No. 04-473

IN THE

SUPREME COURT OF THE UNITED STATES

GIL GARCETTI, ET AL.
Petitioners,

v.

RICHARD CEBALLOS
Respondent.

ON WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE THE THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION, AND THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

In support of the Respondent

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July 21, 2005

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This brief is filed with the written consent of all the parties.

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STATEMENT OF INTEREST OF AMICI CURIAE

The American Association of University Professors and the Thomas Jefferson Center for Protection of Free Expression believe that a blanket prohibition categorizing all job-related speech as unprotected by the First Amendment could seriously undermine the Court's traditional treatment of academic freedom as a "special concern of the First Amendment" and impair the academic freedom of professors in the pursuit of truth and knowledge.

The American Association of University Professors (AAUP) is an organization of approximately 45,000 faculty members and research scholars in all academic disciplines. Founded in 1915, the Association is committed to the defense of academic freedom and the free exchange of ideas in scholarly and creative work.

AAUP has frequently participated before this Court in cases raising First Amendment issues in higher education. *See, e.g., Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Whitehill v. Elkins*, 389 U.S. 54 (1967); *Minnesota State Board of Community Colleges v. Knight*, 465 U.S. 271 (1984). The AAUP

has also filed amicus briefs in cases before this Court that involve the First Amendment rights of public employees generally that have the potential to affect academic speech, as in this case. *See, e.g., Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410 (1979). This Court has cited AAUP policies in its decisions. *See, e.g., Tilton v. Richardson*, 403 U.S. 672, 681-82 (1971); *Board of Regents v. Roth*, 408 U.S. 564, 579 n. 17 (1972).

The Association's *1915 Declaration of Principles*, issued by the AAUP in its founding year, is the major statement on academic freedom in America. AAUP, "General Report of the Committee on Academic Freedom and Tenure (1915)," *AAUP Policy Documents & Reports* 291 (9th ed., 2001) ("1915 Declaration"). The 1915 Declaration was issued in response to the widespread dismissal of faculty members by administrators and boards of trustees who disagreed with the expression of professors, including professors teaching Darwinism; promulgating views favorable "toward free trade and greenbacks;" and speaking out for free silver. Walter P. Metzger, *Academic Freedom in the Age of the University*, 145-47 (1955).

The 1915 Declaration provides for "freedom of inquiry

and research; freedom of teaching within the university or college; and freedom of extramural utterance and action." 1915 Declaration, *supra*, at 292. It eloquently states:

> The responsibility of the university teacher is primarily to the public itself, and the judgment of his own profession…. So far as the university teacher's independence of thought and utterance is concerned--though not in other regards--the relationship of professors to trustees may be compared to that between judges of the federal courts and the executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees, than are judges subject to the control of the president, with respect to their decisions; while of course, for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors, than the president can be assumed to approve of all the legal reasoning of the courts.

Id. at 295.

The joint *1940 Statement of Principles on Academic Freedom and Tenure*, which was authored by the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities), codified the 1915 Declaration and has been endorsed by over 190 professional organizations and learned societies as well as incorporated into

hundreds of university and college faculty handbooks. AAUP, *1940 Statement of Principles on Academic Freedom and Tenure, AAUP Policy Documents & Reports* 3 (9th ed., 2001) ("1940 Statement"). The 1940 Statement provides: "Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning." *Id.*

This Court's justification for its holding that academic freedom is a "special concern of the First Amendment," *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), in many ways parallels the rationale underlying the 1915 Declaration and reiterated in the 1940 Statement: the advancement of truth, the need for scholarly independence, and the university as a "market place of ideas." *Keyishian*, 385 U.S. at 603.[1]

[1] "Both the Supreme Court and the 1915 Declaration maintained that the search for truth, in universities as well as in society generally, is never complete and requires free debate about competing ideas that precludes any imposition of ideological orthodoxy." David M. Rabban, "'Individual' & 'Institutional' Academic Freedom," 53 Law & Contemp. Probs. 227, 240-41 (1990) (also noting that the judicial opinions and "the 1915 Declaration…used similar metaphors"; for example, "[t]he description of the university in the 1915 Declaration as an 'intellectual

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit, nonpartisan organization devoted solely to the protection of free speech and free press. Since its opening in 1990, the Center has pursued its mission in various forms, including the filing of amicus briefs in both state and federal courts. The Center has filed briefs in several cases involving the First Amendment rights of public employees and of Internet users. A number of its cases also involved questions of academic freedom and free speech within the academic community.

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experiment station' closely resembles the description of the classroom in *Keyishian* as a 'marketplace of ideas.'").

SUMMARY OF ARGUMENT

For two closely related reasons, Amici urge affirmance of the judgment of the Court of Appeals. Since the late 1960s, this Court has consistently conferred First Amendment protection on the speech of public employees that deals with matters of public concern, recognizing the vital role that such speech plays in the democratic process. This protection has never excluded, nor treated less favorably, expression of public employees that relates to the speaker's position or assigned responsibilities. Thus, any suggestion that such statements forfeit First Amendment protection because they are job-related, or are made within the speaker's scope of employment, would be seriously at variance with the central premises of this Court's decisions. Such a view would also depart radically from the unanimous consensus of the federal courts of appeals, all of which have been consistent with the judgment of the Ninth Circuit in this case.

Second, Amici are especially concerned that lessening First Amendment protection for job-related public employee speech would threaten academic freedom. Much potentially

controversial expression by university professors relates to the subject matter of the speaker's academic expertise, and could thus be deemed unprotected under a diminished and distorted concept of "public concern." Indeed, the most valuable contributions that most university scholars and teachers make to public debate and understanding typically derive from their academic disciplines or fields of expertise. Thus, any suggestion that "matters of public concern" may not encompass job-related expression of professors would undermine the special protections the Court has given academic freedom for the past 50 years. Adoption of such a view would also create a perverse irony: Constitutional protection for a professor's speech would now extend only to those public statements on which the speaker was *least well informed*, while denying such protection to statements reflecting the speaker's academic expertise (and thus his or her responsibilities as a public employee). Such a result seems not only unimaginable in practical terms, but totally at variance with everything this Court has said about academic freedom. Thus, while Amici fully share the general concerns about drastic diminution of First Amendment protection for the speech of government workers, they bring to this

Court a special concern about the potentially devastating effect of such a change for academic freedom.

ARGUMENT

I. FIRST AMENDMENT PROTECTION FOR PUBLIC EMPLOYEE SPEECH ON MATTERS OF PUBLIC CONCERN INCLUDES EXPRESSION WITHIN THE SCOPE OF THE SPEAKER'S EMPLOYMENT

The Court of Appeals correctly held that respondent's speech was fully protected by the First Amendment, addressing as it did a matter of public concern, no less because it occurred within the workplace and related to issues within respondent's assigned area of responsibility as a prosecutor. That view was entirely consistent with this Court's judgment in *Connick v. Myers*, 461 U.S. 138, 147 (1983), which set forth the criteria that have since been applied to distinguish between protected speech "as a citizen upon matters of public concern" and unprotected speech "as an employee upon matters only of personal interest." As all federal circuits have recognized when they have addressed this issue, many public employee statements deserve full First Amendment protection even though they may occur within the workplace and may relate to the speaker's assigned responsibilities as a

government worker. *See, e.g., Mansoor v. Trank*, 319 F.3d. 133, 138 (4th Cir. 2003) (stating "matters 'relating to your employment' clearly *can* encompass matters of public concern"). *See also Taylor v. Keith*, 338 F.3d. 639 (6th Cir. 2003); *Delgado v. Jones*, 282 F.3d. 511 (7th Cir. 2002); *Branton v. City of Dallas*, 272 F.3d. 730 (5th Cir. 2001); *Dill v. City of Edmond*, 155 F.3d 1193 (10th Cir. 1998); *Kariotis v. Glendening*, 229 F.3d 1142 (4th Cir. 2000); *Belk v. City of Elvon*, 228 F.3d. 872 (8th Cir. 2000); *Fikes v. City of Daphne*, 79 F.3d. 1079 (11th Cir. 1996).

This Court explained clearly in *Connick* why certain statements may not deserve such protection; the unprotected statements (more precisely, questions in a workplace survey) involved in that case were described as "mere extensions of [the speaker's] dispute over her transfer to another section" which "did not seek to inform the public" of potential wrongdoing within the agency and "would convey no information at all other than the fact that a single employee is upset with the status quo." 461 U.S. at 148. Finally, the Court noted that "[t]hese questions reflect one employee's dissatisfaction with a transfer and an attempt to turn that displeasure into a cause celebre." *Id*. Appropriately, a

government worker who simply wishes to press a personal grievance should pursue the "narrowly drawn grievance procedures" as the proper channel for such matters and not broadcast such concerns to the world at large. *Pickering v. Board of Education*, 391 U.S. 563, 572 n.4 (1968).

Connick's rationale for denying protection to such expressions of purely personal grievance can easily be reconciled with the Ninth Circuit's sound basis for treating the respondent's statements as protected "matters of public concern." *Ceballos v. Garcetti*, 361 F.3d 1168, 1180 (2003). None of the disqualifying characteristics of the *Connick* questions can be found in this case. Respondent's statements here related to general agency policy and not personal pique. They concerned the public interest in the fairness of law enforcement procedure and not a narrow dispute between a single assistant district attorney and his superior. Neither the limited dissemination of respondent's statements nor their relevance to the workplace served in any way to lessen their claim for First Amendment protection under the *Pickering-Connick* doctrine. By any measure or standard, these were statements on "matters of public concern," and on that basis they were fully

entitled to constitutional protection, as the court of appeals ruled. *Id.*

The implications of a contrary view are startling. At a practical level, drawing at any other place the line between protected and unprotected public employee speech would pose daunting tasks for the lower courts, which have found the present distinction eminently workable – as witness the unanimity among circuits on the very issue posed by the case. Even more serious than the practical problems posed by such a departure would be the serious potential diminution in First Amendment protection for a vital sector of expression, that of public employees on matters of public concern that may relate to their assigned responsibilities or may occur within the workplace. Thus, Amici strongly urge this Court to affirm the judgment of the court of appeals, recognizing once again that speech such as respondent's in this case does indeed deserve First Amendment protection.

II. ACADEMIC FREEDOM, AN INTEREST UPON WHICH THIS COURT HAS CONFERRED SPECIAL FIRST AMENDMENT PROTECTION, COULD BE IMPERILED BY A RECASTING OF THE "PUBLIC CONCERN" DOCTRINE

A. Decisions of this Court have consistently embraced

academic freedom for university professors as a core First Amendment value.

This Court has unqualifiedly recognized for nearly half a century the special stature of academic freedom for individual faculty among protected First Amendment interests. From its initial recognition of academic freedom as a First Amendment liberty in *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), and continuing unabated through its recent decision in *Grutter v. Bolinger*, 539 U.S. 306 (2003), the Court has not wavered in identifying the university as "a traditional sphere of free expression so fundamental to the functioning of society" that First Amendment concerns apply with special force. *Rust v. Sullivan*, 500 U.S. 173, 200 (1991). This Court has without exception affirmed the principles first advanced in the *Sweezy* case, where the Court examined the government's inquiry into the content of a scholar's lecture at the University of New Hampshire. The Court ruled that the government's interference with the subject matter of the lecture "unquestionably was an invasion of [the lecturer's] liberties in the areas of academic freedom and political expression—areas in which government should be extremely

reticent to tread." 354 U.S. at 250. In so ruling, the Court cautioned that "to impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation." The Court also recognized the dangers of infringing upon "such highly sensitive areas as freedom of speech . . . and freedom of communication of ideas, particularly in the academic community." *Id.* at 245.

Such concerns have been restated at critical moments during the last half century by this Court. In the course of invalidating a state loyalty oath imposed on university professors at the State University of New York, the Court in *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), stated: "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." Most recently, in sustaining a university's race-sensitive admissions policy, this Court reaffirmed "the important purpose of public education and the expansive freedoms of speech and thought associated with the university

environment," declaring once again that, because of that "important purpose," "universities occupy a special niche in our constitutional tradition." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). This Court has consistently affirmed its deference, and has decreed the deference of the lower courts, to judgments made on academic matters by both university professors and administrators. *See Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 226 n.12 (1985) ("Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decision-making by the academy itself.")

B. A severe curtailment of protection for job-related speech under the "public concern" rubric would be at sharp variance with the First Amendment values so forcefully reflected in this Court's academic freedom declarations.

The special concern of Amici in the present case derives directly from this unwavering affirmation of academic freedom as a core First Amendment interest. The central premises of such protection would be poorly served – indeed, could be gravely undermined – by a narrowing of the "public concern" doctrine to exclude job-related expression. A brief review of the interests

which this Court has deemed worthy of protection through academic freedom readily demonstrates that concern.

From the very beginning, this Court's solicitude for professorial speech has focused mainly on what is said in and near the classroom, the laboratory, and the library of the university campus – in short, speech that is indisputably within the scope of the speaker's employment as teacher and scholar. In *Sweezy v. New Hampshire*, the target of governmental inquiry that this Court found to be constitutionally impermissible was a series of lectures by a scholar at a state university. Both the opinion of the Court and Justice Frankfurter's seminal concurring opinion stressed the "vital role in a democracy that is played by those who guide and train our youth," concluding that "[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding. . . ." 354 U.S. at 250.

The *Keyishian* Court, two decades later, expressed special concern for "laws that cast a pall of orthodoxy over the classroom," noting the "transcendent value of [academic freedom] to all of us and not merely to the teachers concerned." 385 U.S. at 603. In sustaining race-sensitive admissions policies, first in

University of California Regents v. Bakke, 438 U.S. 265, 312 (1978), this Court stressed the "freedom of a university to make its own judgments as to education [including] the selection of its student body." And a quarter century later, the *Grutter* Court emphasized in this same context of the admission of students the need for deference to the academic judgments of educators, "given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment." 539 U.S. at 330.

In each of these decisions that establish the primacy of academic freedom as a First Amendment value, the expression for which protection was sought and granted has been at or near the core of what society expects its universities and their faculties to do. Consistently, this Court has focused on the need to permit the unfettered pursuit of knowledge, and the dissemination of such knowledge, to students in the college classroom and to the larger community through other means such as scholarly publications, legislative testimony, and guidance to government agencies in the formulation of standards and policy.

The Court has never even hinted that First Amendment

constitutional protection for academic freedom should abate as the dispute approaches the core of a professor's assigned tasks. To the contrary, a review of this Court's academic freedom decisions and declarations yields a diametrically opposed conclusion: The closer one comes to activity for which a university professor is trained, recruited, compensated and appraised, the more clearly does that activity need and deserve First Amendment protection. Thus, the Petitioners' notion -- that a public employee's job-related or job-required speech has somehow forfeited constitutional protection -- is totally at variance with nearly everything this Court has said about academic freedom.

C. Denying protection to university professors' job-related speech under the rubric of "matters of public concern" could drastically alter the disposition of most academic freedom litigation.

The lower federal courts have never suggested that First Amendment protection for professorial expression diminishes with proximity to the core of a teacher's or scholar's assigned tasks.

Indeed, some courts have been less inclined to grant protection to speech unrelated to the academic setting and the campus community. Suffice it to note that in the view of such courts, *Pickering-Connick* principles fully encompass, and accord First Amendment protection to, professorial speech – without regard to the relationship between that speech and a scholar's academic discipline or assigned area of curricular responsibility.

Moreover, the rationale this Court has consistently invoked for its defense of academic freedom seems to apply with special force to statements made by university professors within their fields of expertise. As the 1915 Declaration of the AAUP stressed, the basic function of university professors "is to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and of their fellow-specialists' investigations and reflection, both to students and to the general public, without fear or favor." 1915 Declaration at 294. The Declaration then added: "To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience

and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish." *Id*. at 294-95. Thus, any suggestion that "matters of public concern" should not include job-related statements, or expression integrally linked to a public employee's assigned task, could have a potentially crippling effect on First Amendment protection for the most valuable and important types of professorial speech.

To appreciate the gravity of Amici's concerns about the potential impact of a reversal in this case, it is vital to consider the full range of a university professor's responsibilities. Everyone who teaches at the post-secondary level is, of course, expected to devote substantial time, thought and effort to classroom instruction and the related tasks of academic advising, meeting with students, guiding theses and dissertations, and the like. In addition, university faculty members are expected to engage in substantial research, which is typically published. Most institutions of higher

learning also expect their professors to engage substantially in professional service – appropriately at the departmental, school/college and campus level, but even more important in myriad ways that serve the discipline and the larger society. Thus, the obligations of the university professor surely include, but also go far beyond, teaching students in the classroom.

Three earlier cases illustrate the potentially alarming implications of a different view. In *Perry v. Sindermann*, 408 U.S. 593 (1972), this Court considered the status of a dismissed professor at a state college in Texas, who sought reinstatement. His employment had been terminated, allegedly because of testimony he gave to state legislative committees urging the elevation of his institution to four-year status (a position disfavored by the governing board). *Id.* at 595. He had also endorsed public statements highly critical of the Board of Regents. *Id.* In holding that the professor could seek legal redress following his termination, no member of this Court remotely suggested that the force of his claim depended upon, or varied with, the nexus between his controversial public statements and the subject matter of his academic expertise. The Petitioners' argument invites an

absurd conclusion: that the professor's statements would somehow merit less protection had his academic field been community college governance, and greater protection were they more remote from the subject he had been appointed to teach.

A rather different sort of case from the 1970s also provides an apt illustration of Amici's concerns. In *Cooper v. Ross*, 472 F. Supp. 802 (E. D. Ark. 1979), a state university professor was denied reappointment in substantial part because of public expression of his avowedly Marxist views about Western history, as well as his acknowledged membership in the Communist Party. The district court ruled that such expression on the professor's part was protected by the First Amendment and accordingly decreed his reinstatement. *Id.* at 814-15. As in the *Sindermann* case, no distinction was drawn or even suggested between speech within the faculty member's field of expertise and statements remote from his academic specialty. A chemist's or classicist's views on Marxism would surely not have been more deserving of First Amendment protection than those of the historian who prevailed in the actual *Cooper* case.

Finally, in *Hardy v. Jefferson Cmty. College,* 260 F.3d 671

(6th. Cir. 2001), *cert. denied*, 535 U.S. 970 (2002), the Sixth Circuit strongly upheld First Amendment protection for a teacher's on-the-job speech. Kenneth Hardy, a community college instructor, lost his job for holding a classroom discussion to explore the impact of words like "nigger" and "bitch." *Id.* at 674. One student complained to her minister, who threatened to discourage other potential students from enrolling unless the school took "corrective action." *Id.* at 675. Despite their earlier assurances, college officials chose not to renew Hardy's contract, telling him that "there were no classes" for him to teach. *Id.* Although the school contended that Hardy had no constitutional right to use those words in the classroom, the district court declared his speech to be on a matter of public concern, and thus protected under the *Pickering-Connick* test. *Id.* at 678. The Sixth Circuit agreed, affirming that Hardy had a clearly established right to his speech that outweighed the school's interests in limiting his words. "A teacher's in-class speech deserves constitutional protection," the court affirmed, and "[r]easonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by

the First Amendment." *Id.* at 680, 683. This deference by the Sixth Circuit suggests that a consideration of "context," under the guidelines of the *Pickering-Connick* balancing test, lends particular weight to protection for in-class academic speech.

Should currently applicable and long-recognized principles be diluted by denying First Amendment protection to public employee speech that is job-related, or to statements that fall within a professor's area of assigned responsibility, cases such as *Sindermann*, *Cooper*, and *Hardy* would be analyzed very differently. Indeed, the standard for which Petitioners argue here could preclude lower courts from considering a state university professor's claim that the administration had abridged free speech. So drastic a dilution of the current *Pickering-Connick* principles would effectively bar recovery to any faculty member at a public university who incurred official sanction on the basis of statements arguably relevant to his or her academic discipline.

The consequences of such a retreat could be truly frightening not only for the academic freedom of outspoken professors, but equally for students and for the larger society that now benefits from the First Amendment protection that scholars

enjoy to speak publicly within their areas of expertise. Such a result would introduce a perverse irony: First Amendment academic freedom would extend *only* to those public statements on which faculty members were least well informed – matters that fell totally outside the fields in which they study and teach. Only those statements clearly beyond academic expertise would be considered "matters of public concern."

However the Court decides to define a matter of public concern under the facts of this case, it should be sensitive to how its decision applies to the university context. The Court has been vigilant in considering academic freedom implications when asked to apply traditional First Amendment doctrines to the academic setting. *Rust v. Sullivan* involved a challenge to government regulations, under which the government refused to fund certain activities, including speech. 500 U.S. 173 (1991). Chief Justice Rehnquist recognized in *Rust* that a different analysis would be necessary in the academic context: "[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to

control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by vagueness and overbreadth doctrines of the First Amendment." *Id.* at 200. Justices of this Court have tread carefully when asked to apply wholesale traditional First Amendment doctrines to colleges and universities. *See, e.g., Widmar v. Vincent,* 454 U.S. 263, 278-79 (1981) (Stevens, J., concurring) (noting that "public forum" analysis "may needlessly undermine the academic freedom of public universities," and reasoning that educators should be free to decide whether to prefer a student rehearsal of *Hamlet* or the showing of Mickey Mouse cartoons because "[j]udgments of this kind should be made by academicians, not federal judges"); *Board of Regents v. Southworth*, 529 U.S. 217, 1346, 1361 (2000) (Souter, J., concurring) ("The University need not provide junior years abroad in North Korea as well as France, instruct in the theory of plutocracy as well as democracy, or teach Nietzsche as well as St. Thomas.") In his concurring opinion in *Southworth*, Justice Souter warned against applying the First Amendment doctrine of viewpoint neutrality to faculty speech within the University. *Id*. at 1357 ("Our decision ought not be taken to imply

that in other instances the University, its agents or employees, or—of particular importance—its faculty, are subject to the First Amendment analysis which controls in this case.")

In the end, a blanket rule that no job-related speech by public employees is constitutionally protected could undermine the First Amendment protections traditionally afforded faculty speech and ignore the special sensitivity this Court has paid in applying the First Amendment to colleges and universities.

CONCLUSION

For the foregoing reasons, Amici respectfully urge this Court to affirm the judgment of the court below. In so doing, this Court should reaffirm its commitments to the current concept of "matters of public concern" in regard to the speech of public employees and to its longstanding recognition of academic freedom as a "special concern" of the First Amendment.

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