

25-3047

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 U.S. District Court for the District of Connecticut,
No. 3:25-cv-00153-SFR

**AMICUS BRIEF OF AMERICAN CENTER FOR LAW AND JUSTICE
IN SUPPORT OF APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

The American Center for Law and Justice (“ACLJ”) is a non-profit legal corporation dedicated to the defense of constitutional liberties secured by law. The ACLJ has no parent corporation and issues no stock.

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INTEREST OF AMICUS¹

Amicus Curiae, the American Center for Law and Justice (“ACLJ”), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before the U.S. Supreme Court as counsel for parties, e.g., *Trump v. Anderson*, 601 U.S. 100 (2024); *Locke v. Davey*, 540 U.S. 712 (2004); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); or for amici, e.g., *Carson v. Makin*, 596 U.S. 767 (2022); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020), addressing various constitutional and statutory issues. In addition, the ACLJ represents the appellee, Staci Barber, in the Fifth Circuit case relied on in part by Appellant here in her opening brief: *Barber v. Rounds*, __ F.4th __, 2026 U.S. App. Lexis 6909 (5th Cir. Mar. 9, 2026). The ACLJ is dedicated to freedom of religious exercise, a proper understanding of the Establishment Clause, and freedom of speech.

SUMMARY OF ARGUMENT

The Supreme Court’s decision in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), controls this case and requires reversal for two reasons.

¹ 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. All parties have consented to the filing of this brief.

First, *Kennedy* established that public school employees do not forfeit their First Amendment rights simply by being at work, and it specifically condemned the use of overbroad job descriptions to classify personal religious expression as government speech. The district court committed precisely that error here. Ms. Castro’s personal crucifix, a small object of private religious significance, was not speech the District paid her to produce. She was paid to teach seventh-grade social studies. Under *Kennedy*’s practical inquiry into the actual scope of an employee’s duties, the crucifix was unambiguously her own private expression. The district court’s contrary conclusion inflated a generic classroom-environment checklist into a comprehensive mandate covering every item a teacher places anywhere in her room. *Kennedy* condemned precisely this kind of “excessively broad job description” reasoning. The facts confirm this: the District had long permitted teachers to display personal items of every kind — sports pennants, family photos, pop culture figurines, a Virgin Mary photograph, and a coffee mug bearing a Scripture citation — without treating any of those items as official government speech. Having opened classroom workspaces to private expression of all kinds, the District cannot now single out Ms. Castro’s crucifix for suppression. No reasonable observer would understand such an eclectic mix of personal objects to represent the government’s own message.

Second, the Establishment Clause does not require a different result. *Kennedy*

squarely rejected the argument that the Establishment Clause compels the government to suppress private religious expression merely because students might observe it. As the Fifth Circuit recently emphasized in *Barber v. Rounds*, the mere possibility that a student could see a teacher’s personal religious expression does not constitute an Establishment Clause violation under the historical-practices framework *Kennedy* mandated. This Court’s “leeway” doctrine from *Marchi v. Board of Cooperative Educational Services* and *Knight v. Connecticut Department of Public Health* cannot survive *Kennedy*. Critically, the leeway doctrine was rooted in the complexity of the now-abandoned *Lemon* test. *Kennedy* cleared that doctrinal minefield and held that “phantom” Establishment Clause concerns “in no world” justify actual violations of First Amendment rights. Even if some residual form of leeway doctrine survives, it requires a showing of substantial and genuine establishment risk — a showing that cannot be made by a school that simultaneously permits every manner of personal, secular, and religious item in teacher workspaces. Strict scrutiny, not leeway, governs the District’s admitted burden on Ms. Castro’s sincere religious practice.

This Court should reverse.

ARGUMENT

I. The Supreme Court’s Decision in *Kennedy* Determines the Outcome in this Case and Protects the Private Religious Expression of Teachers.

In *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), the Supreme Court rejected an overbroad theory of government control over public employees’ personal religious expression. The Court held that a football coach’s post-game prayer was his own private speech — not the government’s — even though it occurred on the field of play after a school-sponsored event with students present. The Court specifically warned against treating every act a public employee performs at work as government speech, condemning any reliance on an “excessively broad job descriptio[n]’ by treating everything teachers and coaches say in the workplace as government speech subject to government control.” *Id.* at 530-31 (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 424 (2006)). On the contrary, the Supreme Court directed courts to conduct the official-duties inquiry by looking at practical duties, “not with a blinkered focus on the terms of some formal and capacious written job description.” *Id.* at 529.

The district court’s decision in this case is a case study in the precise error *Kennedy* forbade. The court took a generic classroom environment policy, a checklist urging teachers to keep their rooms “student-centered,” and transformed it into a comprehensive mandate covering every item a teacher places anywhere in her classroom, including a small personal crucifix, even though numerous other teachers

likewise engaged in similar personal, unofficial speech. Under the district court’s logic, every teacher in America who hangs a family photograph, displays a sports pennant, or keeps a religious object near her desk engages in “official speech” subject to plenary government control. *Kennedy* forecloses that result.

A. *Kennedy* Forecloses the District Court’s Overbroad Job-Duties Analysis.

In *Kennedy*, a school district disciplined and ultimately fired a football coach for praying on the field after weekly football games. In examining whether Coach Kennedy’s speech was protected under the First Amendment, the Court considered whether the speech (his prayers) took place within the scope of his official duties as a coach. 597 U.S. at 529. That analysis did not hinge on any granular reading of employment policies or formalist reading of his job title. Rather, the Court concluded, “Mr. Kennedy has demonstrated that his speech was private speech, not government speech” because when he prayed, “he was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District paid him to produce as a coach.” *Id.*

Importantly, the Court explained that the mere fact that an employee is on duty at the time of their speech does not categorically eliminate the First Amendment’s protections. *Id.* at 530-31. The Bremerton School District argued, explicitly, that “any visible religious conduct by a teacher or coach should be deemed — without more and as a matter of law — impermissibly coercive on students.” *Id.*

at 540. In other words, it took the position that it could justifiably limit religious activity because students might happen to see it. *Kennedy* unambiguously rejected the notion that employees must suppress their religious identity whenever students might observe them. The Court noted that the school’s policy would have prevented Coach Kennedy from even briefly and silently giving thanks after meals in the school lunchroom, because students might observe such religious expression. *Id.* at 531. The Court found this result absurd.

The analysis of Kennedy’s speech hinged on the presence and analysis of comparators, not a formalistic analysis of job descriptions. Coach Kennedy gave “‘thanks through prayer’ briefly and by himself ‘on the playing field’ at the conclusion of each game he coache[d].” *Id.* at 525. He didn’t seek to lead prayers with the team or before any other captive audience. *Id.* As the Court explained further,

During the postgame period when these prayers occurred, coaches were free to attend briefly to personal matters—everything from checking sports scores on their phones to greeting friends and family in the stands. We find it unlikely that Mr. Kennedy was fulfilling a responsibility imposed by his employment by praying during a period in which the District has acknowledged that its coaching staff was free to engage in all manner of private speech. That Mr. Kennedy offered his prayers when students were engaged in other activities like singing the school fight song further suggests that those prayers were not delivered as an address to the team, but instead in his capacity as a private citizen.

Id. at 530.

During the time that Coach Kennedy prayed on the field, other members of the coaching staff were permitted to do things like visit with friends or take personal phone calls. The school made no attempt to regulate any of the conduct by other members of the coaching staff and, as such, it was clear that Coach Kennedy was acting in his personal capacity. *Id.* at 527. The Court categorically rejected the Ninth Circuit’s assertion that everything a teacher or coach says in the workplace is government speech subject to government control.

Applying *Kennedy*, the Fifth Circuit recently addressed similar issues to those presented here in *Barber v. Rounds*, ___ F.4th ___, 2026 U.S. App. Lexis 6909, *1 (5th Cir. Mar. 9, 2026).² There, a teacher was reprimanded by her principal for praying at the school flagpole before her workday, just because students might see it. The Fifth Circuit applied *Kennedy*:

[A]s in *Kennedy*, a schoolteacher sought to engage in personal prayer outside instructional time, and the school district imposed categorical restrictions on her religious expression based solely on the possibility that students might be ‘in the vicinity.’ . . . *Kennedy* thus supports the conclusion that Barber’s complaint plausibly describes conduct that, if proven, would violate her first amendment rights.

Id. at *11. The *Barber* Court emphasized that the rule in *Kennedy* was clear and unassailable: “*Kennedy* clearly established that school officials may not impose categorical, visibility-based restrictions on an employee’s private religious

² Again, undersigned counsel represents Ms. Barber in that case.

expression.” *Id.* at *12. So clear was the alleged violation that the Fifth Circuit allowed the personal-capacity claims to proceed and affirmed the denial of qualified immunity at the complaint stage.

At the heart of *Kennedy*’s application is the basic principle that analysis must look at the ordinary scope of the employee’s duties, not the formal job description. The Court held that courts must conduct the official-duties analysis “‘practical[ly],’ rather than with a blinkered focus on the terms of some formal and capacious written job description.” 597 U.S. at 529 (quoting *Garcetti*, 547 U.S. at 424). The Court specifically condemned as error any approach that stretches job descriptions to classify “everything teachers and coaches say in the workplace as government speech.” *Id.* at 530-31.

The district court’s analysis fails this practical test at every turn. The court identified a District policy acknowledging that the “classroom environment has a powerful influence on student performance and behavior” and providing teachers with a checklist as a “tool to ensure that the physical arrangement of the classroom is student-centered and task-focused.” SPA4. From this general administrative guidance, the court deduced that “[d]ecorating the walls of the classroom is part of the ‘actual, functional job responsibilities’ of a teacher at DiLoreto.” SPA20. And from that premise, it concluded that every item a teacher places on a classroom wall,

including a small personal crucifix carried for years, constitutes official speech subject to the District's plenary control.

This reasoning proves far too much, and it does so in precisely the manner *Kennedy* condemned. The District policy the court invoked is a general reminder to teachers to keep their classrooms organized and student-focused. It says nothing about *what* specific items teachers *may* display. It does not direct teachers to place particular objects on their walls, does not purport to convert all items teachers bring into their classrooms into official communications, and does not even require teachers to decorate their classrooms at all. Yet the district court treated this general guidance as a mandate comprehensive enough to encompass a personal religious object. That is precisely the “excessively broad job description[]” that *Kennedy* forbids. 597 U.S. at 529 (quoting *Garcetti*, 547 U.S. at 424).

Applied practically, the same inquiry the Supreme Court conducted in *Kennedy* yields the same result here. Ms. Castro was paid to teach seventh-grade social studies. She was not paid to carry a personal crucifix given to her by a deceased friend's family. She was not paid to place it near her desk to aid in private prayer. The District itself conceded the crucifix had no “pedagogical justification” for the curriculum. SPA50. The crucifix did not owe its existence to Ms. Castro's professional responsibilities. It owed its existence to her Catholic faith and a decade

of private religious practice she carried with her wherever she taught. Under *Kennedy*'s practical inquiry, it was unambiguously and undeniably her own.

Most importantly, the record establishes that the District's practice was to permit teachers to display personal items of any kind near their workspaces. Defendants admitted as much: "teachers generally have been permitted to display some personal items in their classrooms or work areas." JA122(¶14). This admission is dispositive; Defendants have expressly conceded that they have opened up classroom desk areas for private and personal religious expression, including religious expression. The documented items include athletic team pennants, a Baby Yoda desk mat, pop culture figurines, including a Wonder Woman action figure, family and pet photographs, college decals, inspirational phrases, a picture of Santa Claus, a small photograph of a statue of the Virgin Mary, and a coffee mug bearing a citation to Proverbs 31:26. SPA7. This is not the history of an institution that uses its classroom walls to convey a carefully curated message. It is the history of an institution that gives teachers a personal workspace and permits them to fill it as they see fit, including with other kinds of religious expression. The District, in short, has opened a forum for private expression.

No observer would understand the simultaneous presence of a Yankees pennant, a Baby Yoda figurine, a Virgin Mary photograph, and a coffee mug citing Proverbs to represent the government's own message on each of those subjects. As

the Eighth Circuit recognized, when a government permits all manner of personal items, it does not thereby speak for itself on each topic; to say so would mean the government “is babbling prodigiously and incoherently.” *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 668 (8th Cir. 2024) (quoting *Matal v. Tam*, 582 U.S. 218, 236 (2017)). The district is no more endorsing religion when an employee has a crucifix than it is endorsing *The Mandalorian* (Disney 2019) when an employee has a Baby Yoda figurine. The natural understanding — confirmed by common sense — is that these items reflect individual teachers’ personal affections. Ms. Castro’s crucifix is no different. A District that simultaneously permits pennants, family photos, pop culture figurines, a Virgin Mary photograph, and a Bible-citation mug speaks no coherent government message through any of those items — including the crucifix.

The district court’s central move was to hold that because the crucifix was present “on a classroom wall during instructional time,” Ms. Castro was acting “in her capacity as a teacher” and the expression was therefore attributable to the government. SPA21-22. At its core, this is a location rule: what appears in a classroom during class hours is government speech.

Kennedy directly and emphatically rejected this kind of reasoning. The Court held that it was not “dispositive” that Kennedy’s prayers occurred ““within the office’ environment — here, on the field of play.” 597 U.S. at 530 (quoting *Garcetti*,

547 U.S. at 421). The fact that the expression occurred on government property, in the government workplace, during school-related activities, while the employee was on duty — none of that was sufficient to make it government speech. What matters, the Court said, is not the location of the expression *but its substance*: what the employee was doing, why, and whether it owed existence to his professional responsibilities. *Id.*

The district court’s ruling rests, at bottom, on the view that the government’s interest in controlling its employees’ expression at work is so broad that anything in a teacher’s classroom becomes government speech. *Kennedy* rejected that view precisely because it would eliminate the constitutional protection for personal religious expression that the First Amendment was designed to guarantee. Under the correct *Kennedy* analysis, Ms. Castro’s crucifix was unambiguously her own. She was not “seeking to convey a government-created message.” 597 U.S. at 529. She was not praying “pursuant to government policy.” *Id.* She was not engaged in any activity the District paid her to produce. The crucifix was a personal object of deep religious significance, present to aid her private prayer and provide spiritual comfort through the challenges of a difficult assignment. Its presence near her desk was no more an official act than the Muslim teacher’s headscarf, the Jewish teacher’s yarmulke, or the Christian aide’s lunchtime prayer that *Kennedy* protects. This Court should hold the same.

Displaying a personal crucifix near her desk was not within the scope of Ms. Castro's duties as a teacher. The fact that a general classroom-environment orderliness policy existed does not transform what she did into something the District commissioned or created. As *Kennedy* recognized, the relevant question is not whether the employer has a general interest in its employees' conduct at work — it almost always does — but whether the specific expression at issue was the employee's responsibility to produce. *Id.* at 529-30. Teachers do not shed their First Amendment rights at the classroom door — or even at the schoolhouse gate. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). That foundational principle, reaffirmed in *Kennedy*, means that Ms. Castro retains a personal sphere of religious expression even during the workday. A small crucifix placed near her desk — one she brought to the classroom, never directed students to engage with, and never incorporated into instruction — falls well within that sphere.

B. The District Court Had No “Leeway” to Use the Establishment Clause as Grounds for Infringing on Free Exercise Rights.

The Constitution commits our society to bearing the cost of religious accommodation, ensuring that all flourish — religious and nonreligious — without inhibition due to the claims of conscience. The Establishment Clause does not require the government to scrub “away any reference to the divine.” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 56 (2019). Instead, the Supreme Court has “long recognized that the government may (and sometimes must) accommodate religious

practices and that it may do so without violating the Establishment Clause.” *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136, 144-45 (1987). The First Amendment’s Establishment and Free Exercise Clauses, which should be read in tandem, promote “religious liberty and tolerance for all and [] nurture the conditions which secure the best hope of attainment of that end.” *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 305 (1963). The Constitution does not permit the government to “show a callous indifference to religious groups” by favoring secularism over religion. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990) (“[T]here is a crucial 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.”). The core principle is that “[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.” *Mergens*, at 248 (plurality) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in judgment)).

Most importantly, in *Kennedy*, the Supreme Court rejected an argument that the Establishment Clause required stopping a teacher from praying, concluding that “a proper understanding of the Amendment’s Establishment Clause [does not] require the government to single out private religious speech for special disfavor.

The Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike.” 597 U.S. at 514. In short, the Establishment Clause never requires the government to stifle private religious activity. The Court did not mince words: “Such a rule would be a sure sign that our Establishment Clause jurisprudence had gone off the rails. In the name of protecting religious liberty, the District would have us suppress it.” *Id.* at 540.

The *Kennedy* Court explicitly rejected the *Lemon* test’s hostility toward religion, making it clear that Establishment Clause analysis should instead be based on “historical practices and understandings.” *Id.* at 535-36. This framework is crucial because it eliminates the hyper-subjective interpretation, i.e., the thoughts of a fictional “reasonable observer,” that had previously been used to justify suppressing religious expression. *Id.* at 534. Under *Kennedy*, the mere fact that students might observe a teacher’s religious expression does not create an Establishment Clause violation. As the Court explained, “learning how to tolerate speech or prayer of all kinds is ‘part of learning how to live in a pluralistic society[.]’” *Id.* at 538.

Kennedy is clear: school officials cannot categorically silence the religious expression of teachers simply when done in the presence of students. The Court understood that allowing government to suppress religious expression wherever others might observe it would effectively eliminate religious freedom. Teachers

spend most of their waking hours at school. If they cannot engage in religious expression at work solely because students might see them, they are effectively forced to abandon their faith as a condition of employment. *Kennedy* rejected this constitutional apartheid. *Kennedy* did not create a narrow exception for prayer on athletic fields. It established a broad principle that public employees retain their First Amendment rights at work. It condemned policies that would prevent even giving thanks over lunch because students might observe such religious expression.

This Court’s “leeway” doctrine, derived from *Marchi v. Board of Cooperative Educational Services*, 173 F.3d 469 (2d Cir. 1999), and extended in *Knight v. Connecticut Department of Public Health*, 275 F.3d 156 (2d Cir. 2001), holds that school districts are entitled to “some leeway” when they restrict employee religious expression to avoid a potential Establishment Clause violation. *Marchi*, 173 F.3d at 476. That doctrine was rooted in a specific doctrinal problem that no longer exists. *Marchi* explicitly grounded the need for “leeway” in the difficulty of navigating the *Lemon* test’s “excessive entanglement” prong, observing that “[t]he decisions governmental agencies make in determining when they are at risk of Establishment Clause violations are difficult” precisely because of the ambiguities created by the *Lemon* framework. *Marchi*, 173 F.3d at 476. The court concluded that requiring agencies to resolve these difficulties precisely, “at the peril of legal liability,” was unreasonable. *Id.* The leeway doctrine was a judicial accommodation for the

complexity of *Lemon* — a complexity *Kennedy* recognized had turned Establishment Clause analysis into a “minefield.” 597 U.S. at 534.

Kennedy cleared the minefield. It declared that the Court had “long ago abandoned” the *Lemon* test and “its endorsement test offshoot,” replacing them with an inquiry into historical practices and understandings. *Id.* at 534-35. With *Lemon* gone, the doctrinal complexity that gave rise to the leeway accommodation is gone with it. The Establishment Clause, properly interpreted through historical practice, does not prohibit a teacher from maintaining a personal crucifix near her desk, any more than it prohibits a Muslim teacher from wearing a headscarf to class. The determination of what actually violates the Establishment Clause is no longer the labyrinthine exercise that *Marchi* thought required deference to imprecise government judgment.

Kennedy provides a clear answer here, with no need for leeway: “in no world may a government entity’s concerns about phantom constitutional violations justify actual violations of an individual’s First Amendment rights.” *Id.* at 543. That holding directly repudiates the leeway doctrine’s core premise. *Marchi* held that the government’s concern about a possible — not actual, merely possible — Establishment Clause violation justifies burdening an employee’s free exercise rights even when the conduct restricted “might well be protected by the Free Exercise Clause[.]” 173 F.3d at 476. *Kennedy* says the opposite: a phantom

constitutional concern, however sincerely held, “in no world” justifies an actual First Amendment violation. 597 U.S. at 543. These two holdings cannot coexist. *Marchi*’s permission for leeway is *Kennedy*’s prohibited phantom-violation rationalization.

The incompatibility between *Kennedy* and *Marchi* could not be clearer. *Marchi* was built on *Lemon*, which *Kennedy* abandoned. *Marchi*’s leeway rationale, that phantom Establishment Clause concerns justify real Free Exercise burdens, was directly rejected in *Kennedy*. *Marchi*’s conclusion that government employees “must accept” reduced free exercise rights when their employer invokes Establishment Clause concerns cannot be squared with *Kennedy*’s holding that such concerns justify nothing when they are phantom. This Court should recognize that *Marchi* and *Knight* cannot survive the Supreme Court’s intervening decision and that strict scrutiny — not leeway — governs Defendants’ admitted burden on Ms. Castro’s sincere religious practice. The District’s interest in avoiding a phantom Establishment Clause violation cannot be compelling.

Even if this Court declines to formally abrogate the leeway doctrine, it still cannot reach the result the district court reached here. Leeway, if it remains valid at all, is a doctrine of limited deference for genuine borderline establishment cases — cases where the employer can articulate a real and substantial establishment risk. As *this Court* itself stated, the government must make “a reasonable, good faith judgment that it runs a *substantial* risk of incurring a violation.” *Bronx Household*

of Faith v. Bd. of Educ., 750 F.3d 184, 198 (2d Cir. 2014) (emphasis added). That standard is not met here. A school that permits Baby Yoda figurines, Yankees pennants, family photographs, Virgin Mary photos, and Bible-citation coffee mugs cannot make a reasonable, good faith claim that one teacher’s silent, non-participatory, non-instructional crucifix near her desk presents a substantial establishment risk. Whatever leeway means at its narrowest, it does not mean this.

The Supreme Court has constantly and regularly rebuffed arguments that religious accommodations violate the Establishment Clause. *Cutter v. Wilkinson*, 544 U.S. 709, 713 (2005). The Religion Clauses “foster a society in which people of all beliefs can live together harmoniously[.]” *Am. Legion*, 588 U.S. at 38. This Court should do the same. *Kennedy*’s conclusion is clear: when government employees are able to engage in private speech, like decorations in their classroom, religious speech must not be singled out for disfavored treatment. *Kennedy* established that public school employees retain their First Amendment rights, and that government may not suppress personal religious expression by recasting it as government speech through overbroad job descriptions. The district court’s decision violates that principle in a clear and concrete way: it takes a generic classroom environment policy and uses it to classify a decade-old personal crucifix as government speech — obliterating protection for Ms. Castro’s sincere religious practice.

CONCLUSION

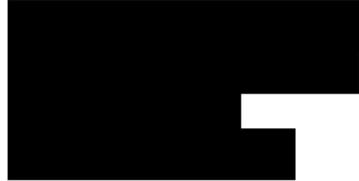
For the foregoing reasons, Amicus Curiae, the American Center for Law and Justice, respectfully asks this Court to reverse the decision of the court below.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and 32(a)(7)(b)(i) and the Rules of this Court because it contains 4,495 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Date: March 25, 2026

/s/ Nathan J. Moelker
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2026, I electronically filed the foregoing document with the United States Court of Appeals for the Second Circuit by using the CM/ECF system, which will send notification of that filing to all counsel of record in this litigation.

/s/ Nathan J. Moelker
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