

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 OF AMICUS CURIAE PACIFIC
JUSTICE INSTITUTE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS¹

Pacific Justice Institute (PJI) is a non-profit legal organization established under § 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented thousands of individuals, non-profit and for-profit corporations, governmental entities, and elected officials, particularly in the realms of First Amendment and parental rights. PJI often represents teachers, parents, and students to vindicate their constitutional rights in public schools. PJI has also advised many school officials and school board members seeking to understand their constitutional duties. From its beginnings in Northern California, PJI today has attorneys licensed and serving nationwide in each of the Circuits discussed herein. PJI therefore has a strong interest in the development of constitutional and educational law nationwide in a consistent direction which maximizes liberty and minimizes suppression of speech and conscience. We believe our clients' First Amendment freedoms should not depend on whether they live in California or New York, Maryland or Virginia.

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than Amicus and their Counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice was given to all parties per S. Ct. Rule 37.

INTRODUCTION AND **SUMMARY OF ARGUMENT**

This brief focuses on unsettled questions of law raised by the Petition in an important area of national debate: the collision of educators’ First Amendment freedoms with controversial compelled speech policies in the public schools.

Two decades after *Garcetti v. Ceballos*, the lower courts are struggling with and disagreeing over this Court’s careful delineation of its limits. This brief urges the Court to grant the Petition and reverse, thereby resolving the conflict and restoring First Amendment values to their rightful place in public education.²

More specifically, courts and scholars are grappling with whether the First Amendment permits public schools to require teachers to comply with their gender identity and parental disclosure policies—and to punish refusal to do so—on the theory that such speech is part of teachers’ official duties rather than a matter of public concern. The Fourth Circuit endorsed compelled ideological speech, and tight restrictions on teachers’ own speech. But *Garcetti* distinguished the strong line of First Amendment decisions involving teachers and

² The Petition also raises an important Question Presented as to the Free Exercise Clause. Amicus is in full agreement with Petitioner on this question as well but will focus here on the speech issue.

reserved conflicts over classroom instruction for the future. Aided by recent developments clarifying both parents' and teachers' rights as to highly controversial classroom policies, that future is now.

Lower courts, public employers, employees, and parents would all benefit from this Court's guidance concerning the government's ability to compel ideological speech merely because it occurs within a teacher's general duties, particularly when the subject of the speech concerns issues at the center of ongoing national debate.

ARGUMENT

I. The classroom questions reserved by *Garcetti* have grown in urgency.

A. *Garcetti* never purported to resolve the educational issue of national importance now before the Court.

The decision below from the Fourth Circuit interpreted *Garcetti v. Ceballos*, 547 U.S. 410 (2006), as denying First Amendment protection to a teacher who could not conscientiously deceive parents or use gendered language that she believed to be false. In *Garcetti*, this Court established important parameters for public employee speech in many contexts. It moderated what might have otherwise trended toward constitutionalizing a multitude of routine conflicts in government workplaces.

But *Garcetti* downplayed its applicability to the classroom. Writing for the majority, Justice Kennedy was candid:

There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.

Id. at 425.

The Court subsequently limited *Garcetti*’s reach into campuses in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). There, considering in some depth the interplay of the *Pickering–Garcetti* framework in a school setting, the Court explained that, even though Coach Kennedy was on duty and serving as a role model when he offered postgame prayers on the football field, the lower courts’ *Garcetti*-based focus on his broad job description “commits the error of positing an excessively broad job description by treating everything teachers and coaches say in the workplace as government speech subject to government control.” *Id.* at 530-31 (citing

Garcetti). The Court offered examples of teachers' religious attire or quiet mealtime prayers that could not be censored on such a basis. *Id.* Responding further to the dissent and school district's Establishment Clause arguments, the Court described them as "just another way of repackaging the District's earlier submission that government may script everything a teacher or coach says in the workplace." *Id.* at 540. That notion was soundly rejected.

Yet, as the Polk Petition for Certiorari now illustrates, the Court's several cautions have been thrown to the wind in the Circuit Courts of Appeal, leaving teachers' rights to the caprice of the jurisdiction in which they happen to land. The Petition should be granted to remedy these untenable inconsistencies, as further explained below.

B. Scholars have pointed out the increasing unpredictability of applying *Garcetti* in the realm of public education.

Shortly after *Garcetti* was decided, scholars began to observe conflicts over its reach into classrooms and other school spaces. *See, e.g.,* Martha M. McCarthy & Suzanne E. Eckes, *Silence in the Hallways: The Impact of Garcetti v. Ceballos on Public School Educators*, 17 B.U. Pub. Int. L.J. 209 (2008). The clashes continued to grow prior to the advent of the compelled pronoun and related gender identity battles that have occupied much of the past

decade of teacher-speech and parental rights conflicts. Nicholas K. Tygesson, *Cracking Open the Classroom Door: Developing a First Amendment Standard for Curricular Speech*, 107 Nw. U. L. Rev. 1917 (2013) (comparing pre- and post-*Garcetti* teacher speech cases). This has been a bone of contention, and arguably a Circuit split, for several years. Lauren K. Ross, *Pursuing Academic Freedom After Garcetti v. Ceballos*, 91 Tex. L. Rev. 1253 (2013) (describing emerging Circuit split). But it has accelerated and reached an acute level as illustrated by the decisions outlined in the below subsections.

Some courts and commentators see *Garcetti* as displacing other foundational lines of precedent directly arising out of the educational context: “*Garcetti*’s categorical holding provides no leeway for speech of such public importance that it may deserve constitutional protection despite the fact that it exists because of the employee’s official duties.” Thomas Keenan, *Circuit Court Interpretations of Garcetti v. Ceballos and the Development of Public Employee Speech*, 87 Notre Dame L. Rev. 841, 842 (2011). Among these displaced precedents, *Pickering v. Bd. of Educ. of Twp. High Sch.*, 391 U.S. 563 (1968), looms large. There, this Court established that the First Amendment grants public employees the right to speak out as citizens on matters of public concern. The *Pickering* Court established a sensible balancing test, starting with the premise that public employees do not lose their free speech rights simply

by accepting public employment. The decision below casts doubt on this fundamental principle.

C. The Circuits are in disagreement about applying *Garcetti* on campus.

The process of resolving a public employee's scope of employment for First Amendment purposes now varies considerably from Circuit to Circuit, and has even put states like Virginia at variance with the Circuit in which they are located.

The following is a non-exhaustive but illustrative overview of the Circuit conflicts leading up to the decision below in three areas: K-12 education, higher education, and truthful vs. untruthful speech.

1. The Circuits disagree about the protectability of educators' speech in the K-12 context.

First Circuit. The First Circuit has staked out one of the more recent, restrictive positions on *Pickering–Garcetti* evaluation of controversial speech in the classroom. In *MacRae v. Mattos*, 106 F.4th 122 (1st Cir. 2024), the First Circuit upheld summary judgment for a school district which had terminated a new teacher after learning of social media posts she made prior to her hiring. She argued in vain that *Garcetti* should not apply to pre-employment speech; the First Circuit disagreed. *Id.*

at 134. Her posts indisputably commented on matters of public concern, including racism, immigration, and transgender controversies. She had agreed to use preferred pronouns in her classroom, but to no avail; the district and court found that her posts, such as criticism of a high-profile and highly controversial federal official, could potentially have caused disruption (even though no actual disruption had been shown), and were thus unprotected.

This Court ultimately denied certiorari because that petition did not directly challenge the First Circuit’s application of the *Pickering–Garcetti* balancing test. No. 24-355 (June 30, 2025). Justice Thomas, respecting the denial of certiorari, wrote separately to express serious concerns about the appellate court’s handling of the case. He observed the case was part of a broader pattern of lower courts misapplying First Amendment precedents in politically charged speech cases involving public employees.

As a result, under *Garcetti*, the speech rights of educators in the First Circuit even outside the classroom depend largely on (1) the perceived political incorrectness of their posts; and (2) the intensity with which local media or others who take a different view choose to condemn such a teacher.

Third Circuit. By contrast, in *Munroe v. Central Bucks School District*, 805 F.3d 454 (3d Cir.

2015), a case involving a teacher’s blog posts, the Third Circuit rejected *Garcetti* and instead applied the *Pickering* framework because the teacher’s blog posts touched on matters of public concern “like academic integrity, honor, and the importance of hard work.” *Munroe*, at 470. This, even though all such topics could be said to be encompassed by a teacher’s official duties. The Third Circuit’s approach is difficult to reconcile with that of the First Circuit discussed above.

Fourth Circuit (pre-Polk) and Virginia.

The Fourth Circuit had previously been among the more careful Circuits when applying *Garcetti* in the educational realm. In *Lee v. York Cnty. Sch. Div.*, 484 F.3d 687 (4th Cir. 2007), the Fourth Circuit distinguished *Garcetti* and applied the *Pickering* framework to a high school Spanish teacher who had placed bulletin board materials outside his classroom. The appellate court determined these were “curricular in nature,” explaining that “in order to be considered curricular in nature, the speech must also be supervised by faculty members and designed to impart particular knowledge to the students.” *Lee*, at 697.

As ably expounded by Petitioner, the Virginia Supreme Court also held nearly the opposite as the *Polk* decision below in *Vlaming v. W. Point. Sch. Bd.*, 302 Va. 504 (Va. 2023). *Vlaming* has been ably briefed by Petitioner, Pet. Br. at 24-25, and that discussion will not be repeated here. Suffice it to say

for present purposes that as a result of this divergence, the speech rights of educators in the Commonwealth will depend on whether their cases are decided in state or federal court, and whether they plead state or federal compelled speech claims.

Sixth Circuit. *Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332 (6th Cir. 2010) (*Evans-Marshall II*), exemplifies the change wrought by *Garcetti* in the K-12 context. A high school English teacher lost her job through non-renewal of her contract after stirring controversy leading to parent complaints and heated school board meetings. Ironically, the controversies began with a class assignment on censorship, which prompted students to research controversial, frequently challenged books. Before *Garcetti*, the district court refused to dismiss her First Amendment claims, and the Sixth Circuit agreed the case should go forward, 428 F.3d 223 (6th Cir. 2005) (*Evans-Marshall I*). But at summary judgment, the Sixth Circuit held that *Garcetti* changed everything, and the teacher could not overcome it even though she could satisfy *Pickering* and *Connick*. *Evans-Marshall II*.

More recently, though its implications for teachers are as yet unclear, in *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732 (6th Cir. 2025), the Sixth Circuit reversed and remanded for entry of a preliminary injunction against a school district that, not unlike MCPS here,

required use of preferred pronouns. While this suit was brought by parents, it emphasized that use of gendered language was a matter of public concern. *Id.* at 753-54. The district had impermissibly adopted viewpoint discrimination inconsistent with *Tinker* and *Barnette*.

Seventh Circuit. On remand from this Court, similar Title VII accommodation claims by a teacher involving preferred name usage were revived, and summary judgment denied to the school district. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792 (7th Cir. 2025) (*Kluge II*). Following *Groff v. DeJoy*, 600 U.S. 447 (2023), the Court vacated and remanded its prior decision granting summary judgment to the district, 64 F.4th 861 (7th Cir. 2023) (*Kluge I*).

Before the debate over preferred pronouns exploded, teachers' classroom speech on war and racial issues was less protected in the Seventh Circuit. In *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477 (7th Cir. 2007), the Seventh Circuit held that teachers are not protected by the First Amendment on topics that depart from the approved curriculum. There, an elementary school teacher had expressed her opposition to the Iraq war to her students during a classroom lesson on current events. Crucially, as in *Garcetti*, the teacher did not dispute that she was speaking in the course of her official duties.

The Seventh Circuit followed this decision with *Brown v. Chi. Bd. of Educ.*, 824 F.3d 713 (7th Cir. 2016), in which it held that a sixth grade teacher had no First Amendment protection for an impromptu lesson on racial epithets; he was deemed not to be speaking as a citizen or on a matter of public concern when he responded to a note being passed in class with the n-word, and his response, described by the Court as well intentioned but poorly executed, earned him a suspension. Disagreeing with the Fourth Circuit's decision in *Lee*, the Seventh Circuit held his claim failed out of the gate under *Garcetti*. *Brown*, at 715. Ironically, then, the Seventh Circuit has become almost the opposite of the Fourth, reluctantly protecting teachers' speech on gender but not so much on race and politics. And counterintuitively, teachers are likely to prevail against compelled speech in the Seventh Circuit if they are able to recast the speech claims as Title VII concerns. Amicus submits that constitutional freedoms should not so depend on labeling.

Ninth Circuit. There is renewed uncertainty in the Ninth Circuit as to continuing application of *Garcetti* to the K-12 context. *See, e.g., Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011) (applying *Pickering* rather than forum analysis to teacher's classroom posters but concluding math teacher had no right to post historical quotes including national motto); *Dodge v. Evergreen Sch. Dist.*, 56 F.4th 767 (9th Cir. 2022) (siding with teacher punished for MAGA attire at

staff meeting); *Damiano v. Grants Pass Sch. Dist.* No. 7, 140 F.4th 1117 (9th Cir. 2025) (reversing summary judgment for school district where educators had been disciplined for online speech). At the time this Petition was filed, in the Ninth Circuit, it appeared to matter whether the speech was germane to the subject being taught (*Johnson*); whether the speech was directed at other adults (*Dodge*); and whether, unlike the First Circuit, it occurred outside school as part of a broader public debate (*Damiano*). Much else, though, remains in doubt as to how the Ninth Circuit will or will not protect teachers' speech in and out of the classroom.

Less than a month after the filing of Polk's Petition, on July 21 the Ninth Circuit issued a significant and sharply divided decision more restrictive than its predecessors, *Theis v. Intermountain Educ. Serv. Dist. - Bd. of Dirs.*, 2026 U.S. App. LEXIS 21590 (9th Cir. July 21, 2026). The facts are sobering. A licensed clinical social worker and education specialist was fired after he initially displayed in his office three books: *He is He*, *She is She*, and *Johnny the Walrus*. Such titles were deemed transphobic by another teacher who filed a bias incident complaint, ultimately leading to Theis's termination. The Ninth Circuit's sweeping ruling, applying *Garcetti* instead of *Kennedy*, leaves teachers and school staff with almost no First Amendment rights in their classrooms and offices. Judge VanDyke vigorously dissented.

Tenth Circuit. The Tenth Circuit has recognized, at least when teachers are speaking out about the First Amendment itself, that whether it can be characterized as part of their official duties under *Garcetti* is not enough to defeat their Section 1983 retaliation claims. *Brammer-Hoelter v. Twin Peaks Charter Academy*, 492 F.3d 1192, 1203 (10th Cir. 2007) (reversing in part summary judgment for school district). It is far from clear, though, whether any other type of classroom speech is similarly protected in the Tenth Circuit.

Eleventh Circuit. Lastly, *Wood v. Fla. Dept. of Educ.*, 142 F.4th 1286 (11th Cir. 2025), demonstrates how *Garcetti* could cut both ways in the classroom, depending on the leanings of lawmakers. There, the Eleventh Circuit overturned a preliminary injunction that had been issued against a state law which prohibited teachers from identifying themselves to students during instructional time with names and pronouns that did not correspond to their biology. Under *Garcetti*, the Court determined such speech to be part of the teacher's official duties and thus unprotected by the First Amendment.

2. The Circuits have been more willing to skirt *Garcetti* in higher education.

The Circuits do not entirely agree on the status of professors' speech post-*Garcetti*. But they have overall been more willing to favor *Pickering*

analysis and extend protections than they have for K-12 teachers. Yet it is far from clear why *Garcetti* should come down with greater severity on a high school history teacher addressing seniors than a community college instructor teaching those same students a few months later as college freshmen, or perhaps even concurrently in a dual enrollment program. A brief survey, though, of *Garcetti* in the university context raises further questions as to why it has often been applied so differently in secondary schools.

Second Circuit. In New York, as a matter of first impression, a district court rejected the First Amendment claims of an economics professor at the State University of New York at Albany, relying on *Garcetti*. But the Second Circuit, troubled by that approach, chose a different path. *Heim v. Daniel*, 81 F.4th 212 (2d Cir. 2023). The panel ultimately affirmed on the theory that university departments must be allowed to prefer and promote professors from specific schools of thought, even if perhaps not allowed to discipline dissenters. *Id.* at 229-233 (discussing Justice Frankfurter’s four academic freedoms) (internal citations omitted). It agreed with the Fourth, Fifth, Sixth, and Ninth Circuits, though, that academic speech such as this was a matter of public concern under *Pickering*, not subject to *Garcetti*.

Third Circuit. Conversely, the Third Circuit has applied *Garcetti* to reject a professor’s speech

and retaliation claims. *Gorum v. Sessoms*, 561 F.3d 179 (3d Cir. 2009). The professor had been punished after objecting to the hiring of the university president; the professor had rescinded an invitation for the same president to speak at a prayer breakfast; and the professor had advised a football player being punished under the university's zero-tolerance weapons policy. To the Third Circuit, these were *Garcetti* and not *Pickering* concerns, leaving them unprotected. In the Third Circuit, then, professors have fewer speech rights than even in the Fourth Circuit, as noted next.

Fourth Circuit. By contrast, in *Adams v. Trustees of University of North Carolina-Wilmington*, 640 F.3d 550 (4th Cir. 2011), the Fourth Circuit declined to apply *Garcetti* to a professor's speech claims. There, a professor alleged violations of his First Amendment rights when the University denied him a promotion due to his expression of Christian and conservative views in external columns. The appellate court applied the *Pickering-Connick* balancing analysis and concluded that Adams's columns were not drafted pursuant to his "official duties" but rather as a citizen speaking on a matter of public concern. *Cf.*, *Porter v. Bd. of Trs. of N.C. St. Univ.*, 72 F.4th 573 (4th Cir. 2023) (applying *Garcetti* to professor's sarcastic email).

Fifth Circuit. The Fifth Circuit applied *Pickering-Connick* to classroom speech in *Buchanan v. Alexander*, 919 F.3d 847 (5th Cir. 2019). It

ultimately upheld the firing of a tenured LSU professor whose profanity and discussion of her sex life in class was deemed unprofessional and not matters of public concern.

Sixth Circuit. In one of the more notable appellate rulings analogous to the present, *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021), the Sixth Circuit held that *Garcetti* does not apply strictly to public university professors. It found that core academic functions, such as teaching and scholarship, retain First Amendment protection against ideological conformity. With eloquence and depth, the Sixth Circuit expounded on the incompatibility of compelled speech such as preferred pronouns with academic freedom. Because Petitioners have highlighted *Meriwether*, its abbreviated treatment here will seek to avoid repetition and offer a broader survey of the nationwide landscape. The thin distinction between the protectability of a professor's use of pronouns and the lack of similar protection for Polk is difficult to defend on any principled basis.

Ninth Circuit. In *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014), the Ninth Circuit held that *Pickering* and not *Garcetti* applies to scholarship or teaching-related speech. Much more recently, the Ninth Circuit has reiterated this view, siding with a professor who included satire in his syllabus. *Reges v. Cauce*, 175 F.4th 1014 (9th Cir. 2026).

To summarize, most of the Circuits (including the Fourth) afford greater protections to teachers—and more exemptions from *Garcetti*—if they teach eighteen-year-old college freshmen rather than eighteen-year-old high school seniors. While the differences between, say, a first-grader and a post-graduate student are of course much greater, in the absence of further guidance from this Court, squiggly doctrinal lines will continue to be drawn in often unpredictable fashion.

3. Unlike the Fourth Circuit here, at least two other Circuits offer greater protection post-*Garcetti* to public employees who refuse to speak untruths.

The last category of conflict examined here offers a poignant contrast to teachers ordered to speak what they believe to be untruths about biology and gender.

In *Jackler v. Byrne*, 658 F.3d 225 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 1634 (2012), the Second Circuit determined that a police officer’s refusal to retract and replace his truthful report with a false report constituted protected speech even though it fell within his official duties. Ultimately, the Second Circuit determined that “the First Amendment protects the rights of a citizen to refuse to . . . make a statement that he believes is false.” *Id.* at 238.

The Ninth Circuit took a similar approach in *Dahlia v. Rodriguez*, 735 F.3d 1060 (9th Cir. 2013), a case involving a police officer's reports of police misconduct to fellow officers. The Ninth Circuit found the police officer's speech was protected because his reporting of the misconduct to outside agencies met the criteria of a private citizen speaking on a matter of public concern. *Id.* at 1077-78. These approaches recognize that some Circuits have been unable to condone punishment of officers speaking the truth.

These carve-outs from *Garcetti* appear to have been fully validated by this Court's subsequent, unanimous decision in *Lane v. Franks*, 573 U.S. 228 (2014). In *Lane*, this Court held that the First Amendment protected a public employee who was terminated by his employer in retaliation for providing truthful court testimony pursuant to a subpoena in a federal investigation. Writing for the majority, Justice Sotomayor reminded lower courts that the Court has "cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights." *Id.* at 236. A citizen's duty to tell the truth is "distinct and independent" from any separate obligations he might have to his employer. *Id.* at 239.

This approach, though, is at odds with the Fourth Circuit's unwillingness to protect teachers who believe they are doing the same. This Court should grant certiorari to resolve these conflicts and

reiterate that truthful speech is protected, not punishable.

4. The Fourth Circuit, once protective of educators’ speech, has now stretched *Garcetti* beyond its logical limits.

In contrast to its earlier decisions, the Fourth Circuit has now swung the pendulum in the opposite direction, leaving behind more speech protective decisions from state courts within the Circuit.

In the decision below, the Fourth Circuit cast Polk within the official duties framework of *Garcetti*.

In *Garcetti*, the employee, Ceballos, did not dispute that when he wrote his disposition memo, he wrote it pursuant to his employment duties. Because the parties agreed on this fact, this Court was allowed to forgo the need to “articulate a comprehensive framework for defining the scope of an employee’s duties in cases where there is room for serious debate.” *Garcetti*, 547 U.S. at 424.

Here, the government is engaging in compelled ideological speech in violation of a teacher’s sincerely held religious beliefs when it demands she use preferred pronouns and speak deceptively to parents about their child’s gender identity.

The Fourth Circuit nevertheless concluded that the school’s gender identity guidelines requiring

teachers to use students' preferred pronouns, and governing communication with parents regarding students' gender identity, constituted administrative requirements rather than speech on a matter of public concern. Therefore, the court found that Polk's speech lacked First Amendment protection.

By agreeing with the school district, the Fourth Circuit failed to account for this Court's decades of free speech, free exercise of religion, and parental rights jurisprudence.

The court commented that Polk voluntarily signed up to be a substitute teacher, a position which demands she comply with the Guidelines. Such a view is difficult to square with this Court's reasoning in *Lane*. The Fourth Circuit further rejected Polk's reliance on compelled speech precedents such as *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018), and the court instead reaffirmed that the school-mandated use of gender pronouns is a lawful requirement pursuant to Polk's official duties as a teacher.

Janus acknowledged *Garcetti*'s focus on official duties, *id.* at 908, but it added two cautions regarding compelled ideological speech. First, "[c]ompelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned." *Id.* at 893. Second, the Court explained, "However, it is not easy to

imagine a situation in which a public employer has a legitimate need to demand that its employees recite words with which they disagree.” *Id.* at 908.

The panel’s cavalier approach below to compelled speech sparked a vigorous dissent. “Speech at the noncurricular margins of a teacher’s job should remain subject to the same standards that we have always applied.” Pet. App. 51a (Wilkinson, J., dissenting).

This Court has had much more to say about the evils of compelled speech, beginning with the classroom in *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), and including such landmark decisions as *Wooley v. Maynard*, 430 U.S. 705 (1977); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995); *Janus*; and *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).

A fulsome discussion of these principles is not possible here, because other key areas brushed past by the Fourth Circuit such as parental rights must be mentioned in the remaining pages. Suffice it to say, in the words of the dissent below, “The effects of this compelled, viewpoint-discriminatory speech must loom large when determining whether Ms. Polk, as a public employee, retains First Amendment protection.” Pet. App. at 44a (Wilkinson, J., dissenting). *See also*, Jacob D. Fleming, *A “Compelling” Exception to Garcetti: Compelled*

Speech and Conscience in Public Education, 86 U. Pitt. L. Rev. 1037 (2025).

The decision below also gives short shrift to this Court’s larger First Amendment jurisprudence for teachers and students, beyond compelled speech.

The year after *Pickering*, in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969), this Court reaffirmed this principle when it declared that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school-house gate.”

Garcetti was surely never intended to displace *Tinker* and its progeny. But since the lower court remains confused, to the constitutional detriment of teachers such as Polk, the Court should grant the Petition and clarify the limits of *Garcetti*.

5. The Petition should be granted to resolve important nationwide questions over the rights of teachers to speak or refrain from speaking as a matter of conscience.

It can hardly be gainsaid that whether or to what degree preferred pronouns can be compelled in schools is a point of intense national discussion and debate. *See, Janus*, 585 U.S. at 913-14 (“sexual orientation and gender identity . . . are sensitive political topics, and they are undoubtedly matters of

profound value and concern to the public.”) (cleaned up). *See also, Connick v. Myers*, 461 U.S. 138, 145 (1983) (reaffirming that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

The Fourth Circuit nevertheless determined that Polk’s objections to compelled pronoun usage and concealment of information from parents was not a matter of public concern. *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 421 (4th Cir. 2026) (Pet. App. at 37a); *cf.*, Bradley A. MacDonald, *What’s in a Name?: The Constitutionality of Using Personal Pronouns in Public Schools*, 56 UIC L. Rev. 477 (2023) (describing unsettled state of the law, national debate, and need for Supreme Court clarification). *See also, Meriwether and Defending Education, supra* (Sixth Circuit describing passionate national debate over pronouns in schools).

Just last year, this Court issued its landmark decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), holding that MCPS burdened parents’ religious exercise when it compelled elementary school children to participate in LGBTQ+ instruction without an opt-out policy. In *Mahmoud*, the majority explained that the book “What pronouns fit you best?” and “the accompanying discussion guidance present as a settled matter a hotly contested view of sex and gender that sharply conflicts with the religious beliefs that the parents wish to instill in

their children.” *Id.* at 553. The *Mahmoud* decision reinforced that the debate over parents’ rights to direct their children’s education and school transparency policies is a preeminent matter of public concern.

Earlier this year, this Court granted an emergency application to vacate the Ninth Circuit’s stay on a lower court statewide injunction preventing school staff from concealing students’ gender identity changes (e.g., using different names or pronouns at school) from their parents without the students’ consent. *Mirabelli v. Bonta*, 607 U.S. 492 (2026). In a pivotal development, this Court concluded that parents are likely to succeed in their free exercise of religion and due process claims against such school policies.

Even more recently, in contrast to the Fourth Circuit’s supposition that a teacher’s conscientious concern about using gendered language inconsistent with perceived biological reality is not a matter of public concern, the Court addressed real conflicts sparked by individual students challenging biological sex-based limitations in school sports. *West Virginia v. B.P.J.*, 2026 U.S. LEXIS 2884 (2026). To the Fourth Circuit, such conflicts are not matters of public concern; the nationwide interest in this Court’s decision indicates quite the opposite.

One might have assumed that this Court’s relevant post-*Garcetti* decisions, including *Lane*,

Kennedy, Mahmoud, Mirabelli, and B.P.J., have made clear that at a bare minimum a teacher’s conscientious objection to compelled gendered language and concealment of information from parents was a settled issue, and not in the school district’s favor. But with the very school district rebuked by the Court in *Mahmoud* now having prevailed in the Fourth Circuit, more clarity is needed.

The First Amendment is uniquely “vital” for teachers, “enabling them to perform their jobs without fear of reprisal.” Jordan Zaia, *Is Garcetti Too Cool for School? Why Garcetti v. Ceballos Should Not Apply to School Teachers*, 34 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 734, 736 (2024). Yet, school guidelines mandating use of preferred gender pronouns go far beyond general curriculum or a standard lesson plan. They force teachers to personally affirm a specific ideology that may directly conflict with their religious beliefs.

Without this Court’s guidance, lower courts will continue to struggle with *Garcetti*’s application, including in cases like Polk’s where the speech concerns a subject that is of serious debate in our nation.

As a result of the decision below and those like it, in contrast to appellate decisions holding nearly the opposite, teachers are left questioning the actual state of their First Amendment freedoms. J.P.

Riley, *Is There Room in the Classroom for the First Amendment? Defining the Doctrine for Teachers' Classroom Speech*, 61 San Diego L. Rev. 185 (2024) (describing Circuit split and lamenting teachers' options of self-censorship or resignation absent further guidance from the Supreme Court).

CONCLUSION

In light of the foregoing, this Court should grant the Petition for Certiorari.

Respectfully submitted this thirtieth day of July 2026,

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