

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 Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

**BRIEF OF THE COALITION FOR JEWISH
VALUES AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae, the Coalition for Jewish Values (“CJV”), is the largest rabbinic public policy organization in the United States, representing over 2,500 traditional rabbinic leaders. Led by a board of traditional Orthodox rabbis, CJV articulates and advocates for public policy positions based on traditional Jewish thought through education and mobilization. Its work includes legal advocacy in defense of equality and freedom for religious institutions and individuals.

This case involves questions regarding when government may compel public servants to speak contrary to their sincerely held religious beliefs. The court below held that such compelled speech is permissible if the government makes it part of the employee’s “job description.” This approach particularly harms members of minority faiths, such as Judaism, because those whose religious beliefs fall outside of prevailing cultural norms may be forced to choose between their conscience and their livelihood.

Amicus seeks to bring to the Court’s attention this Nation’s longstanding tradition of ensuring that citizens are not excluded from public service because of their religious convictions and of accommodating those of minority faiths.

¹ No party or counsel for a party authored this brief in whole or in part. No one other than *Amicus* or their counsel made a monetary contribution to preparing or submitting this brief. *Amicus* gave timely notice to each of the parties regarding the filing of this amicus brief.

SUMMARY OF ARGUMENT

Our history, Constitution, and legal tradition reject the exclusion of otherwise qualified individuals from public service because of their religious convictions. Religious tests and oaths once excluded Jews and other dissenters from public service. To ensure that nonconformers could fully engage in public life, our Constitution rejected such tests and accommodated those whose beliefs prohibited oath-swearing. These principles of religious accommodation also underpin the First Amendment’s protections of religious exercise and free speech. This Court has therefore consistently guarded against the exclusion of citizens from public service because of their religious convictions.

Here, however, the court below held that the government may exclude religious persons from public service by deeming compelled speech a job duty. Montgomery County Public Schools (MCPS) issued guidelines requiring teachers to (1) address certain students by gendered pronouns inconsistent with the students’ sex and (2) hide this from the children’s parents. For Kimberly Polk, that command offends the very first chapter of the Bible: “So God created man in his own image, in the image of God created he him; male and female created he them.” Genesis 1:27 (KJV); *see* Pet. App. 6a–7a (explaining Polk’s sincerely held beliefs).² MCPS thus commanded Polk to speak as though a

² Traditional Jewish teachings also read Genesis to forbid gender transition. *See* Coalition for Jewish Values & Do No Harm, *Rethinking Gender Affirmation: What Rabbis, Jewish Educators, and Parents Need to Know About the Social, Medical, and Surgical Transition of Children* 3, 18, 20 (2026), <http://bit.ly/44YMGD0>.

proposition she understands to contradict her faith were true or lose her teaching position.

Although the use of wrong-sex pronouns was not part of any school curriculum, the court below held the compelled speech permissible—even over religious objections—reasoning “how a teacher addresses a particular student in a particular classroom—and whether a teacher communicates with a student’s parent—is merely a part of that teacher’s job description.” Pet. App. 31a. In other words, the court held that the government may compel any speech it defines to be part of a public servant’s “official duties.” *Ibid.*

The court’s ruling has significant implications for those of minority faiths. A Quaker prosecutor could be required to affirm that capital punishment is morally just. A Jain science teacher could be commanded to endorse animal testing, despite religious objections. A Native American park ranger could be required to describe a sacred site as mythology rather than a place of genuine religious significance. An Orthodox Jewish employee conducting nondiscrimination training at a public university could be required to teach that sex-separated religious practices are inherently discriminatory.

These results are antithetical to our nation’s constitutional values. The Court should grant the petition to ensure that our nation’s rich history of religious accommodation continues.

ARGUMENT

I. The history of religious tests and compelled oaths shows that a principle of religious accommodation in public service is fixed in our Constitution.

A. The founding generation viewed religious liberty as protection for conduct directed by conscience.

The founding generation understood religious liberty to protect believers' ability to act in accordance with their conscience, both by speaking and remaining silent, as well as acting and refraining from acting.

This principle found expression in colonial charters and enactments protecting religious exercise from majoritarian interference. For example, Rhode Island's 1663 Royal Charter protected residents from being "in any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, [who] do not actually disturb the civil peace of our said colony." R.I. Charter of 1663 (spelling modernized), reprinted in 2 *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States 1595, 1596* (Benjamin Perley Poore ed., 2d ed. 1878).

State constitutions following the Revolution similarly "defined the free exercise right affirmatively, based on the scope of duties to God perceived by the believer." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1459 (1990) (hereinafter, "*Origins*"). A religious believer confronted with a state command to disobey his faith "was not seen as the instigator of the conflict; the believer was simply caught between the inconsistent demands of two rightful au-

thorities, through no fault of his own.” *Id.* at 1496. Under this hermeneutic, “religious freedom is unalienable because it is a duty to God and not a privilege of the individual.” *Id.* at 1497.

Likewise, in opposing Virginia’s proposed tax to support religious teachers, James Madison wrote that “the Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.” *James Madison, Memorial and Remonstrance Against Religious Assessments* ¶ 1 (June 20, 1785), reprinted in 5 *The Founders’ Constitution* 82, 82 (Philip B. Kurland & Ralph Lerner eds., 1987). Madison later described conscience as “the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right.” James Madison, *Property* (Mar. 29, 1792), reprinted in 1 *The Founders’ Constitution* 598, 598 (Philip B. Kurland & Ralph Lerner eds., 1987).

B. Nonetheless, governments used compelled oaths and religious tests to exclude minority faiths from public service.

Despite these protections for the free exercise of religion, governments used religious tests and required oaths to preclude those from minority faiths from public office.

Pre-Revolutionary English law used compelled professions and civil disabilities to exclude religious minorities. See 4 William Blackstone, *Commentaries on the Laws of England* *54–56, *58 (1769) (describing religious tests and civil disabilities imposed on Catholics and Protestant dissenters). Many English colonists were intimately familiar with this tradition, having

crossed the Atlantic, or descended from ancestors who had, in search of religious freedom. See Isaac Backus, *An Appeal to the Public for Religious Liberty* 53 (Boston, John Boyle 1773), reprinted in 1 *Political Sermons of the American Founding Era: 1730–1805*, at 254 (Ellis Sandoz ed., 2d ed. 1998) (appealing to his “fathers and brethren, who inhabit the land to which our ancestors fled for religious liberty”). Yet once secure in positions of political and religious dominance, some imposed similar disabilities on dissenters in the colonies. See Thomas Jefferson, *Notes on the State of Virginia, Query XVII*, at 157 (1784), reprinted in 5 *The Founders’ Constitution* 79, 79 (Philip B. Kurland & Ralph Lerner eds., 1987) (those who fled religious intolerance in England “shewed equal intolerance in this country with their Presbyterian brethren.” Ultimately, the colonies were “free only for the reigning sect”).

“Through the sanction of an oath, the office-holder was required to avow a specific set of religious beliefs, and effectively disclaim any others.” Paul Horwitz, *Religious Tests in the Mirror: The Constitutional Law and Constitutional Etiquette of Religion in Judicial Nominations*, 15 *Wm. & Mary Bill Rts. J.* 75, 106 (2006). For instance, Pennsylvania’s religious test excluded Jews who could not take oaths affirming Christian doctrine. Jonas Phillips, a Jewish merchant in Philadelphia, explained in a September 1787 letter to George Washington and the Constitutional Convention that “to swear and believe that the New Testament was given by devine inspiration” was “absolutely against the religious principle of a Jew” and that it was “against his Conscience to take any such oath.” See Jonas Phillips to *President and Members of the Convention* (Sept. 7, 1787), in 4 *The Founders’ Constitution* 638 (Philip B. Kurland & Ralph Lerner eds.,

1987). Phillips further explained that under that requirement, “a Jew is deprived of holding any publick office or place of Government which is a Contridectory to the bill of Right Sect 2.” *Id.*

Minority faiths of all stripes were thus excluded from office due to gerrymandered oaths intended to benefit a state’s majority religion. Indeed, “the bulk of complaints about infringement of religious liberty during the preconstitutional period apparently concerned outright discrimination against dissenters from the dominant sect.” David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789–1888*, at 440 (1985).

C. The Founders’ rejection of religious tests and their concessions to religious objections to oaths established a principle of religious accommodation in public service.

The Constitution’s treatment of oaths and religious tests demonstrates that the Founders rejected conditioning public office on one’s religious convictions. Article VI provides:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Const. art. VI, cl. 3. Article II likewise requires that the President, “[b]efore he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—‘I do solemnly swear (or affirm) . . .’” U.S. Const. art. II, § 1, cl. 8.

The Oath Clause evidences the Founders’ principle that one’s religious convictions should not be disqualifying for government service. The alternative of an affirmation was adopted precisely because some minority sects, like the Quakers, understood their Scripture to prohibit the swearing of oaths. *Origins*, 103 Harv. L. Rev. at 1475.

The Federal Constitution’s firm rejection of religious tests represented a “dramatic departure from the prevailing practice in the states, eleven of which then banned non-Christians and at least four of which banned non-Protestants from office.” *Origins*, 103 Harv. L. Rev. at 1474. “The exclusion of religious tests is an exception from this general provision, with respect to oaths, or affirmations. Although officers &c are to swear that they will support this [C]onstitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing.” Edmund Randolph, *Virginia Ratifying Convention* (June 10, 1788), in 4 *The Founders’ Constitution* 644 (Philip B. Kurland & Ralph Lerner eds., 1987).

The state ratifying conventions responded with proposals expressly protecting religious equality. Virginia proposed an amendment declaring: “[A]ll men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular sect or society ought to be favored or established by Law in preference to oth-

ers.” Virginia Ratifying Convention, Proposed Amendments (June 27, 1788), reprinted in *The Complete Bill of Rights* 13 (Neil H. Cogan ed., 2d ed. 2015).

New York similarly proposed: “[T]he People have an equal, natural, and unalienable right, freely and peaceably to Exercise their Religion according to the dictates of Conscience, and that no Religious Sect or Society ought to be favoured or established by Law in preference of others.” New York Ratifying Convention, Proposed Amendments (July 26, 1788), reprinted in *The Complete Bill of Rights* 12 (Neil H. Cogan ed., 2d ed. 2015).

After ratifying Article VI, many States removed or loosened their own religious-test oaths between 1789 and 1796. *See* John Witte, Jr. & Joel A. Nichols, *Religion and the American Constitutional Experiment* 50–51 (4th ed. 2016).

This “dramatic departure” from historic practice demonstrates the Founders’ commitment to preventing government from conditioning public service on religious conformity.

II. This principle of religious accommodation in public service animates the First Amendment’s protections.

This principle of accommodation is not only embedded in the express language of the Constitution, but it also underlies the First Amendment. As this Court explained,

When our Constitution was adopted, the desire to put the people “securely beyond the reach” of religious test oaths brought about the inclusion in Article VI of that document of a provi-

sion that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” Not satisfied, however, with Article VI and other guarantees in the original Constitution, the First Congress proposed and the States very shortly thereafter adopted our Bill of Rights, including the First Amendment. That Amendment broke new constitutional ground in the protection it sought to afford to freedom of religion, speech, press, petition and assembly.

Torcaso v. Watkins, 367 U.S. 488, 491-92 (1961). The Court thus held that a state law conditioning appointment as a notary public on a profession of belief in God violates the First Amendment protections, emphasizing that “[t]he fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution.” *Id.* at 495-96.

Based on this principle, this Court has consistently held that the First Amendment precludes government from excluding nonconformers from public life by compelling them to speak in ways that violate their convictions. In *Barnette*, the Court held that Jehovah’s Witness children could not be expelled from public schools for refusing a compulsory flag salute because it “require[d] affirmation of a belief and an attitude of mind.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633 (1943). As the Court explained, the First Amendment protects nonconformance: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be

orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *Id.* at 642.

In *303 Creative*, this Court held that, even to advance antidiscrimination laws, the state cannot condition the right to engage in public commerce on engaging in speech contrary to one’s religious convictions. See *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023). The Court came to this conclusion recognizing that “public accommodations laws play a vital role in realizing the civil rights of all Americans, and governments in this country have a ‘compelling interest’ in eliminating discrimination in places of public accommodation.” *Id.* at 590. Still, it reasoned that “no public accommodations law is immune from the demands of the Constitution.” *Ibid.* No matter the goals of the state, it cannot “coopt an individual’s voice for its own purposes.” *Id.* at 592.

In *Chiles*, this Court held that a state may not condition professional licenses on conformance with state-mandated speech. See *Chiles v. Salazar*, 607 U.S. 627, 146 S. Ct. 1010 (2026). Thus, even in the professional licensing context, the state cannot “prescrib[e] what views [a citizen] may and may not express.” *Id.* at 1024. And a state cannot avoid this prohibition by labeling speech “conduct.” “[S]peech does not become conduct just because the State may call it that. Nor does . . . speech become conduct just because it can also be described as a ‘treatment,’ a ‘therapeutic modality,’ or anything else.” *Id.* at 1023.

The accommodation principle also protects public servants from retaliation for engaging in religious speech. In *Kennedy*, this Court held that the First Amendment precluded a public school from terminat-

ing a football coach for engaging in a brief post-game, on-field prayer. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). The Court explained that “the First Amendment doubly protects religious speech”: the “Free Exercise and Free Speech Clauses . . . work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities.” *Id.* at 523. Reflecting the accommodation principle, the Court stressed, “Respect for religious expressions is indispensable to life in a free and diverse Republic—whether those expressions take place in a sanctuary or on a field, and whether they manifest through the spoken word or a bowed head.” *Id.* at 543.

The Court has thus held the door open for those of minority faiths to engage in public life and, in particular, public service.

III. The Court should grant the petition to make clear that the state cannot void First Amendment protections by gerrymandering public servants’ job descriptions.

Under the lower court’s reasoning, the government’s power to compel speech does not stop at pronouns. The ruling below allows the government to require virtually any ideological profession of public servants by simply making it part of their official duty. Simply put, the ruling gives government the power to enforce ideological conformity. It allows the First Amendment to become a “word game” and “the rights it protects . . . renamed away [and] their protections nullified by ‘mere labels.’” *Chiles*, 607 U.S. at 1023.

If allowed to stand, the lower court’s ruling necessarily places the heaviest burden on those whose be-

liefs depart from the popular majority. Without protections against compelled speech, members of minority faiths could participate in public service only so long as their convictions remained compatible with prevailing political dogma. Should those convictions diverge, religious Americans would be forced to violate their sincere religious convictions or forgo public employment.

The denial of public employment is not a trivial or incidental burden. As this Court has held, “denying a qualified religious entity a public benefit solely because of its religious character . . . goes too far.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017). The same is true for public employment. In fact, in coming to this conclusion, the Court quoted extensively from an 1818 speech by a Maryland legislator opposing the exclusion of Jews from public office:

“If, on account of my religious faith, I am subjected to disqualifications, from which others are free, . . . I cannot but consider myself a persecuted man . . . An odious exclusion from any of the benefits common to the rest of my fellow-citizens, is a persecution, differing only in degree, but of a nature equally unjustifiable with that, whose instruments are chains and torture.”

Ibid. (quoting Speech by H.M. Brackenridge, Dec. Sess. 1818, in H. Brackenridge, W. Worthington, & J. Tyson, *Speeches in the House of Delegates of Maryland* 64 (1829)).

That is precisely the inequality the First Amendment was designed to prevent. *See Letter from George*

Washington to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), reprinted in 6 *The Papers of George Washington*, Presidential Series 284, 285 (Mark A. Mastromarino ed., 1996) (“All possess alike liberty of conscience and immunities of citizenship.”); *see also* Va. Statute for Religious Freedom, ch. 34, 12 Hening’s Statutes at Large 84, 85 (1786) (condemning laws that make a citizen ineligible for “offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage”).

To continue the Nation’s commitment to ensuring religious minorities may participate in public service, the Court must make clear that the state cannot use job descriptions to exclude religious minorities.

CONCLUSION

Certiorari should be granted.

Respectfully submitted.

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