25-3047

United States Court of Appeals for the Second Circuit

MARISOL ARROYO-CASTRO

Plaintiff-Appellant,

v.

ANTHONY GASPER, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Connecticut

AMICUS BRIEF FOR THE STATES OF IOWA, ALASKA AND 17 STATES IN SUPPORT OF PLAINTIFF AND REVERSAL

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

INTEREST OF AMICI CURIAE

The Consolidated School District of New Britain's administrators got cross with teacher Marisol Arroyo-Castro. Why? The 30-year veteran teacher hung a crucifix on her wall, among the other decorations otherwise allowed by the school.

The District asks teachers to decorate their classrooms—and Arroyo-Castro did so with gusto. The district court acknowledged that among the items hung on her walls were "inspirational quotes, student artwork, a social studies poster, a daily schedule, and reminders about personal computer commands"—along with "personal expressive items," including a small crucifix. Dkt. 88 at 20–21. Apparently, while the District encourages all manner of secular wall decorations, it prohibits any religious expression.

But that reflects the "mistaken view that [a school] had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). But as the Supreme Court recently explained, the "Constitution neither mandates nor tolerates that kind of discrimination." *Id.*

The undersigned State Attorneys General have a deep interest in ensuring the First Amendment rights of students are respected. Many of those *amici curiae* defend school districts when they are sued—and thus understand the necessity to have clear rules to ensure that public school districts can perform their vital pedagogical duties without running afoul of federal constitutional law. But where, as here, there is a flagrant violation that finds mere display of a cross on a wall justifies discipline, the undersigned wish to speak up to counsel a recalibration.

This Court should take the opportunity to rectify the District's prohibition on Arroyo-Castro's quiet and subtle religious practice, placing a cross on the wall. The district court erred in distinguishing from *Kennedy* on the basis that "students received the religious message when they were required to be present in the classroom receiving instruction from Ms. Castro." Dkt. 88 at 22. After all, the students face no more religious message from a cross hanging innocently on the wall than from Ms. Castro wearing a cross around her neck.

Because the district court erred in denying the preliminary injunction to Arroyo-Castro, this Court should reverse.

INTRODUCTION

The First Amendment does not require—and the Supreme Court has explicitly forbidden—the transformation of public schools into religion-free zones where the mere presence of a personal religious icon is treated as a constitutional crisis. For over a decade, Marisol Arroyo-Castro, a veteran educator and devout Catholic, has quietly maintained a small, foot-high crucifix near her personal desk. Her passive expression of faith served no curricular end and invited no student participation; it was a private anchor for a public servant.

Yet the district court appears to rely on a "phantom" understanding of the Establishment Clause that the Supreme Court interred in *Kennedy v. Bremerton School District*, 597 U.S. at 543. The district court concluded that Arroyo-Castro's personal display was government speech subject to total administrative control—and thus rejected her quiet gesture towards her faith. *See* Dkt. 88 at 25. By labeling the personal decoration as a "'core' job duty," *id.* at 18, the court granted school districts a license to purge classrooms of any teacher whose identity includes a religious component.

Amici States submit this brief to clarify that *Kennedy* and the "historical practices and understandings" of our Constitution protect the right of public employees to be both faithful citizens and effective teachers. *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).

ARGUMENT

I. THE DISTRICT COURT ERRED BY EXTENDING *GARCETTI* TO PASSIVE, PERSONAL RELIGIOUS EXPRESSION.

The district court's threshold error was its determination that Ms. Arroyo-Castro's act of hanging a personal crucifix near her desk was a "display as expression pursuant to official duties" under the "*Pickering-Garcetti* framework." Dkt. 88 at 33. Under *Garcetti v. Ceballos*, speech is stripped of First Amendment protection only when it is part of the work the employee was "actually paid to perform." 547 U.S. 410, 422 (2006). Here, the district court contorted *Garcetti* past its breaking point, finding that because Ms. Castro had a general duty to "decorate[] the walls in furtherance of her teaching duties," any item she placed on the wall—no matter how personal, or for what religious purpose—became the speech of the State. Dkt. 88 at 31.

Yet that imperial-classroom theory of government speech suggests that the moment a teacher crosses the schoolhouse threshold, her entire physical environment is subsumed by the school district. But even the district court recognized that "teachers . . . do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" *Id.* at 15 (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). And given the district court's predilection to merge First Amendment analyses together, that should reflect a reasonable position that teachers do not lose their Free Exercise rights when they walk through the schoolhouse door, either.

To justify its approach, the district court relies on the pre-*Kennedy* case *Johnson v. Poway United School District*, which involved a man seeking to hang banners stating, among other claims, "GOD SHED HIS GRACE ON THEE." *Id.* at 23 (quoting *Johnson v. Poway United Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011)). Putting aside the somewhat ridiculous comparison of large banners with the small crucifix here, the logic that enticed the district court involved why the wall decorations were government speech. The district court found that because an "ordinary citizen" could not have hanged the posters, the speech related

to the role of teacher. And then applied that holding to the crucifix. *Id.* at 24.

But this logic proves too much. An ordinary citizen also cannot walk into a teacher's classroom and place a family photo, a wedding ring, or a "Patriots pennant" on the teacher's desk. *Id.* at 26. Yet no one seriously contends that these items constitute official-duty speech simply because they occupy space within a public building.

The record is clear: the crucifix was an approximately one-foot-tall personal item given to Ms. Castro after the death of a friend. It was hung at waist height, blocked from most students' view by a computer monitor, and was explicitly "not part of the seventh grade social studies curriculum." *Id.* at 5. Ms. Castro used the crucifix not as a teaching tool, but as a source of personal "peace and strength" and a focal point for silent prayer during her lunch breaks. *Id.* at 6. If instead of a crucifix, Ms. Castro sought solace in a dream-catcher, a Star of David, or a miniature of the Hindu god Vishnu hanging from her desk, it is hard to imagine the same response would follow. Much less all of the well-treated secular speech hanging on Arroyo-Castro (and other teachers') walls.

By labeling her private religious practice "official duties" speech, Dkt. 88 at 50, the court creates a standard where teachers must check their religious identity at the door to satisfy a government mission they never agreed to undertake. And that approach directly contradicts the Supreme Court's warning in *Kennedy* that expansive definitions of official duties are not a license for schools to transform every moment of a teacher's day into government-mandated expression. *Kennedy*, 597 U.S. at 529–31.

II. *KENNEDY V. BREMERTON SCHOOL DISTRICT* DISPELLED THE "FALSE CONFLICT" BETWEEN FREE EXERCISE AND ESTABLISHMENT.

For decades until *Kennedy*, school districts operated under the mistaken belief that the Establishment Clause requires—and even mandates—suppressing visible religious expression to avoid the "perception of endorsement." *See Bronx Household of Faith v. Board of Educ. Of City of New York*, 650 F.3d 30, 41–42 (2d Cir. 2011) (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). But that perception test, indeed the entire *Lemon* test, is now recognized to be abrogated. *Groff v. DeJoy*, 600 U.S. 447, 460 (2023). So no longer is there a risk of an

Establishment Clause violation for treating religious claims on the same footing as secular ones. *See id.*

Defendants here invoke that "ghoul in a late-night horror movie" not realizing that post-*Kennedy*, *Lemon* has met its permanent repose. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (Scalia, J., concurring). To that end, Defendants contend that "any permanent displays of religious symbols are prohibited from public schools" because they might send a message that the district is "promoting that religion." Dkt. 88 at 8. That failed logic based on a fundamental misunderstanding of the First Amendment echoes the endorsement-test logic that the Supreme Court discarded in *Kennedy* as "long ago abandoned." *See Kennedy*, 597 U.S. at 534. Those tests "invited chaos" in district courts and acted as a constitutionally improper "heckler's veto." *Id.* No more.

Kennedy clarified that the Establishment Clause is not a trump card that allows the government to defeat the Free Exercise and Free Speech Clauses. *See id.* at 536. Instead, courts must look to "historical practices and understandings." *Id.* There is no American tradition of purging the public square—or the public classroom—of all religious

symbols. To the contrary, our history is replete with the recognition that individuals do not lose their religious character merely because they are on the public payroll.

The District Court focused on the students as a "captive audience," reasoning that hanging "the crucifix on the classroom wall during instructional time 'runs a substantial risk of incurring a violation of the Establishment Clause.'" Dkt. 88 at 42 (quoting *Bronx Household*, 650 F.3d at 198). But the case the court relied on, *Bronx Household*, seems very unlikely to have survived *Kennedy*'s repudiation of *Lemon*.

Indeed, most of the cases the district court relied on for its Establishment Clause analysis are boughs on *Lemon*'s tree—poison fruit today. *See*, *e.g.*, Dkt. 88 at 43 (citing *Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) and *Stone v. Graham*, 449 U.S. 39 (1980)). For example, *Stone v. Graham* "turns entirely on *Lemon v. Kurtzman*—and everyone agrees that *Lemon* is no longer good law." *Roake v. Brumley*, ---F.4th---, 2026 WL 482555 (5th Cir. Feb. 20, 2026) (en banc) (Ho, J., concurring). *Stone* relied on "the first prong of the *Lemon* test" and spent "ensuing paragraphs" to eventually hold that the law "violates the first part of the *Lemon v. Kurtzman* test." *Id.* Just like in *Roake v. Brumley*, Defendants

"insist that" *Stone*, *Lemon*, and their progeny "remains good law, never mind the Court's 'abandonment' of *Lemon*." *Id.* (cleaned up). Like the district court here, the district court in *Roake* "relies on *precedent* that the Supreme Court has *overturned*." *Id.*

Defendants' reliance on Second Circuit and the Supreme Court's *Lemon*-era precedents do not inform this Court whether that reliance was "reasonable, good faith judgment that [the District] runs a substantial risk of incurring a violation of the Establishment Clause." Dkt. 88 at 40 (quoting *Bronx Household*, 650 F.3d at 198). Instead, this Court should find that treating religiosity on a neutral field with secularism is guaranteed by the Free Exercise Clause.

As the Supreme Court noted in *Kennedy*, there is no conflict between the Free Exercise and Establishment Clauses. Indeed, the "mere shadow" of a religious exercise in the presence of students is not government coercion. 597 U.S. at 543. Students are often exposed to a variety of "personal expressive items" in the classroom, from American flags, to foreign flags, to flags that many despise (the New England Patriots). If a student's exposure to a Patriots pennant does not transform the school district into a satellite of Foxborough, then exposure

to a teacher's personal crucifix cannot be seen as the State's endorsement of Catholicism. By treating religious speech as uniquely dangerous or uniquely subject to censorship, the District engaged in a "mistaken view" of the Establishment Clause that Kennedy was specifically written to correct. *Id.*

III. THE DISTRICT'S ACTIONS WERE NEITHER NEUTRAL NOR GENERALLY APPLICABLE.

Even if the court were to apply a "balancing" test rather than strict scrutiny, the District's actions fail because they were not neutral or generally applicable. Dkt. 88 at 40. The record reveals a classroom environment filled with "personal expressive items." Other teachers at DiLoreto displayed everything from "Baby Yoda" mats to "Mona Lisa" prints and inspirational phrases like, "Yes you can!" Dkt. 88 at 7. Some items even had "religious origins or connotations, including a picture of Santa Claus," a coffee mug that cites scripture, a Christmas tree, and a photograph of the Virgin Mary. *Id.*

Yet, only Ms. Castro was directed to remove the crucifix or face "insubordination and disciplinary measures." *Id.* at 8. The District did not issue a memo banning all personal wall decorations; it issued a

specific directive targeting a "religious symbol." *Id.* That is the definition of a policy that is not neutral because it targets a religious practice.

Recent Second Circuit precedent confirms that treating religious practices, activities, and people worse than others merely because of the fact of their religiosity is constitutionally infirm. *Mid Vermont Christian Sch. v. Saunders*, 151 F.4th 86, 89 (2d Cir. 2025). There, a religious Christian school in Vermont was prohibited from participating in intra-state extracurriculars after the school refused to participate in a women's volleyball match against a team with a biologically mail opponent. *Id.* at 90. Adding insult to the school's injury, the extracurricular group's executive director testified two days later testified to Vermont's House Education Committee in favor of a bill that would prohibit the Christian school from receiving funding. *Id.* The executive director specifically referred to the Christian school refusing to put its students at risk as without "common decency." *Id.* Like here, the district court denied a preliminary injunction to the Christian school.

Like there, this Court should again reverse the denial of a preliminary injunction because "Plaintiffs are likely to succeed in showing that [Defendants] did not consider [Plaintiff's] case with the

neutrality that the Free Exercise Clause requires because it was hostile to [Plaintiff's] religious views." *Id.* at 92. That was based on understanding that the First Amendment requires not only neutral rules be drafted but also that they "be *applied* in a manner that is neutral toward religion." *Id.* (quoting *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 640 (2018)). When religious expression is treated differently than secular expression, "courts may set aside the adverse results of tainted enforcement proceedings 'without further inquiry.'" *Id.* at 93 (quoting *Kennedy*, 597 U.S. at 525 n.1).

And *Mid Vermont Christian School* is helpful to this Court to show that when a policy tends not to be enforced towards secular expression, the unique enforcement aimed at religious conduct can be evidence of constitutionally impermissible religious hostility. *Id.* at 95. The extracurricular organization had "never before banned a school from all sporting events." *Id.* The only reason that a school had been removed from participation eligibility is because the school stays true to its religious character.

Here, the only discipline in the record related to the eclectic collection of items on classroom walls is the crucifix. And the school's

issue with the cross is specifically because of its religious nature—no other reason. The District's interest in a "student-centered" environment was apparently not undermined by "Wonder Woman" figurines, but it was by a small crucifix. Dkt. 88 at 21. That "targeted punishment" because of a display's religious content is a textbook violation of the Free Exercise Clause. By forcing Ms. Castro to choose between fidelity to religious belief or cessation of work, the District placed a substantial and unconstitutional burden on her faith.

Reversal is further bolstered by this Court's decision recognizing that an Emergency Declaration that imposed a COVID-19 vaccine mandate on children may not be neutral and generally applicable—and thus required heightened scrutiny. *M.A. on behalf of H.R. v. Rockland Cnty. Dept. of Health*, 53 F.4th 29, 36 (2d Cir. 2022) (quoting *Kennedy*, 597 U.S. at 524). In *M.A.*, this Court reversed an adverse summary judgment ruling against a parent on the basis that there is a fact question about whether the declaration was "neutral or generally applicable." *Id.* That matters, because if the rule is not neutral or generally applicable then strict scrutiny follows. Given the failure to have a neutral and generally applicable rule relating to what is allowed as decorations here,

this is likely the better path to determine the constitutionality of the District's actions.

Even more helpful to this Court's analysis is Judge Park's concurrence, explaining that because the Emergency Declaration's "'object' was to burden Plaintiffs' choices 'at least in part because of their religious character'" that it was "not neutral." *Id.* at 40 (quoting *Kennedy*, 597 U.S. at 526). Indeed, not only was the Declaration not "neutral" it was not "generally applicable" because it prohibited "religious conduct while permitting secular conduct that undermined the government's asserted interests in a similar way." *Id.* (cleaned up) (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021)).

The same arguments that swayed both the panel majority and Judge Park writing separately to find that school-related policies that target religious expression to be unconstitutional applies here as well. Arroyo-Castro deserves to have her personal expressive decorations treated on a level playing field with secular counterparts. Indeed, that is what the First Amendment requires.

So while even under a balancing test, the District's actions here fail constitutional scrutiny, it is possible that stricter scrutiny provides another path towards reversal.

CONCLUSION

This Court should reverse the district court's denial of a preliminary injunction.

Dated: Des Moines, Iowa
March 25, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, Eric H. Wessan, an employee in the Office of the Attorney General of the State of Iowa, hereby certifies that according to the word count feature of the word-processing program used to prepare this brief, the brief contains 2,913 words and complies with the typeface requirements and length limits of Rule 29(a).

/s/ Eric H. Wessan
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