

No. 25-3047

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARISOL ARROYO-CASTRO,
Plaintiff-Appellant,

v.

ANTHONY GASPER, in his individual and official
capacity; MARYELLEN MANNING, in her
individual and official capacity; DARIO SOTO, in
his individual and official capacity; and ANDREW
MAZZEI, in his individual and official capacity,
Defendants-Appellees.

On Appeal from the United States District Court
For the District of Connecticut
Honorable Sarah F. Russell
Case No. 3:25-cv-00153

**BRIEF *AMICUS CURIAE* OF THE FREEDOM FROM
RELIGION FOUNDATION IN SUPPORT OF APPELLEES AND
AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

The Freedom From Religion Foundation, Inc. (“FFRF”) is a nationally recognized 501(c)(3) educational nonprofit incorporated in 1978. FFRF has no parent corporation and issues no stock.

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INTEREST OF AMICUS¹

Amicus curiae Freedom From Religion Foundation (FFRF) is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason, rather than faith, tradition, or authority. Founded in Madison, Wisconsin in 1978 as a 501(c)(3) nonprofit, FFRF has over 40,000 members, including members in every state and the District of Columbia. FFRF ends hundreds of state/church entanglements each year through education and persuasion, while also litigating, publishing a newspaper, and broadcasting educational programming. FFRF, whose motto is “Freedom depends on freethinkers,” works to uphold the values of the Enlightenment. As a secular organization that promotes freedom of conscience for those who do not practice religion, FFRF offers a unique viewpoint on erosion of civil rights and preferential treatment of religious viewpoints by the government.

¹ All parties consented to the filing of this amicus brief. No party’s counsel in this case authored this brief in whole or in part. No party or party’s counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

Public school teachers play a critical role in American society. They are entrusted to take charge of our nation's children on a daily basis, educating them and imparting upon them the knowledge and skills necessary to grow into successful adults. Teachers serve as critical role models in a child's life—the amount of time they spend with their students and the nature of classroom instruction allow them to have a tremendous amount of influence on children. Because of this critical role, what teachers tell their students is of the utmost importance.

As government employees, speech by public school teachers is governed by the Supreme Court's decision. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (citation modified). When teachers speak pursuant to their official duties as government employees, their speech is not protected under the First Amendment. *Id.* Religious speech remains speech, and thus, when made pursuant to official duties, is analyzed under *Garcetti*. Thus, when a public school teacher engages in religious expression while taking part in their official duties as a government employee, the Constitution does not protect such expression.

The Consolidated School District of New Britain has control over the messages communicated on its classroom walls. As a teacher in the district, one of Arroyo-Castro’s official duties is to decorate the classroom walls “to make the physical classroom environment conducive to student learning.” Mem. & Order at 2. Among the displays adorning her classroom wall are a poster for a social studies textbook, instructions relating to Chrome Book computers, a printout entitled “Student Daily Schedule,” a painting including the Puerto Rican flag, and various other drawings and assignments that appear to have been created by children—and a crucifix. *Id.* at 5.

The display of a crucifix on the classroom wall is speech, and because the District’s policy provides explicit guidance for classroom decoration, this speech was pursuant to Arroyo-Castro’s official duties under *Garcetti*. This determination properly denies Arroyo-Castro’s motion for preliminary injunction not only on her Free Speech claim, but her Free Exercise claim as well. Religious speech is still speech, and applying *Garcetti* to the Free Exercise challenge here adheres to the constitutional requirement of government neutrality concerning religion.

ARGUMENT

I. A Teacher’s Speech Within the Classroom is Government Speech and is Not Protected by the First Amendment.

“When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.” *Garcetti*, 547 U.S. at 418. Public employees’ speech can contravene governmental policies or impair the proper performances of government functions when their speech is at odds with their government employer’s desired message. *Id.* at 419. “When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Id.* at 421. A public employee’s speech may be pursuant to their official duties even though it is not required by, or included in, the employee’s job description or in response to a specific request by the employer. *Weintraub v. Bd. of Educ. of City Sch. Dist. of City of New York*, 593 F.3d 196, 203 (2d Cir. 2010).

A. Arroyo-Castro’s Display of the Crucifix in her Classroom was Speech Pursuant to her Official Government Duties, and *Garcetti* Properly Decides Her Free Speech Claim.

Public school teachers speak pursuant to their official duties when the speech is “part-and-parcel” of their classroom responsibilities.

Weintraub, 593 F.3d at 203. Other circuit courts have found that school systems do not regulate teachers’ speech so much as they hire that speech. *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479 (7th Cir. 2007). The Sixth Circuit expanded on Mayer’s principle, holding that a school board “can surely regulate the content of what is or is not expressed.” *Evans-Marshall v. Bd. of Educ.*, 624 F.3d 332, 340 (6th Cir. 2010). The Ninth Circuit has found that the scope and content of a teacher’s job responsibilities includes speaking to their class. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 965 (9th Cir. 2011). Finally, the Eleventh Circuit found that “when a public school teacher speaks ‘in the course of performing [her] job’—i.e., ‘speaking to [her] class in [her] classroom during class hours’—she does so pursuant to her official duties and therefore speaks as a government employee, not a citizen. *Wood v. Fla. Dep’t of Educ.*, 142 F.4th 1286, 1291–92 (11th Cir. 2025).

In *Weintraub*, this Court held that a teacher's filing of a grievance pertaining to discipline of a student was pursuant to the teacher's official duties because it was "undertaken in the course of performing" his primary employment responsibility of teaching. *Weintraub*, 593 F.3d at 203. The Court focused its analysis through whether the form of speech in question would be available to a non-employee. *Id.* The Court reasoned that because the filing of an employee grievance necessarily requires the filer to be an employee of the school district, no non-employee speech could be analogous to that of the teacher's. *Id.*

In *Johnson*, a California school district ordered a high school math teacher to take down religious banners from his classroom walls. *Johnson*, 658 F.3d at 958. The banners contained statements such as "IN GOD WE TRUST," "ONE NATION UNDER GOD," "GOD BLESS AMERICA," "GOD SHED HIS GRACE ON THEE," and "All men are created equal, they are endowed by their CREATOR." *Id.* While the banners are also references to popular American phrases, the court found that the context and intent behind the messages explicitly concerned religion and fell within permissibly regulated government speech. *Id.* at 965.

In *Wood*, a transgender teacher sued to enjoin enforcement of a Florida statute which prohibited her from using the honorific “Ms.” as well as “she/her” pronouns in exchanges with students during class time. *Wood*, 142 F.4th at 1288. The court found that the teacher’s speech pursuant to her official duties included verbal requests to use her preferred pronouns, wearing a pin reading “she/her,” and writing her preferred pronouns on the whiteboard and syllabi. *Id.*

Arroyo-Castro’s display of a crucifix on the classroom wall is speech pursuant to her duties as a government employee. The District’s policy instructs that the physical classroom environment “is student-centered and task focused.” Mem. & Order at 4. The physical aspects of a classroom “include, but are not limited to, room arrangement, seating, bulletin boards, and artifacts relating to instructional areas.” *Id.* It is the job of a school district to develop policies and protocols for its classrooms that maximize educational value for its students. The District here hired Arroyo-Castro to carry out those policies, and maintains the constitutional right to regulate her speech when it runs contrary to the school district’s chosen path.

Similar to the facts in *Weintraub*, there is no availability here for a private citizen to speak by displaying iconography on public classroom walls—this is an activity delegated to classroom teachers. Mem. & Order at 4. Arroyo-Castro gets to decorate her classroom solely because she is a government employee. *Johnson* and *Wood* both emphasize that displays on classroom walls are speech pursuant to a teacher’s official duties. The *Johnson* court focused its analysis on the religious implications behind the text of the banners, finding that it conveyed a clear intent by the teacher to communicate a religious message to students. And while the banners at issue in *Johnson* arguably contained some secular academic value as quotes from founding American documents or popular phraseology, a crucifix has no such alternate meaning. Under *Garcetti*, Arroyo-Castro is not entitled to First Amendment protection for messages placed on classroom walls.

B. Garcetti Applies to Free Exercise Analysis for Expression by a Government Employee in the Course of Their Official Duties and Properly Dismisses Arroyo-Castro’s Free Exercise Claim.

“Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.” *Garcetti*, 547 U.S. at 421–22.

The Free Exercise Clause and Free Speech Clause provide overlapping protections. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (citation modified). There is a “critical difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 841 (1995) (citation modified).

Public schools may not show favoritism toward or coerce belief in religion. See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948). Courts have continually held that religious displays in public school classrooms violate the Establishment Clause. See, e.g., *Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York Cnty.*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomingdale Pub. Schs.*, 33

F.3d 679 (6th Cir. 1994) (ruling that a painting of Jesus may not be displayed in a public school).

Speech does not cease to be speech simply because its topic concerns religion. In *Rosenberger*, the Court emphasized that attributing speech from a student-run religious newspaper to the University of Virginia itself was “not plausible,” and thus was considered private speech. *Rosenberger*, 515 U.S. at 841. In drawing a clear line between unprotected government speech promoting religion and private religious speech protected by the Free Speech and Free Exercise Clauses, the Court noted that the university had “taken pains to disassociate itself from the private speech involved in this case.” *Id.* Such efforts, however, are far more easily done when the speech comes from students operating a “Contracted Independent Organization” rather than a paid government employee. *See Rosenberger*, 515 U.S. at 825. Arroyo-Castro is not operating her own independent religious newspaper as part of a government-run forum. There are no allegations of the District allowing other religious speech while censoring hers. Instead, she is a government employee expressing a religious sentiment while acting pursuant to her official duties. When the Supreme Court

decided *Garcetti*, it emphasized the need for the government to speak as an entity. *See Garcetti*, 547 U.S. at 419. To apply the “official duties” test to Arroyo-Castro’s Free Speech claim and not her Free Exercise claim would allow subversion of this doctrine if—and only if—the speech in question is religious.² This would take a sword not only to the purpose of *Garcetti*, but to the foundational constitutional principle of separation between state and church.

Under the Establishment Clause of the First Amendment, the District has a legal obligation to remain neutral in matters of religion. When its teachers, who have been hired to convey the government’s speech, display explicitly religious artifacts in the classroom, it conveys a message of religious favoritism to students and violates this core command of the Constitution. The District Court correctly applied *Garcetti* to Arroyo-Castro’s Free Exercise claim, and properly denied Arroyo-Castro’s motion for preliminary injunction. Mem. & Order at 54.

² Importantly, the Supreme Court’s decision in *Kennedy* involved a coach praying “quietly by himself on the field,” and his prayers “were not publicly broadcast or recited to a captive audience,” thus *Garcetti* did not apply. *Kennedy*, 597 U.S. at 538, 542.

C. The Classroom Environment is Especially Coercive for Public School Students.

Students in Connecticut are required by law to attend school. CGS § 10-184. “The State exerts great authority and coercive power through mandatory attendance requirements.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). Students’ “emulation of teachers as role models and children’s susceptibility to peer pressure” makes them especially vulnerable to religious indoctrination in the classroom. *Id.* “There are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). The Supreme Court recently reaffirmed that it is “problematically coercive” for public schools to impose religion upon students who are members of a captive audience. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 541–42 (2022) (citing *Lee*, 505 U.S. at 580; *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 311). The classroom is a captive environment for students where teachers hold positions of authority. As the Seventh Circuit said:

“[P]upils are a captive audience. Education is compulsory, and children must attend public schools unless their parents are willing to incur the cost of private education or the considerable time commitment of home schooling. Children who attend school

because they must ought not be subject to teachers' idiosyncratic perspectives.”

Mayer v. Monroe Cnty. Cmty. Sch. Corp., 474 F.3d 477, 479 (7th Cir. 2007). In *Mayer*, the plaintiff teacher filed a free speech claim after the public school district did not rehire her due to remarks she made about the Iraq war in class. *Id.* at 479. Ruling in favor of the school district, the Court found, “The Constitution does not entitle teachers to present personal views to captive audiences against the instructions of elected officials.” *Id.* at 480.

42% of Connecticut residents are non-Christian, including 31% who are non-religious. Religious Landscape Study: People in Connecticut, Pew Research Center (last visited Jun. 23, 2026), <https://www.pewresearch.org/religious-landscape-study/state/connecticut/>. Students may not simply leave Arroyo-Castro's classroom and find another teacher who represents their own religious beliefs. Instead, they must sit and stare at a display of Jesus Christ nailed to a cross without any option, and fear how they may be treated for speaking in favor of a different faith. These coercive pressures emphasize the importance of religious neutrality in public schools.

**D. Excepting Religious Speech from *Garcetti* Analysis
Would Unconstitutionally Privilege Religion and Lead
to Extreme Outcomes**

If this Court were to decline to apply *Garcetti* to Arroyo-Castro's Free Exercise claim, it would effectively carve its own religious exemption to the Supreme Court's longstanding Free Speech doctrine. This would invite disastrous outcomes, particularly in public school classrooms. Under such a rule, a teacher would be permitted to tell their students that Muhammad is the one true prophet or that they should fast during Ramadan, but could be fired for sharing who she thinks is the best political candidate in an upcoming election. Another teacher could conceivably spend class time reading aloud from the Book of Mormon without punishment yet not receive the same protection for reading aloud from a secular children's book chosen at their discretion.

The snowball would not stop at the classroom door. If *Garcetti*'s doctrine doesn't apply to religious speech by government employees within classrooms, then it wouldn't apply to government employees anywhere. Government employees would conceivably be free to display whatever and however much religious symbols, messages, or other iconography on the walls of their workplaces regardless of whether or to

what extent their workplace is viewed by patrons, colleagues, or anyone else. A rule preventing the government from regulating what its own employees can say or display in the course of their employment would easily become untenable.

This Court should apply *Garcetti* to Arroyo-Castro's Free Exercise challenge—to hold otherwise would effectively find the Establishment Clause unconstitutional and destroy the principle of religious neutrality by the government. The Constitution does not allow public school teachers to subject their students, as a captive audience, to their own religious agenda. Arroyo-Castro may practice her religion as she sees fit on her own time—but not as a teacher via classroom wall displays for students to see.

CONCLUSION

This Court should affirm the judgment of the court below.

Dated: June 24, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 2,933 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because this brief was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: June 24, 2026

Respectfully submitted,

/s/ Samuel T. Grover

Samuel T. Grover

CERTIFICATE OF SERVICE

In accordance with Local Rule 25.1(c), this brief is being filed electronically via the Court's CM/ECF system on this day, June 24, 2026, and six paper copies will be delivered to the Court. I further certify that service was accomplished on all parties via the Court's electronic filing system.

Dated: June 24, 2026

Respectfully submitted,

/s/ Samuel T. Grover
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