

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 *AMICUS CURIAE*
CENTER FOR AMERICAN LIBERTY
IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*¹

The Center for American Liberty (CAL) is a 501(c)(3) nonprofit law firm dedicated to protecting free speech and civil liberties. CAL has represented litigants across the country, including in this Court, in cases seeking to vindicate individuals’ religious freedom, free speech, and parental rights, among other things, against oppressive state action. *See, e.g., Antonucci v. Winters*, 767 F. Supp. 3d 122 (D. Vt. 2025), *opinion vacated, appeal dismissed*, No. 25-514, 2026 WL 623319 (2d Cir. Feb. 25, 2026); *Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025); *Ateba v. Leavitt*, 133 F.4th 114 (D.C. Cir. 2025), *cert. denied*, 146 S. Ct. 822 (2025); *Doe v. Weiser*, No. 1:24-CV-2185-CNS-SBP, 2025 WL 295015 (D. Colo. Jan. 24, 2025), *appeal docketed* No. 25-1037 (10th Cir. Jan. 28, 2025); *Mahoney v. U.S. Cap. Police Bd.*, No. 21-2314 (JEB), 2024 WL 4235429 (D.D.C. July 31, 2024), *appeal docketed* No. 24-5207 (D.C. Cir. Sept. 13, 2024); *Konen v. Caldeira*, No. 5:22-CV-05195-EJD, 2023 WL 4595143 (N.D. Cal. July 17, 2023). CAL has also filed multiple amicus briefs, including in this Court, on similar issues. *See, e.g., St. Mary Cath. Par. v. Roy*, No. 25-581 (U.S. 2026) (Brief of Amicus Curiae in Support of Petitioners); *Mahmoud v. Taylor*, 606 U.S. 522 (2025)

¹ Pursuant to Supreme Court Rule 37.2, counsel for amicus timely notified all known parties of the intention to file a brief of amicus curiae in this case. In accordance with Supreme Court Rule 37, no party or party’s counsel has authored this brief either in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting the brief. No person other than amicus curiae or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

(Brief of Amicus Curiae in Support of Petitioners); *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) (Brief of Amicus Curiae in Support of Petitioners); *Villarreal v. Alaniz*, 145 S. Ct. 368 (2024) (Brief of Amicus Curiae in Support of Petitioner); *Dubash v. City of Houston*, No. 24-20485 (5th Cir. 2024) (Brief of Amicus Curiae in Support of Appellants); *L.M. v. Town of Middleborough*, 103 F.4th 854 (1st Cir. 2024) (Brief of Amicus Curiae in Support of Appellant).

This case sits at the intersection of two separate problems that converge in a single policy. CAL has supported speakers compelled into silence or conformity on the contested subject of gender identity, *see L.M., supra*, and it has defended parents’ right to notice and consent when a school facilitates a child’s gender transition by using a new name and pronouns, *see Regino, Doe, and Konen, supra*. The Board’s Guidelines here combine both problems into one by conscripting a public employee’s speech to enforce an ideological message while also keeping parents from learning what is happening to their children at school. CAL’s experience with each half of that problem gives it a useful vantage point on why the two cannot be resolved in isolation from each other, and on how urgently school districts nationwide need this Court’s guidance on both.

SUMMARY OF THE ARGUMENT

This case presents recurring and unresolved questions about the government’s power to compel ideological speech from public employees. The decision below permits a public employer to place a contested message in a schoolteacher’s mouth, treat the command

as proof that the message falls within her official duties, and use her speech to prevent parents from learning what is happening to their children at school. Review is warranted because the panel's reasoning gives public employers throughout the Nation a ready means of avoiding meaningful First Amendment scrutiny.

This brief makes three arguments. *First*, compelled ideological speech outside an employee's actual duties does not fall within *Garcetti* and is not evaluated by ordinary *Pickering* balancing. No one seriously questions a school's authority to select its curriculum or require teachers to deliver it. But the speech here was noncurricular and did not constitute government speech merely because the Board commanded it. Moreover, *Janus* recognized that *Pickering* review is a poor fit for compelled speech. When the government requires an employee personally to affirm a contested ideological proposition outside her actual representative role, strict scrutiny should govern. At minimum, *Janus* requires some form of exacting or heightened scrutiny.

Second, even if *Pickering* applies, the panel's reasoning bypassed *Pickering*'s public-concern and employer-operations inquiries. Speech about gender identity does not lose its character as a matter of public concern because the government compels it through individual classroom conversations rather than public remarks. Nor may an employer establish operational necessity merely by labeling its preferred message an administrative requirement. The panel's rule allows the challenged command to prove its own constitutionality: the employer creates the duty,

treats resistance as disruption, and leaves nothing for *Pickering* to balance.

Third, the Guidelines do not compel the kind of “lawful message” that *Janus* permits an employer to require. The Guidelines do not merely instruct Polk to remain silent; they script her communications so that an uninformed parent will remain unaware of a child’s gender transition at school. That compelled misdirection violates parents’ right not to be “shut out” of their children’s upbringing as recognized in *Mirabelli*. A message designed to frustrate parents’ constitutional rights does not become lawful simply because a school board requires it through a personnel policy.

The Court should grant the petition.

ARGUMENT

I. THIS CASE PRESENTS THE UNRESOLVED QUESTION OF WHAT SCRUTINY APPLIES TO COMPELLED IDEOLOGICAL SPEECH OUTSIDE AN EMPLOYEE’S ACTUAL DUTIES

This case does not involve a public school’s authority to select its curriculum or direct teachers to deliver it. As Petitioner acknowledges, a school board may require teachers to teach a board-selected curriculum that constitutes government speech. Pet. 22. But the speech challenged here falls outside that rule. As the panel recognized, the Board’s pronoun mandate and restrictions on communications with parents are non-curricular. App.32a n.12, 35a n.13.

Petitioner explains why that distinction precludes the Board from treating everything Polk says to students and parents as the Board’s own speech under *Garcetti v. Ceballos*, 547 U.S. 410 (2006). Pet. 21–30. Amicus primarily addresses the next question—once a public employer compels an employee to affirm a contested ideological message that falls outside her official duties, does *Pickering* balancing govern, or does the compelled-speech doctrine require strict scrutiny?

In *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878 (2018), this Court highlighted the difficulty in applying *Pickering* balancing to compelled speech but left the governing standard unresolved. *Janus* began with a familiar proposition: when speech forms part of an employee’s official duties, “the employer may insist that the employee deliver any lawful message.” *Id.* at 908. But the Court distinguished the situation in which a public employer “does not simply restrict potentially disruptive speech but commands that its employees mouth a message on its own behalf.” *Id.* In that setting, “the calculus is very different.” *Id.* Specifically, *Pickering* balancing “fits much less well” because “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.* Indeed, the Court noted that it had “never applied *Pickering* in such a case.” *Id.*

Here, the panel majority concluded that the compelled speech at issue fell within Polk’s actual duties and that its message was lawful. The panel therefore did not decide what scrutiny applies when the government compels an ideological message outside an

employee’s actual role. And the dissent recognized that *Janus* may require modification of *Pickering* in the context of compelled ideological speech but concluded it was unnecessary to decide that issue because Polk prevailed even under ordinary *Pickering* balancing. App.46a–48a (Wilkinson, J., dissenting).

This case squarely presents that unresolved issue, making certiorari appropriate. When the government compels an employee to affirm a contested ideological proposition outside the work she was hired to perform, the speech does not become government speech merely because the employer issued the command. *Garcetti* does not bar the claim, and *Pickering* balancing does not apply. Instead, strict scrutiny applies to compelled speech.

A. *Garcetti* Does Not Extend to Ideological Affirmance Outside an Employee’s Actual Role

Much public employment necessarily requires speech. Police officers prepare reports. Agency lawyers advance the government’s legal positions. Public information officers issue official statements. Benefits personnel give notices prescribed by law. Teachers deliver assigned lessons. In each instance, the government hires the employee to create or communicate a governmental message, and the employee speaks in an assigned representative capacity.

Garcetti permits the government to control that speech. When an employee speaks “pursuant to [her] official duties,” the Constitution does not require the employer to surrender control over what it commissioned the employee to produce. 547 U.S. at 421–22.

Janus describes the same principle by explaining that an employee who speaks within her duties may function as the employer’s “spokesperson.” 585 U.S. at 910.

But the government does not create government speech merely by requiring employees to speak. *Garcetti* rejected “the suggestion that employers can restrict employees’ rights by creating excessively broad job descriptions.” 547 U.S. at 424. Job descriptions are “neither necessary nor sufficient” to define an employee’s duties. *Id.* at 425. Instead, courts must conduct a “practical” inquiry into the work the employee actually performs. *Id.* at 424. The question is whether the speech is “ordinarily within the scope of an employee’s duties,” not merely whether it relates to those duties or occurs at work. *Lane v. Franks*, 573 U.S. 228, 240 (2014).

In the school setting, the curricular/noncurricular distinction informs that practical inquiry without mechanically resolving it. Curricular instruction presents the clearest case for governmental authorship because the government hires teachers to deliver the curriculum it selects. In some situations, noncurricular speech may also fall within a teacher’s ordinary duties—safety instructions, attendance matters, and other operational communications provide obvious examples. But once speech leaves the curricular domain, a court cannot presume that every word uttered in a classroom constitutes the government’s own message. It must examine the communication at issue and the employee’s role and purpose in making it.

That inquiry focuses on function and attribution, not simply on an employee's private assent or disagreement. Courts can ask whether the government hired the employee to speak for it on the disputed subject, whether the message constitutes assigned speech, and whether the employee conveys an identified governmental position in a representative capacity. They can also ask whether the command requires the employee to use ordinary speech to express a contested proposition as true, even though the employee's job does not otherwise make her the government's spokesperson on that subject.

The Guidelines fall into the latter category. Polk worked as a substitute teacher. The Board hired her to teach assigned material, not to serve as its spokesperson on contested questions of sex and gender. Yet the Guidelines require her to use language that communicates acceptance of the Board's position during ordinary interactions with students. They also require her to use different language with an uninformed parent so that the parent will not learn that the student is undergoing a social gender transition at school. JA67. These commands do not simply prescribe the content of an assigned lesson. They place the Board's contested message into Polk's own everyday speech and require her to communicate it as true.

The Board cannot transform that message into government speech simply by calling compliance an "administrative requirement." That approach makes the constitutional inquiry circular. The Board issues a speech command; the command becomes an official duty because the Board issued it; and the official-duty label then shields the command from First

Amendment review. *Garcetti*'s practical inquiry forbids that formalistic result. The employer's directive may be *evidence* about the scope of an employee's official duties, but it cannot *define* the constitutional boundary under review.

B. *Pickering* Balancing Does Not Apply to Compelled Speech

As Petitioner argues, she prevails under the traditional *Pickering* framework. Pet. 26–33. The panel dissent reached the same conclusion. App.46a–52a (Wilkinson, J., dissenting). But under *Janus*, there is an antecedent question: whether *Pickering* balancing is appropriate when the government *compels* the employee's speech rather than *restricts* it.

In the case of compelled speech, *Pickering* balancing is not appropriate. Rather, strict scrutiny applies.

Pickering addressed the government's authority to discipline an employee for speech the employee voluntarily expressed as a citizen on a matter of public concern. *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968). The Court balanced the employee's interest in speaking against the employer's need to maintain discipline, harmony, effective performance, and efficient operations. *Id.* at 568–73. That framework asks when anticipated or actual workplace disruption justifies restricting an employee's own message.

Compelled speech reverses the constitutional posture. The employee does not seek permission to express a message despite its effect on public operations. Rather, the employer uses the employment

relationship to force the employee to express the government's message despite her objection. The government therefore causes the speech rather than responds to it. An inquiry designed to measure the operational consequences of employee-initiated speech does not capture the distinct injury that arises when the government puts words in the employee's mouth.

That distinction explains *Janus*'s warning that *Pickering* review "fits much less well" when the government commands employees to recite disputed words. 585 U.S. at 908. The employer's interest cannot consist merely of its desire to have the compelled message spoken. Otherwise, the government could create its own interest by adopting the mandate and then placing that manufactured interest on its side of the balance. The command would constitute both the asserted operational need and the means of satisfying it.

The prospective and categorical nature of the Guidelines deepens the mismatch. *Pickering* reviewed an individualized disciplinary action after a teacher chose to speak. The Guidelines instead dictate in advance how every employee must speak in future interactions. In *United States v. National Treasury Employees Union*, this Court distinguished an "isolated disciplinary action" from a broad prospective rule that chills speech "before it happens." 513 U.S. 454, 467–68 (1995) ("*NTEU*"). Because such a rule burdens "a massive number of potential speakers," the government carries a heavier burden than it does in an ordinary employee-speech case. *Id.* at 466–68.

The Guidelines do more than deter speech. They prescribe it. They govern all teachers before any classroom interaction occurs, commanding the words teachers must use and controlling what teachers may convey to parents. A framework already inadequate for broad prospective restrictions fits even less well when the rule affirmatively scripts the employee's speech.

To be clear, Petitioner wins even under *Pickering*. Amicus simply addresses the antecedent question of whether *Pickering* applies in compelled speech cases. *Janus* says the calculus must change.

C. Strict Scrutiny Applies

Once speech falls outside the employee's actual official duties, the government cannot claim the special authority it possesses over its own speech. Instead, the ordinary compelled-speech doctrine governs. Under that doctrine, the government generally may not force an individual "to utter what is not in [her] mind," *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943), or require her to convey an ideological message that she would not otherwise express, *see* 303 *Creative LLC v. Elenis*, 600 U.S. 570, 586–89 (2023), absent compelling justification.

In other words, compelled ideological speech must survive strict scrutiny. *See Nat'l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018). To satisfy this standard, the government must identify a compelling interest and show that it has narrowly tailored the mandate to serve that interest. *Ibid.* Public employment does not erase that rule. It only identifies a domain—genuine government speech within the

employee's actual duties—in which the employee speaks for the government rather than herself.

Thus, the proper rule is this: When a public employer requires an employee personally to affirm a contested ideological proposition that falls outside the employee's actual official duties, the mandate falls outside both *Garcetti* and *Pickering* and must satisfy strict scrutiny.

That rule preserves the government's managerial authority. It does not prevent public employers from requiring accurate reports, official correspondence, prescribed legal notices, curricular instruction, or other speech that employees are hired to produce on the government's behalf. Nor does an employee trigger strict scrutiny simply by disagreeing with a workplace instruction to speak. The inquiry remains objective—courts examine the character of the message, the employee's actual responsibilities, and whether the government has assigned the employee a genuine representative role on the subject.

Construed properly, this rule requires the application of strict scrutiny in a narrow category of mandates. It applies when the government requires an employee who does not ordinarily speak for it on a disputed subject to use her own voice to communicate the government's ideological position as true. In that setting, the employer no longer manages government speech. It compels individual affirmation.

Polk's allegations fit that rule. The Guidelines do not simply require her to convey neutral operational information, give instruction on Board-approved curriculum, or tell students what Board policy provides.

They require her to use contested language in all her interactions with students and to use that language selectively in a way designed to keep an uninformed parent unaware of what occurs at school. The Guidelines therefore compel both affirmation and concealment outside Polk's assigned curriculum and outside any identified role as the Board's spokesperson.

At minimum, *Janus* and *NTEU* foreclose the deference the panel gave to the Board. Even if the Court declines to hold that strict scrutiny governs every mandate within this narrow category, the government must satisfy exacting or comparably heightened scrutiny that accounts for both the compelled nature of the speech and the Guidelines' categorical, prospective scope. *Janus*, 585 U.S. at 907–09, 916; *NTEU*, 513 U.S. at 466–68. Petitioner advances that position as the minimum protection the Constitution requires. Pet. 32–33. Amicus agrees. But strict scrutiny applies because the government has left the domain of its own speech and compelled an individual to affirm a contested ideological message.

The panel's reasoning foreclosed that distinction. It treated the Board's policy as sufficient to establish Polk's official duties, invoked *Janus* to permit the compelled message, and declined to apply the ordinary rules governing ideological speech compulsion. App.31a–35a. The dissent acknowledged that *Janus* may require a different standard but left the question unresolved because Polk prevailed even under *Pickering*. App.46a–48a (Wilkinson, J., dissenting). This Court should grant review and answer the question it reserved in *Janus*: compelled ideological speech outside a public employee's actual duties falls outside

Garcetti and *Pickering* balancing and is subject to strict scrutiny.

II. REVIEW IS ALSO WARRANTED BECAUSE THE PANEL REPLACED *PICKERING*'S CONTEXT-SPECIFIC INQUIRY WITH CATEGORICAL RULES

Even if this Court concludes that *Pickering* balancing applies, review is warranted because the panel replaced *Pickering*'s context-specific inquiry with two categorical rules. First, it treated speech as outside the realm of public concern because the government compelled it through individualized classroom conversations. Second, it treated the Board's characterization of the mandate as an "administrative requirement" sufficient to dispense with further analysis.

Those rules do not merely misapply *Pickering*. They give public employers a repeatable means of avoiding *Pickering* altogether: compel a contested message one conversation at a time, write the command into an employment policy, and invoke the setting and policy label as dispositive. The same structure is already recurring nationwide, yet settlements and fact-bound rulings have prevented a stable appellate rule from emerging. This Court's review is needed to prevent those categorical shortcuts from displacing the case-specific inquiry *Pickering* requires.

A. Speech About Gender Identity Does Not Lose Public-Concern Status Merely Because It Is Delivered to One Student at a Time

The panel concluded that Polk's speech was not a matter of public concern because her challenge is "as

applied” to how she addresses “individual students within [the] classroom” rather than to “public statements outside school regarding the Guidelines.” App.37a; *see also* App.32a–33a n.12, App.36a–38a. That reasoning mistakes the setting and audience of compelled speech for its content. Whether a school may require staff to affirm a contested position on gender identity, and to conceal that a student is transitioning from his or her parent, does not become a private dispute merely because the panel calls it one. Indeed, school boards, legislatures, and courts nationwide are engaged in extensive debate over the question, *see infra*, Part II.C, a fact that evidences the importance of what goes on in the classroom.

Courts that have examined what the compelled words convey, rather than focus myopically on where they were spoken, have reached the opposite conclusion. Preferred names and pronouns “carry a message” regarding a student’s perceived gender identity. *Meriwether v. Hartop*, 992 F.3d 492, 507, 510 (6th Cir. 2021). Compelling a teacher to use them therefore forces her to “wade[] into a matter of public concern,” regardless of how routine the act of addressing a student might otherwise be. *Id.* at 508 (quotations omitted); *see also Geraghty v. Jackson Loc. Sch. Dist. Bd. of Educ.*, No. 5:22-cv-02237, 2024 WL 3758499, at *13 (N.D. Ohio Aug. 12, 2024) (concluding that public concern turns on “the extent to which the speech advances an idea transcending personal interest or opinion which impacts our social and/or political lives” (quotations omitted)). A rule under which an employer can strip a subject of its public-concern status simply by compelling it one individualized conversation at a time proves too much. Nearly every

employee-speech dispute is, by definition, tied to a specific employee, listener, and workplace event, and the panel’s logic would let any government employer immunize any topic from *Pickering* scrutiny merely by insisting on it person-to-person rather than podium-to-crowd.

That the underlying subject is one of intense public debate cannot be seriously disputed. “[T]he question whether speakers should use preferred pronouns to refer to transgender individuals—and whether we should treat the commonplace (and non-antagonistic) use of biological pronouns as proper or offensive—has stirred a passionate political and social debate in our society.” *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 753 (6th Cir. 2025) (quotations omitted). As the dissent below catalogued, it touches public accommodations, sports, healthcare, publishing, employment, passports, and military service, to name a few. App.44a–45a (Wilkinson, J., dissenting). The panel did not dispute that characterization generally; it simply declined to apply it to Polk’s speech because of where, and to whom, she was compelled to speak it. App.33a n.12, 36a–37a. This Court should step in to ensure that other courts do not follow the Fourth Circuit down the wrong road.

B. The Board’s Administrative Label Cannot Replace *Pickering*’s Operational Inquiry

The panel reasoned that addressing students and communicating with parents “flow directly from Polk’s employment,” so the Board could condition her continued employment on compliance with its “administrative requirements.” App.36a n.13. But that

conclusion pertains only to whether the disputed communications relate to Polk's work. It does not answer *Pickering's* separate question: what harm to school operations would result from protecting her speech?

Pickering requires a connection between the employee's protected conduct and an identifiable institutional harm, such as impaired discipline, disrupted working relationships, diminished performance, or interference with regular operations. *Pickering*, 391 U.S. at 569–73. In *Pickering* itself, the school board could not establish that connection merely by asserting that a teacher's criticism harmed its schools. Without a showing that the speech undermined operations, the board had simply "equate[d] the Board members' own interests with that of the schools." *Id.* at 571.

True, an employer may rely on a reasonable prediction of disruption rather than wait for harm to occur. See *Waters v. Churchill*, 511 U.S. 661, 673 (1994) (plurality opinion). But the predicted harm must extend beyond the employee's refusal to obey the challenged speech command. Otherwise, every mandate proves its own constitutionality: the employer adopts a speech rule, labels compliance an administrative duty, and treats resistance as the disruption that justifies the rule.

The panel followed that circular path. It identified no operational impairment distinct from Polk's non-compliance with the Guidelines themselves. Instead, it moved from the Board's decision to classify the compelled communications as administrative requirements directly to the conclusion that the Board could

insist on them. App.36a n.13. That collapses *Pickering*'s operational inquiry into *Garcetti*'s official-duty threshold and leaves nothing to balance.

Geraghty illustrates the distinction. There, the parties presented competing expert testimony on whether compelled use of preferred names and pronouns furthered the school's asserted safety and welfare interests, preventing the court from resolving the *Pickering* balance as a matter of law. 2024 WL 3758499, at *15–16. While not every case will require expert testimony, an employer's operational justification in this setting does not become conclusive merely because the employer writes it into a policy.

Petitioner explains why the Board's asserted interests do not outweigh Polk's speech interests. Pet. 32–33 & n.4. Amicus adds another point: the panel adopted a rule under which those interests need never be weighed. *Pickering* does not permit an employer to establish operational necessity merely by labeling its preferred message an administrative requirement.

C. Similar Pronoun Mandates Are Producing Divergent Results and Little Guidance

The doctrinal uncertainty reflected in the panel's decision is not unique to Montgomery County. Similar pronoun mandates are producing recurring litigation, divergent legal treatment, and little stable appellate guidance. *Compare Meriwether*, 992 F.3d at 507–10 (holding compelled use of student's preferred pronouns addressed a matter of public concern and that the *Pickering* balance favored the professor), *with Wood v. Fla. Dep't of Educ.*, 142 F.4th 1286, 1290–93 (11th Cir. 2025) (holding that a teacher's in-class use

of her own preferred honorific and pronouns constituted government speech), *Sullivan v. Unified Sch. Dist. No. 512*, No. 24-2491-DDC-BGS, 2025 WL 2732589, at *12 (D. Kan. Sept. 25, 2025) (dismissing a teacher’s free speech claim because addressing students by their preferred pronouns fell within her official duties), *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 837–39 (S.D. Ind. 2020) (same), and *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, No. 23-CV-0069-SWS, 2023 WL 9597101, at *8–9 (D. Wyo. Dec. 18, 2023) (same).

The same uncertainty has also produced settlements that are slowing development of the case law. In California, a district paid \$360,000 to settle a materially identical claim. *See* Mallika Seshadri, *District reaches settlement with former teacher who allegedly failed to heed transgender policies*, EdSource (May 20, 2024), available at <https://bit.ly/4yRDGNU>. In Wisconsin, a district paid \$20,000 to settle a similar claim. *See* Kelly Meyerhofer, *Wisconsin school district settles with teacher who refused to use transgender student’s pronouns*, Milwaukee Journal Sentinel (Mar. 10, 2025), available at <https://bit.ly/4vVviu0>. In Kansas, a federal district court confronting the identical two-part structure reached different results as to the policy’s two components—enjoining the district as to parent communications but not as to pronoun use. *Ricard v. USD 475 Geary Cnty. Schs.*, No. 5:22-cv-04015, 2022 WL 1471372 (D. Kan. May 9, 2022). That case, too, ended in a settlement. *See Kansas public school pays \$95K after suspending teacher for refusing to deceive parents*, Alliance Defending Freedom (Aug. 31, 2022), available at <https://bit.ly/4fWhZEJ>. None of

these cases produced a precedential appellate decision.

Nor is the pattern confined to teachers. The California Supreme Court recently rejected a facial First Amendment challenge to a statute prohibiting long-term-care staff from willfully and repeatedly refusing to use residents' preferred names or pronouns, reasoning that the law regulated discriminatory conduct that only incidentally affected speech. *Taking Offense v. State*, 18 Cal. 5th 891 (2025). The Ninth Circuit, by contrast, struck down a materially similar condition on foster-care licensure. *Bates v. Pakseresht*, 146 F.4th 772 (9th Cir. 2025). And Florida's Legislature considered—but did not enact—the “Freedom of Conscience in the Workplace Act,” which would have prohibited certain public employers from requiring employees and contractors to use pronouns inconsistent with sex. See CS/H.B. 641, Reg. Sess. (Fla. 2026). These divergent approaches reinforce the need for this Court's guidance: governments increasingly characterize compelled pronoun use as conduct regulation, a licensing condition, or workplace administration, but no uniform federal rule determines when those labels may displace ordinary First Amendment scrutiny.

III. THE DECISION BELOW THREATENS THE CONSTITUTIONAL ARCHITECTURE PROTECTING PARENTAL AUTHORITY NATIONWIDE

This case also presents the question of whether a directive can qualify as a “lawful message” an employer may require its employees to deliver when the directive results in the violation of the rights of

another. This Court has not addressed that question, and this case presents it with unusual clarity because it arises entirely within the compelled-speech analysis the panel conducted rather than as an independent claim brought on a parent's behalf. Sup. Ct. R. 10(c).

The Guidelines do not simply instruct Polk to say nothing about a student's gender identity to his or her parents. They affirmatively direct her, when "contacting the parent/guardian of a transgender student," to "use the student's legal name and pronoun that correspond to the student's sex assigned at birth" unless the student has specifically authorized otherwise. JA67. In other words, when an uninformed parent asks a question, the Board does not merely forbid Polk from volunteering the truth. Instead, despite requiring her to use students' preferred names and pronouns at school, it scripts the words she must use to leave that parent with the opposite impression. That is compelled misdirection, not silence.

Parents' right to bring up their children is among the oldest liberties this Court has recognized. See *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923); see also *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (plurality op.). And as this Court recently concluded, school policies that "facilitate" a child's gender transition during school hours and "conceal" that transition from his or her parents likely violate that right under both the Due Process and Free Exercise Clauses. *Mirabelli v. Bonta*, 607 U.S. 492, 496–97 (2026) (per curiam). In short, parents have the right not to be "shut

out” of participation in decisions regarding their child’s gender transition at school. *Id.* at 497.

An employer’s authority under *Garcetti* has never extended past directing an employee to deliver a “lawful message.” *Janus*, 585 U.S. at 908 (citing *Garcetti*, 547 U.S. at 421–22, 425–26). A directive whose operation deprives parents of information to which they are constitutionally entitled is not rendered lawful merely because a school board reduces it to a personnel policy. The Board asks this Court to let stand, as lawful employer direction of a teacher’s speech, the same conduct at issue in *Mirabelli*. But the Free Speech Clause does not allow an employer to compel the very concealment this Court has already deemed unconstitutional as applied to parents under the Due Process and Free Exercise Clauses.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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