

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 A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT*

**BRIEF OF FIRST LIBERTY INSTITUTE AND
INSTITUTE FOR FREE SPEECH AS *AMICI
CURIAE* SUPPORTING PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

First Liberty Institute is a nonprofit, public interest law firm dedicated to defending religious liberty for all Americans. First Liberty represents religious teachers and students across the country who have faced adverse consequences for outward displays of their faith in the classroom. Those individuals deserve robust and clear protection of their First Amendment rights.

The Institute for Free Speech is a nonpartisan, nonprofit organization dedicated to securing the First Amendment rights of free speech, assembly, press, and petition. In addition to scholarly and educational work, the Institute represents individuals and civil society organizations in litigation securing their First Amendment liberties. Protecting people from compelled speech and preserving free expression are core aspects of the Institute's mission.

SUMMARY OF ARGUMENT

The First Amendment does not permit schools to expand their definition of “curriculum” so it touches everything a teacher might say or do. Yet that is exactly what Montgomery County Public Schools (“MCPS”) attempted and the Fourth Circuit allowed.

¹ All parties were timely notified of the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae* or their counsel made a monetary contribution to this brief's preparation or submission.

Kimberly Polk, an MCPS substitute teacher, objected to MCPS policies requiring her to use students' preferred pronouns (instead of biologically accurate ones) and keep hidden from parents their children's social transitioning at school. MCPS mandated and the Fourth Circuit blessed these policies requiring affirmation of a contentious ideology under the guise of "official duties." This was possible because this Court's precedent lacks clarity on when teachers speak as citizens in the classroom, and thus, when schools are prohibited from restricting teachers' speech. Yet precedent makes some principles clear: schools cannot hide value-laden policy judgments about contentious political issues in their "official duty" requirements. To do so compels not just speech but thought, which our Constitution emphatically prohibits. It also provides a backdoor escape from the *Pickering-Garcetti* framework. This Court should take the opportunity to address these issues and make evident that teachers' First Amendment rights endure even when they enter the classroom.

ARGUMENT

I. The Court's precedent has left lower courts confused about when *Garcetti* applies to teachers.

This Court's precedent, beginning with *Pickering* and refined as recently as four years ago, has laid out a convoluted path for government employees challenging their employer's restriction on their speech. On one hand, this Court has stated that employers do not receive protection for speech conducted as part of their official duties. *See, e.g.,*

Garcetti v. Ceballos, 547 U.S. 410, 421 (2006). Yet on the other hand, this Court has warned against interpreting “official duties” as encompassing *anything* an employee might undertake in their position. See, e.g., *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 530–31 (2022). This Court has not yet explained how to draw a line between properly-defined job requirements and overly-expansive ones. Nor has it explained what activity falls under *Garcetti*’s “academic exception.” This case presents an ideal vehicle to clarify these issues for lower courts.

A. *Pickering* and its progeny.

The Supreme Court first established a framework to evaluate government restriction of employee speech in *Pickering v. Board of Education of Township High School*. 391 U.S. 563 (1968). There, the Court explained its goal in analyzing restrictions on employee speech by government employers: “to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* at 568. However, the *Pickering* opinion did not carefully define and analyze each factor of the test it gave. Nor did it inquire whether the government employee at issue spoke as a citizen or how to determine whether his speech touched on an issue of public concern. The opinion instead collapsed the analysis into one general discussion, examining the effect and content of the employee’s speech together.

The Court decided occasional *Pickering*-esque cases, but none explained the “as a citizen” part of

Pickering's standard until *Garcetti v. Ceballos*. 547 U.S. 410 (2006). There, the Court wrote that *Pickering* identified “two inquiries to guide interpretation of the constitutional protections accorded to public employee speech.” *Id.* at 418. The first inquiry “requires determining whether the employee spoke as a citizen on a matter of public concern.” *Id.* If not, “the employee has no First Amendment cause of action based on his or her employer’s reaction to the speech.” *Id.* But if so, “[t]he question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.” *Id.*

In *Garcetti*, the Court elaborated upon the “speaking as a citizen” principle. “[W]hen 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.” *Id.* at 421 (emphasis added). In evaluating whether the government employee spoke as a citizen on a matter of public concern, the “controlling factor” was that the employee’s speech was “made pursuant to his duties” *Id.*

The case did not present “occasion to articulate a comprehensive framework for defining the scope of an employee’s duties in cases where there is room for serious debate.” *Id.* at 424. Yet the Court made three additional points. First, it rejected “the suggestion that employers can restrict employees’ rights by creating excessively broad job descriptions.” *Id.* Beyond this warning, though, it did not explain when a job description is too broad. Second, it emphasized

that the inquiry into official duties was “practical.” *Id.* “Formal job descriptions often bear little resemblance to the duties an employee actually is expected to perform.” *Id.* at 424–25. Thus, “the listing of a given task in an employee’s written job description is neither necessary nor sufficient to demonstrate that conducting the task is within the scope of the employee’s professional duties for First Amendment purposes.” *Id.* at 425. But the Court did not articulate what criteria would be necessary or sufficient. Lastly, “classroom instruction” could implicate additional constitutional interests “not fully accounted for by this Court’s customary employee-speech jurisprudence.” *Id.* at 425. That question was beyond the scope of the case, so it declined to decide whether its analysis would “apply in the same manner to a case involving speech related to scholarship or teaching.” *Id.*

In *Lane v. Franks*, the Court further clarified when a government employee speaks as a citizen. 573 U.S. 228 (2014). The “critical question” was “whether the speech at issue [wa]s itself ordinarily within the scope of an employee’s duties, not whether it merely concern[ed] those duties.” *Id.* at 240. “The mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech.” *Id.*

The Court most recently addressed the “as a citizen” prong of the *Pickering-Garcetti* test in *Kennedy v. Bremerton School District*. 597 U.S. 507 (2022). There, the Court examined the “timing and circumstances” of the government employee’s speech, not just the location. *Id.* at 530. The Court concluded

that the employee’s speech—prayer on the football field after games—was not “speech ‘ordinarily within the scope’ of his duties as a coach.” *Id.* at 529 (citing *Lane*, 573 U.S. at 240). The coach “was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District paid him to produce as a coach.” *Id.* at 529–30. In short, his prayers “did not ‘ow[e their] existence’ to [his] responsibilities as a public employee.” *Id.* at 530 (citing *Garcetti*, 547 U.S. at 421) (first alteration in original).

This Court also wrote that it would be wrong to posit “an ‘excessively broad job descriptio[n]’ by treating everything teachers and coaches say in the workplace as government speech subject to government control.” *Id.* at 530–31. If that were the case, “a school could fire a Muslim teacher for wearing a headscarf in the classroom or prohibit a Christian aide from praying quietly over her lunch in the cafeteria.” *Id.* at 531.

The *Kennedy* Court reiterated *Garcetti*’s limitations on official duties imposed on employees. Employees’ speech can be regulated because they do not speak as citizens if their speech is “ordinarily within the scope” of their duties. *Id.* at 529. However, overly broad job descriptions that encompass speech not ordinarily within an employee’s duties cannot render such speech “pursuant to their official duties.”

B. Lower courts still lack clarity in applying *Garcetti*, especially to teachers.

This Court’s precedent, though, has not given lower courts the clarity they need to determine when a

teacher speaks as a citizen, rather than merely pursuant to his or her duties. This Court has not addressed situations where a government employer requires, as an employee's official duties, speech outside traditionally defined "official duties." Nor has it addressed situations where a teacher is compelled to speak when such speech goes against his or her beliefs. Neither has it addressed situations where a teacher is compelled to share a particular viewpoint with students in the classroom while being prohibited from expressing his or her own view.

Pickering and *Garcetti*'s language about official duties is difficult to square with the more recent *Lane* and *Kennedy* language. The former cases asked whether speech *related* to "daily" or "official" duties. *Pickering*, 391 U.S. at 569–570; *Garcetti*, 547 U.S. at 421. The latter cases, though, indicate that it is not enough that speech merely owes its existence to—or is "related" to—the official duty. After all, *Kennedy* was only able to pray on the football field with players because of his role as a coach, so in that sense, his prayers "related" to his job. Rather, the speech must fall within the ordinary "scope" of the employee's duties. *Lane*, 573 U.S. at 240. Whether compelled pronoun usage in classrooms and censored communication between teachers and parents falls within the ordinary "scope" of teachers' duties has not been explained. And without this Court's answer, lower courts will continue treating teachers' personal speech as subject to government censorship. *See, e.g., Theis v. Intermountain Educ. Serv. Dist.*, Nos. 25-5641, 25-8039, 2026 U.S. App. LEXIS 21597 (9th Cir. Jul. 21, 2026) (holding that a social worker employed by a school who portrayed books indicating his view on

gender identity in his school office did so as part of his official duties, such that the school could censor his speech).

Additionally, this Court has not clarified the “academic exception” mentioned in *Garcetti*—cases involving “expression related to academic scholarship or classroom instruction.” *Garcetti*, 547 U.S. at 417. Some lower courts have already identified (and applied) this exception in the university setting. *See, e.g., Pernell v. Fla. Bd. of Governors*, No. 22-13992, 2026 U.S. App. LEXIS 19799 (11th Cir. July 7, 2026) (noting that “though the Supreme Court has been stingy about the details of academic freedom” and its “discussions of the nature of academic freedom are murky at best[,]” “it has been generous in its declarations that scholarship and teaching are part of the First Amendment package”); *see also Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (holding that “professors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship”).

Speech in the classroom is no less valuable or worthy of protection because of the setting in which it is spoken. This Court has, numerous times, recognized an interest in academic freedom. *See Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (noting that the area of academic freedom is one “in which the government should be extremely reticent to tread”); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (noting that “[o]ur Nation is deeply committed to safeguarding academic freedom, . . . a special concern of the First Amendment, which does not tolerate laws

that cast a pall of orthodoxy over the classroom”). And academic freedom is not limited to students; it belongs to teachers as well. Teachers, like students, do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

Because this Court’s precedent involving free speech generally has involved university professors, this case provides an opportunity to address academic freedom more broadly. Polk is an elementary school substitute teacher, not a college professor. Her academic freedom interest may be no less substantial than university professors’, as “[t]he classroom is peculiarly the ‘marketplace of ideas.’” *Keyishian*, 385 U.S. at 603.

II. Compelling adherence to one side of a contentious issue as part of “official duties” violates bedrock First Amendment principles.

While this Court has not clarified its government employee speech doctrine, it has also not left lower courts unequipped to handle cases like Polk’s. The Fourth Circuit’s application of *Garcetti* is egregious. Schools cannot shoehorn value-laden, ideological policy judgments into their teacher’s official job requirements and expect the First Amendment to look the other way.

MCPS’s policies do not merely give Polk or other teachers instructions for teaching and regulating their classrooms. They go far beyond permissible curricular goals and violate core First Amendment principles. First, teachers do not give up their First Amendment

rights by becoming teachers. Second, the First Amendment protects individuals' rights to think and speak according to their thoughts and beliefs, without government compulsion or censorship. And third, viewpoint discrimination is highly suspect and subject to rigorous scrutiny.

The Fourth Circuit allowed MCPS to grossly expand the scope of its "official duties." It ignored that not everything that teachers say in the classroom is curricular and can be regulated. It allowed this by reasoning that "no one forced Polk to become a substitute teacher in Montgomery County." *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 421 (4th Cir. 2026). But that misses the point. Polk did not give up her First Amendment freedoms by choosing to become a teacher any more than her students did when they walked into Montgomery County schools. Governments cannot insert First Amendment violations by way of compelled speech into their official duties. Nor can MCPS's ideology swallow the First Amendment freedoms of Polk and others who hold heterodox views. MCPS cannot compel Polk to speak its noncurricular message, and it cannot silence her side of a controversial debate in favor of its preferred viewpoint.

A. The First Amendment protects government employees, including teachers.

Teachers' speech in the classroom is no exception to the First Amendment. Rather, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). The next

generation—“[t]he Nation’s future”—is trained through exposure to a range of ideas in schools. *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). Students learn by interacting with peers, but they also learn from their teachers. “[I]nhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of [the First and Fourteenth] amendments vividly into operation.” *Shelton*, 364 U.S. at 487 (quoting *Wieman v. Updegraff*, 344 U.S. 183, 195 (1952)).

Polk’s position as a teacher does not afford her personal speech that is unrelated to her classroom instruction less protection than it would receive if her employer were not a government entity. The Second Circuit more than fifty years ago decided a case that implicated the same principles. In *Russo v. Central School District*, Russo, a teacher, was required to recite the Pledge of Allegiance and salute the flag. 469 F.2d 623, 625 (2d Cir. 1972). After she refused and only “stood at respectful attention, with her hands at her sides[,]” she was dismissed from her job. *Id.* at 626. The Second Circuit wrote that Russo’s “refusal to recite the pledge and salute the flag,” even though it took “the form of silence,” was “a form of expression.” *Id.* at 631.

A proper First Amendment interpretation, the Second Circuit wrote, disallowed placing more restrictions on teachers than students where there was “no interference with the requirements of appropriate discipline in the operation of the school.” *Id.* at 632. The Second Circuit skipped a *Pickering* analysis and instead evaluated the case using “[t]raditional First Amendment teaching.” *Id.* It

concluded that “the state’s interest in maintaining a flag salute program was well-served in [Russo’s] classroom, even without her participation in the pledge ceremonies.” *Id.* at 633.

The court did “not mean to limit the traditionally broad discretion that has always rested with local school authorities to prescribe curriculum, set classroom standards, and evaluate conduct of teachers and students ‘in light of the special characteristics of the school environment.’” *Id.* (quoting *James v. Bd. of Educ.*, 461 F.2d 566, 575 (2d Cir. 1972)). But “the right to remain silent in the face of an illegitimate demand for speech is as much a part of First Amendment protections as the right to speak out in the face of an illegitimate demand for silence[.]” *Id.* at 634. And “[t]o compel a person to speak what is not in his mind offends the very principles of tolerance and understanding which for so long have been the foundation of our great land.” *Id.*

Similarly, the Virginia Supreme Court and the Sixth Circuit have held that teachers are protected in their non-curricular speech. *See Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021); *Vlaming v. West Point Sch. Bd.*, 302 Va. 504, 567–68 (2023). In both cases, teachers refused to use students’ preferred pronouns because of their religious beliefs. And both courts held that to require teachers to use pronouns that went against their beliefs transcended permissible official duties and would impermissibly compel them to speak a message they did not endorse. *See Meriwether*, 992 F.3d at 505–06; *Vlaming*, 302 Va. at 568–69. Neither court blessed the idea that because preferred pronoun usage was required by the teachers’

schools, the speech was not subject to First Amendment scrutiny.

The Second Circuit, the Sixth Circuit, and the Virginia Supreme Court understood what was at stake. Teachers are government employees, and it is true that they are “paid in part to speak on the government’s behalf and convey its intended messages.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022). Thus, teachers cannot “deliver any message to anyone anytime they wish.” *Id.* But they do not speak solely as government employees as soon as they walk into school and as long as they remain in the building—if they did, they *would* “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Instead, they lack First Amendment protection for their speech only when they speak “pursuant to . . . official duties.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

“Official duties” encompass typical classroom administration involving value-neutral speech and actions that do not impart contentious views. That is because that kind of speech is “ordinarily within the scope” of teachers’ duties. *Lane v. Franks*, 573 U.S. 228, 240 (2014). When a teacher is required to instruct her classroom in algebra, or line her students up by height for picture day, or tell students to be quiet as they walk down the hall to lunch, she is not being forced to impart an ideological message. She is not being compelled to say something she does not believe. There is no viewpoint associated with those tasks. She

is engaging in her official, curricular duties as a teacher.

Additionally, some speech teachers engage in is so necessary to a teacher's duties that to leave it optional would subvert a school's purpose. It would thwart a school's basic purpose to prohibit a school from requiring teachers to instruct their students that two plus two is four (as opposed to five), or from requiring teachers to teach that the Earth is a sphere (and not flat). Similarly, it would not violate the First Amendment to require Polk to teach her history students that before the Civil War, southern states permitted slavery. Nor would it violate the First Amendment to require her to inform students that Israel is a country located in the Middle East. Those statements, while matters of public concern, are factual and part of a curriculum that MCPS might want taught to students. That speech is plainly curricular, and this Court's jurisprudence has recognized that "teachers . . . are also government employees paid in part to speak on the government's behalf and convey its intended messages." *Kennedy*, 597 U.S. at 527.

While it is true that "classroom administration" and teaching a curriculum are part of a teacher's official duties, the MCPS Board's policies regarding pronoun usage and communicating to parents in no way concern mere "[c]lassroom administration," *Polk*, 166 F.4th at 420 n.13, like doing roll call, organizing a seating chart, or teaching students algebra. Instead, they commit the exact error the *Kennedy* Court warned against: "positing an 'excessively broad job descriptio[n]' by treating everything teachers . . . say

in the workplace as government speech subject to government control.” *Kennedy*, 597 U.S. at 530–31 (quoting *Garcetti*, 547 U.S. at 424).

The *Kennedy* Court recognized that not everything a teacher says or does in the classroom, and not everything a school attempts to require a teacher to say or do, can be regulated. There exists a subset of activity teachers engage in that remains personal and outside the government’s reach. To hold otherwise would render the First Amendment an illusory promise for teachers. But that cannot be permitted—the First Amendment protects teachers’ non-curricular speech in the classroom just as it protects students’ speech.

B. The First Amendment protects the freedom to think, speak, and remain silent.

The Fourth Circuit’s opinion also ignores clear prohibitions against government-compelled speech. Our country was built upon the “individual freedom of mind[.]” not “officially disciplined uniformity.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). “Mere unorthodoxy or dissent from the prevailing mores is not to be condemned.” *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957). And “[t]he very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion.” *Riley v. Nat’l Fed’n of the Blind*, 487 U.S. 781, 791 (1988) (quoting *Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring)). Diverse views and ideas are to be embraced, not stifled.

With the ability to freely think comes the ability to freely communicate one's own message. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660–61 (2000). “[A]ll speech inherently involves choices of what to say and what to leave unsaid,” and therefore “one important manifestation of the principle of free speech is that one who chooses to speak may also decide ‘what not to say[.]’” *Hurley v. Irish-American Gay, Lesbian and Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (quoting *Pacific Gas and Elec. Co. v. Pub. Utilities Comm’n of Cal.*, 475 U.S. 1, 11, 16 (1986)). As this Court has said, beyond true official duties, “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.” *Janus v. Am. Fed’n of State, Cnty., and Mun. Emps.*, 585 U.S. 878, 908 (2018).

The MCPS Board’s policies compel Polk to use pronouns in ways she finds objectionable and prohibit her from communicating honestly with parents. Polk has clear beliefs about gender, pronouns, and communication with parents. She believes “she would act unethically if she affirmatively assisted children to present as other than their God-given sex,” by referring to them by biologically inaccurate pronouns. *Polk*, 166 F.4th at 407 n.3. She also believes “God gave parents the primary responsibility for the care and upbringing of their minor children and it would be unethical for her to hide from parents that their child is transitioning genders at school.” *Id.* The policies prohibit Polk from exercising her “right to speak [her] mind.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). And regarding how she addresses students,

she is even prohibited from avoiding pronoun usage altogether.

Polk’s claim is unique from prior cases because it involves two types of First Amendment violations: censored speech and compelled speech. Polk’s desire to speak—to use biological pronouns for students and to discuss student conduct with their parents—is being stifled. Yet she is also being compelled to speak words she would not otherwise say, namely, students’ pronouns matching their gender identity, not their biological sex. In so doing, she is forced to affirm the idea that pronouns are not a reflection of biological permanence but reflect a mere mutable social construct.

Compelled speech like this is no less odious than censored speech. When someone is censored, they believe something but cannot voice it; when someone’s speech is compelled, they must voice something they do not believe. In both cases, a person outwardly affirms or represents something they do not believe. This Court has held “time and again that freedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’” *Janus*, 585 U.S. at 892 (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). And “[i]n this Nation, no official—‘high or petty’—may command our tongues or silence our voices.” *Chiles v. Salazar*, 146 S. Ct. 1010, 1021 (2026) (quoting *Barnette*, 319 U.S. at 642).

Polk can no more be forced to speak a message she does not believe—that students’ pronouns, which reflect their gender, can change—than she can be prohibited from speaking a message she wishes to communicate—that students’ pronouns are a

reflection of their unchangeable biological sex, notwithstanding their perhaps-malleable gender identity. Both require her to communicate a message that she does not believe.

And Polk’s communication with parents about their children’s social transitioning also cannot be censored. Polk, pursuant to her beliefs, wishes to inform parents when their children are socially transitioned. Yet MCPS’s policies act as a gag order, preventing her from telling parents the truth and compelling her to lie to them about the actions the school is taking. MCPS has no legitimate basis for denying Polk employment because she declined to comply with a policy like one this Court recently found unconstitutional in *Mirabelli v. Bonta*, 607 U.S. 492 (2026).

The First Amendment views compelled and censored speech alike as impermissible violations of the inherent right to think and speak freely. MCPS’s policies, which both compel and censor speech, cannot be reconciled with the First Amendment’s demands.

C. The First Amendment protects individuals from viewpoint-based restrictions on their speech.

Additionally, this Court has recognized “the even greater dangers associated with regulations that discriminate based on [a] speaker’s point of view.” *Chiles*, 146 S. Ct. at 1021. Laws are content-based if they apply “to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). In other words, with content-based laws the government “seeks to dictate what particular ‘opinion or perspective’

individuals may express on” a subject. *Chiles*, 146 S. Ct. at 1021. Given the “egregious” nature of viewpoint discrimination, “governments in this country must nearly always ‘abstain’ from it.” *Id.*

Words and phrases are not always banal—depending on the context and content, even innocuous ones are value-laden. Whether one refers to the current president as “President Trump” or “that orange man in the White House” conveys a message about what the speaker thinks. Consider *Skrmetti*: there, the majority used the phrase “sex transition treatments” while the dissent used “gender-affirming care” when discussing the same procedure. *United States v. Skrmetti*, 605 U.S. 495, 503, 536 (2025). Or compare the majority’s reference to the plaintiff in *West Virginia v. B.P.J.*—“a biological male who identifies as a female”—with the dissent’s—“a transgender girl who wants to live her life consistent with her gender identity.” Nos. 24-43, 24-38, 2026 LEXIS 2884, at *15, *46–47 (S. Ct. Jun. 30, 2026). While the majority and dissent discussed the same medical procedure and person, they recognized that terms like “gender-affirming care” and “transgender girl” are fraught with meaning. Their usage of different terms was no accident.

The pronouns one uses can convey a particular worldview that some might find offensive and others might find imperative. Polk herself believes that using pronouns corresponding to a student’s gender identity and not to biological sex would be “unethical[]” and cause her to lie. *Polk*, 166 F.4th at 407 n.3. Using preferred pronouns instead of biological ones can convey that the speaker affirms the subject’s gender

identity. See, e.g., *Pronoun Usage and Mental Health Impacts of Pronoun Respect in TGNB Young People*, THE TREVOR PROJECT (Dec. 10, 2025), [<https://perma.cc/5MCR-5864>].

The policies regarding mandated pronoun use are content-based because they require endorsement of one view and relegate another off-limits. MCPS could have allowed teachers to refer to students by their first or last names. They also could have allowed teachers to use either biological pronouns or pronouns that comported with a student's gender identity. But instead, the policies require Polk to affirm that gender is changeable. They make one viewpoint off limits and require affirmation of the other side. That is textbook viewpoint discrimination.

As such, MCPS's policies cannot survive its attempts to fit them under the "official duties" umbrella. Compelled speech and viewpoint discrimination are subject to heightened scrutiny, not a hall pass.

III. Forcing adherence to one side of a contentious issue into "official duties" is a *Pickering-Garcetti* runaround.

There is yet another problem with the Fourth Circuit's holding: it collapses two inquiries this Court sought to keep separate with its *Pickering-Garcetti* framework. The framework balances the government's interest in providing efficient services with an employee's interest in speaking freely, *if* the employee speaks as a citizen, not pursuant to his or her official duties, *and* speaks on a matter of interest to the community. See *Garcetti v. Ceballos*, 547 U.S. 410, 418

(2006). According to the framework, there is no need to balance interests if an employee does not speak as a citizen or if the employee does not speak on matters of public concern.

This Court has warned that “[t]he First Amendment is no word game[.]” “the rights it protects cannot be renamed away or their protections nullified by ‘mere labels.’” *Chiles v. Salazar*, 146 S. Ct. 1010, 1023 (2026) (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). Speech cannot be suppressed merely because schools expand the scope of teachers’ duties to include compelled, ideological speech and then and label that speech “official duties.” Allowing the Fourth Circuit’s holding to stand sequesters large swaths of protected speech off-limits for employees of any school that decides to mandate specific views on matters of public controversy.

Polk wishes to speak pursuant to her beliefs and address students according to their biological pronouns. And if the school did not require as part of her “official duties” that she address students according to their preferred pronouns, then the subject of her speech—pronoun usage—would be up for discussion at step two of the *Pickering* test. A court would then evaluate whether pronoun usage, gender identity, and social transition are matters of public concern. They are.² See *Janus v. Am. Fed’n of State*,

² The prevalence of cases this Court has decided in the last few terms confirms that the issues of transgender students in schools and sports, transgender surgeries and biology, and pronoun usage are matters of public concern. See, e.g., *United States v.*

Cnty., and Mun. Emps., 585 U.S. 878, 913–14 (2018) (noting that “gender identity” is “undoubtedly [a matter] of profound value and concern to the public”) (footnote and internal quotations omitted).

But according to the Fourth Circuit, whenever the government declares that speech on a matter of public concern falls within one’s “official duty,” the government employee loses First Amendment protection for his or her speech. If government entities can compel speech about matters of public concern by integrating that speech into official duties—*Garcetti*’s inquiry—then they obtain a backdoor escape from liability under *Pickering*.

It does not matter that Polk addresses students inside the classroom rather than outside. A school cannot mandate that a teacher make a controversial or ideological statement in the classroom and then claim that, because that speech is only in the classroom, it is not of public concern. Imagine if a school required that all teachers, as part of their official duties, refer to their Caucasian students as “whities.” Or imagine if a school required all teachers to tell their students that the school’s budget properly allocated funds to the athletic department instead of the school’s academic programs. *See Pickering v. Bd. of Educ. of Township High Sch.*, 391 U.S. 563, 565–67 (1968). Under the Fourth Circuit’s reasoning, both would be permitted. That is because, according to the Fourth Circuit, “how a teacher addresses a particular

Skrmetti, 605 U.S. 495 (2025); *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Mirabelli v. Bonta*, 607 U.S. 492 (2026); *Chiles v. Salazar*, 146 S. Ct. 1010 (2026); *West Virginia v. B.P.J.*, Nos. 24-43, 24-38, 2026 LEXIS 2884 (S. Ct. Jun. 30, 2026).

student in a particular classroom — and whether a teacher communicates with a student’s parent — is merely a part of that teacher’s job description.” *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 418 (2026). In other words, schools can avoid a *Pickering* inquiry altogether by requiring contentious speech as part of the teachers’ official duties.

Under the Fourth Circuit’s logic, schools could easily mandate the exact opposite speech as MCPS— schools could instead require teachers to address students by their biological pronouns. *See Polk*, 166 F.4th at 428 (Wilkinson, J., dissenting). And according to the Fourth Circuit, it would not matter that the speech at issue might be of public concern. It would not matter that the compelled speech conveys an idea teachers might not agree with. And it would not matter that the compelled speech favors one viewpoint at the expense of another.

The Fourth Circuit’s holding can be used to stifle more than just teachers’ speech. Under its logic, a government employer could require its employees to engage in political advocacy during work hours as part of their “official duties.” Whether the employee agreed with the advocacy, and whether the advocacy related to matters of public concern, would be no matter. Labeling the advocacy an “official duty” would insulate it from *Pickering* analysis.

This *Pickering-Garcetti* escape hatch cannot be permitted to continue. This Court has faced attempted run-arounds of First Amendment protection through mislabeling, and it has not let them stand. In *Chiles*, this Court rejected the idea that a state law restricting one side of a controversial issue was permissible under

the guise of regulating mere “conduct,” “treatment,” or a “therapeutic modality.” 146 S. Ct. at 1023. Speech “does not become conduct just because the State may call it that.” *Id.* Similarly, in *NIFLA v. Becerra*, wrongly labeling compelled notices “professional speech” did not exempt the notices from First Amendment scrutiny. 585 U.S. 755, 768 (2018).

The First Amendment is not fooled by improper labels. Just as speech remains protected even when it is labeled “conduct” or “professional speech,” it remains protected when it is improperly labeled an “official duty.” Lower courts cannot be allowed to run around the *Pickering-Garcetti* analysis through mislabeling.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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