one for everybody, so no exceptions.”). *Smith* has functionally prevented courts from directly implementing the First Amendment’s purpose of protecting religious individuals’ and institutions’ freedom to live faithfully according to their sincerely

held religious beliefs. *Smith* diminishes religious freedom. No matter how great the burden on religious freedom and how inconsequential the government's interest, *Smith* often means the careful consideration and balancing of those interests never occur.

CONCLUSION

The Fourth Circuit's analysis effectively undermines the ability to value and balance the First Amendment rights of teachers against government interests. If the rigid application of *Garcetti* is allowed to stand, lower courts will continue to produce inconsistent outcomes that ignore First Amendment principles.

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted.

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