No. 12345

IN THE

Supreme Court of the United States

College of Southern Pemberly
PETITIONER,

v.

Elizabeth Bennet
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTEENTH CIRCUIT BRIEF FOR RESPONDENT

BRIEF FOR RESPONDENT

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March 6, 2015

QUESTIONS PRESENTED

I. Whether the assignment of grades by a public university professor constitutes speech under the First Amendment.

II. Whether the doctrine of academic freedom extends to the university or to the professor.

PARTIES TO THE PROCEEDING

Plaintiff-appellant in the proceedings below was Elizabeth Bennet.

Defendant-appellee in the proceedings below was College of Southern Pemberley.

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STATEMENT OF JURISDICTION

The court of appeals entered judgment on June 5, 2014. (R. at 21). Petitioner filed its Petition for Writ of Certiorari on June 24, 2014. (R. at 23). This Court granted the Petition on October 15, 2014. (R. at 24). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2012).

STANDARD OF REVIEW

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusion are reviewed *de novo*.

CONSTITUTIONAL PROVISION AND STATUTE

Relevant provisions of the U.S. Constitution and the Civil Action for Deprivation of Rights Act, 42 U.S.C. §1983, are reproduced in an appendix to this brief.

STATEMENT OF THE CASE

In August 2008, Elizabeth Bennet ("Professor Bennet") was hired as an assistant professor of English Literature at the College of Southern Pemberley ("CSP"), and began teaching in September of that year. (R. at 3). In January 2013, George Wickham ("Wickham") enrolled in Professor Bennet's English class after transferring to CSP from New York University. (R. at 3). Wickham's exceptional athletic skills made him an asset to CSP's basketball team, helping the team improve significantly, attain unprecedented victories, and attract national recognition and coverage. (R. at 3). During this time, the *Southern Pemberley Daily News* began reporting on the special treatment that Wickham received due to his elite athletic status. (R. at 3). In late March, the newspaper reported that Wickham was given new Senior-Only housing. and that he was excused from taking two of his midterms. (R. at 3). A month later, the newspaper's editorials criticized CSP's administration, reporting that, upon a request from CSP's dean, professors were to excuse all of Wickham's absences—regardless if they were related to the basketball team's commitments. (R. at 3). In Professor Bennet's English class, Wickham failed to attend fifteen out of twenty-eight classes. (R. at 3). Wickham's final paper comprised sixty percent of the entire grade, and due to his use of improper grammar, numerous misspellings, and unforgiveable factual errors, Professor Bennet assigned him the letter grade of "F." (R. at 4). Pursuant to CSP's athletic division rules, receiving such a grade precludes a student from competing in any sports for the following semester. (R. at 4). Petitioner feared that if CSP were to change Wickham's grade administratively, news of this move would be leaked to the media, and invite criticism. (R. at 4). Instead, Petitioner ordered Professor Bennet to re-grade Wickham's paper,

such that he would be eligible to compete. (R. at 4). Professor Bennet refused to comply with Petitioner's order. (R. at 4). Consequently, on May 22, 2013, Professor Bennet received a letter from Petitioner terminating her employment. (R. at 4).

On June 8, 2013, Professor Bennet brought an action against CSP, alleging that Petitioner—in violation of 42 U.S.C. § 1983 and in retaliation for the exercise of her First Amendment right to free speech—terminated Professor Bennet's employment based on her refusal to change Wickham's grade. (R. at 4). Professor Bennet seeks monetary, and injunctive relief, demanding that CSP re-hire her. (R. at 4). On July 10, 2013, Petitioner filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (R. at 6). Professor Bennet filed her opposition to the motion on July 29, 2013. (R. at 9). The district court granted Petitioner's motion to dismiss on August 26, 2013. (R. at 13). Professor Bennet filed a notice of appeal on August 30, 2013, which the Sixteenth Circuit granted on September 20, 2013. (R. at 18). On June 5, 2014, the Sixteenth Circuit affirmed in part and reversed in part the district court's decision, holding that grades constitute a form of symbolic speech, but noting the doctrine of academic freedom extends to both the university and the professor. (R. at 19). Petitioner filed its Petition for Writ of Certiorari on June 24, 2014. (R. at 23). This Court granted the Petition on October 15, 2014. (R. at 24).

SUMMARY OF THE ARGUMENT

I. The lower courts correctly held that grades constitute symbolic speech protected by the First Amendment. In *Spence*, the Supreme Court recognized several factors to determine whether one's conduct should be considered protected speech: (1) the intent of the speaker to convey a particularized message; (2) the likelihood that the message will

be understood by those who viewed it; and (3) the context in which the conduct alleged to be communicative takes place. Here, it was Professor Bennet's clear intent to communicate a message through the assignment of a specific letter grade. Because Professor Bennet's communicate act qualifies as symbolic speech, her refusal to comply with Petitioner's directive does not amount to an act of insubordination. Moreover, her refusal to obey Petitioner's order to change a previously assigned grade was not a refusal to conform to the university's standards, since the grade that she assigned to Wickham complied with the university's grading policy. The Sixth Circuit has specifically held that unjustifiably compelling a professor to change a grade contrary to the professor's professional judgment amounts to a violation of his constitutional rights. Accordingly, this Court should affirm the Sixteenth Circuit's holding that Petitioner violated Professor Bennet's constitutional rights because grades are a form of symbolic speech protected by the First Amendment.

II. The Sixteenth Circuit correctly held that the doctrine of academic freedom protects Professor Bennet's assignment of grades because the Supreme Court in *Sweezy* held that this right vests in both the professor and the university. Admittedly, Professor Bennet's speech was made pursuant to her official duties, but this Court should not apply *Garcetti* because the present case involves matters of scholarship and teaching. Because Petitioner possessed the ability to change Wickham's grade administratively, but instead compelled Professor Bennet to change it, Petitioner's interests in preserving the school's efficiency and operations do not outweigh Professor Bennet's First Amendment rights. Accordingly, this Court should affirm the Sixteenth Circuit's holding and find that the doctrine of academic freedom extends to Professor Bennet.

ARGUMENT

I. THE LOWER COURTS CORRECTLY HELD THAT PROFESSOR BENNET'S ASSIGNMENT OF GRADES WARRANTS CONSTITUTIONAL PROTECTION BECAUSE HER COMMUNICATIVE ACT QUALIFIES AS A FORM OF SYMBOLIC SPEECH PROTECTED BY THE FIRST AMENDMENT

A. The Supreme Court has afforded constitutional protection to the expression of ideas that qualify as symbolic speech under the First Amendment.

The First Amendment right of free speech is not plenary—it does not protect every mode of communication that expresses an idea. *United States v. O'Brien*, 391 U.S. 367, 376 (1968) (holding that substantial, strong, and compelling governmental interests may justify certain regulations of non-speech First Amendment freedoms). Because the Supreme Court has not held that all conduct deserves constitutional protection, the Court considers the following factors to determine whether the expression of an idea merits First Amendment protections: (1) the speaker's intention to "convey a particularized message"; (2) the likelihood of that message being understood by those who view it; and (3) the surrounding context. *Spence v. Washington*, 418 U.S. 405, 410–11 (1974) (holding that the context in which a symbol functions to convey a message, or express an idea, imports value because the context can provide additional meaning to the symbol).

Despite the primitive nature of symbols, the Supreme Court has recognized symbols to be an effective way to communicate ideas. *See, e.g., W. Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 633–34 (1943) (concluding that a flag salute qualifies as a form of expression and warrants constitutional protection); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that the wearing of black armbands

in a school environment qualified as protected speech because it unquestionably conveyed a message about a matter of public concern—an issue that was of "intense public concern" at the time); *Brown v. Louisiana*, 383 U.S. 131, 141–42 (1966) (holding that a sit-in by black students, in a "whites only" library, constituted protected symbolic speech). These cases represent acts of deliberate expression, which are sufficiently imbued with the necessary aspects of communication to deserve constitutional protection. *United States v. O'Brien*, 391 U.S. at 376. Whether Professor Bennet's First Amendment rights were violated when Petitioner directed her to change Wickham's grade hinges on whether or not the assignment of grades by public university professors satisfies the elements of communication laid out by this Court in *Spence*. *See Spence v. Washington*, 418 U.S. at 411.

B. Professor Bennet's assignment of grades qualifies as symbolic speech because her conduct meets the standard laid out by this Court in *Spence*.

Within the context of the academic environment, the assignment of grades transmits a particularized message to the students that receive them. *Parate v. Isibor*, 868 F.2d 821, 827 (6th Cir. 1989) (concluding that a professor's discretion to assign grades according to his professional judgment contributes to his individual teaching method). In *Parate*, the Sixth Circuit described a written evaluation that indicates "excellent work," and the letter grade "A," as being synonymous with one another, since both modes of communication represent symbols that reflect a particularized message. *Id.* at 827. In the present case, Professor Bennet specifically intended to convey a message of disapproval to Wickham by assigning him the letter grade of "F." The numerous misspellings, use of improper grammar, and unforgiveable factual errors in Wickham's final paper are just a

few examples that justify the "F" that he received from Professor Bennet. Most students enrolled in institutions of higher education, such as CSP, understand the meaning and significance of grades. In fact, the student in this case, Wickham, transferred to CSP from New York University, which proves he was obviously familiar with the role that grades and transcripts play in the academic process.

In light of this academic environment, coupled with Wickham's meager attendance and minimal efforts in Professor Bennet's class, Wickham could not have misunderstood his letter grade of "F" to indicate anything other than Professor Bennet's dissatisfaction of his performance in her class. Under these circumstances, a student might even anticipate or expect such a grade. Moreover, all other schools and professors understand the universal message that an "F" conveys as well. As demonstrated by Petitioner's attempts to force Professor Bennet to change Wickham's grade, the athletic department of CSP interpreted Wickham's "F" to indicate his ineligibility to continue playing on the school's basketball team, since the athletic department knows that such a grade violates CSP's athletic division rules. Because Professor Bennet's conduct in assigning grade sends a specific and unique message to the individual student, her communicative act qualifies as a form of symbolic speech and warrants some degree of protection under the First Amendment. *Parate v. Isibor,* 868 F.2d at 827.

C. Circuit decisions holding that grades are not protected by the First Amendment are distinguishable from Professor Bennet's case because her conduct did not violate the university's grading policy.

Each academic institution may decide how to appropriate the authority to assign grades among its faculty. *Wozniak v. Conry*, 236 F.3d 888, 891 (7th Cir. 2001) (holding

that professors do not possess any fundamental right to teach classes that do not conform to the university's grading policies). Thus, where a professor has violated the grading policy of an institution, his termination does not necessarily entitle him to relief. *Id*. at 891. In *Wozniak*, professors were required to grade on a prescribed curve as an effort to ensure consistency across the divided sections, and professors were also required to submit their grading materials—the latter of which the petitioner in that case failed to do. *Id*. at 889. His failure to comply with these grading requirements allowed the university to terminate him without violating the professor's constitutional rights. *Id*. at 891 (holding that the professor's termination resulted from his behavior, and not as a penalty for his speech about that behavior). Unlike *Wozniak*, Professor Bennet's assignment of grades complied with Petitioner's grading policy, and did not violate any policy or mission of CSP's. *See Wozniak*, 236 F.2d at 891.

A university's decision to not renew a professor's contract may also stem from the fact that the professor's individual teaching methods are not preferable or conducive to the school's goals and policies. *Hetrick v. Martin*, 480 F.2d 705, 707 (6th Cir. 1973) (holding that the First Amendment does not preclude a university from terminating a teacher if his pedagogical approach and philosophy do not align with the university's standards, goals, and missions). For instance, the First Circuit has held in favor of a university's ability to not renew a teacher's contract where the professor failed to heed instruction from the university, requesting him to amend his high grading standards and lower his expectations. *Lovelace v. Se. Mass. Univ.*, 793 F.2d 419, 424 (1st Cir. 1986) (noting that the professor's criticism of the university's need to elevate its standards generated "receptivity," rather than "hostility," towards these voiced concerns).

Even if the university in *Lovelace* failed to renew the professor's contract in retaliation to the professor's refusal to change his personal grading standards, the First Circuit held that the university must be allowed to determine for itself certain decisions, such as what target population it seeks to attract, the class content and homework load it prefers to assign, and its own general grading policies. *Lovelace*, 793 F.2d at 425. Therefore, the First Circuit in *Lovelace* concluded that the university lawfully terminated the professor because the teacher's elevated grading standards conflicted with the university's core concerns. *Id*. at 425. These Circuit decisions highlight the difference between a professor's refusal to change an individual grade, and the professor's refusal to conform to the university's grading policies that dovetail the school's mission.

The First Circuit in *Lovelace* also made a distinction between the professor's speech, which criticized the university's grading standards, and the professor's act of refusing to change his own, individual grading standards where they conflicted with the university's mission. *Id.* at 425 (holding that the professor's action, of disobeying the university's request for the professor to amend his grading standards in order to conform with the university's, constituted an act of insubordination not protected by the First Amendment); *see also Hillis v. Stephen F. Austin State University*, 665 F.2d 547, 552 (5th Cir. 1982) (differentiating between the exercise of First Amendment rights and acts of plain insubordination, the former of which played no substantial role in the nonrenewal decision). Unlike the present case, where Petitioner compelled Professor Bennet to change Wickham's grade, the university in *Hillis* changed the student's grade administratively. *See Hillis*, 665 F.2d at 550.

Professor Bennet's refusal to change Wickham's grade does not amount to an act of insubordination because her conduct was not a refusal to conform to the university's standards. Rather, Professor Bennet merely refused to change an individual grade that she intended to assign to her student—a grade that the student earned, and indeed complied with CSP's grading policies. Moreover, Petitioner's ability to change Wickham's grade administratively renders the directive to Professor Bennet unnecessary. By unjustifiably compelling Professor Bennet to change a student's grade, contrary to her professional judgment, Petitioner precluded Professor Bennet from conveying a message that she intended to send to her student. Therefore, Professor Bennet merely exercised her constitutional rights when she refused to follow Petitioner's directive, which resulted in an unlawful termination. *See Parate v. Isibor*, 868 F.2d at 827.

II. THE SIXTEENTH CIRCUIT CORRECTLY HELD THAT ACADEMIC FREEDOM EXTENDS TO PROFESSOR BENNET BECAUSE THE SUPREME COURT HAS SPECIFICALLY HELD THAT THIS RIGHT VESTS IN BOTH THE PROFESSOR AND THE UNIVERSITY.

A. This Court has held that academic freedom vests in both the professor and the university.

The Supreme Court has held that the doctrine of academic freedom belongs to both the university and the professor. *See Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). In *Sweezy*, Justice Frankfurter's concurrence outlines four essential freedoms that specifically belong to the university: the freedom to decide what to teach, how it is taught, who will teach, and who will be admitted. *Id.* at 263 (Frankfurter, J., concurring) (concluding that a free society depends on free universities, meaning free from

governmental interference in the intellectual life of a university). However, the Supreme Court in *Sweezy* also held that professors and students alike must remain free to inquire, learn, and understand because the failure to do so would lead to the stagnation and death of our civilization. *Id*. at 250. Therefore, Professor Bennet's assignment of grades must be protected by the doctrine of academic freedom in order for both the educators and the students to gain new maturity and comprehension. *See Sweezy*, 354 U.S. at 250.

Various Circuit decisions have also recognized that the doctrine of academic freedom extends to both the professor and the university. *See, e.g., Hillis v. Stephen F. Austin State University*, 665 F.2d 547, 553 (5th Cir. 1982) (explaining that academic freedom stems from the First Amendment to protect against infringements on a teacher's freedom concerning classroom content and method); *Piarowski v. Ill. Cmty. Coll. Dist. 515*, 759 F.2d 625, 629 (7th Cir. 1985) (noting that the term academic freedom is equivocal, denoting freedoms of both the university and the professor); *cf. Urofsky v. Gilmore*, 219 F.3d 401, 410 (4th Cir. 200) (concluding that, if the Constitution recognizes any right of academic freedom, it inheres in the university, not in individual professors).

In *Hillis*, the Fifth Circuit held that the professor in that case made one credible First Amendment claim, which related to his criticism of Dr. Creighton Delaney—the university's Art Department head who ordered the professor to assign a specific student the letter grade of "B." *Hillis*, 665 F.2d at 552. However, the Fifth Circuit held in favor of the university in *Hillis* because the professor in that case failed to show that his refusal to assign a grade as instructed constituted a "teaching method." *Id.* at 553. Moreover, the professor's protected rights to protest and criticize did not play a substantial role in the university's nonrenewal decision. *Id*. at 552 (concluding that, absent any exercise of

constitutionally protected rights, a professor may be terminated for any reason, or no reason at all). Unlike Professor Bennet, the professor in *Hillis* tarnished his renewal prospects by evidencing his continual lack of cooperation and unacceptable conduct on multiple occasions—all of which are absent from the facts in Professor Bennet's case. *See Hillis*, 665 F.2d at 551–552. More importantly, *Hillis* differs from the present case because the university in *Hillis* ultimately assigned the desired grade administratively, whereas, in the present case, Petitioner chose to compel Professor Bennet to change the grade, rather than changing it administratively. *See Hillis*, 665 F.2d at 552.

Even the Sixth Circuit in *Parate* agreed that a professor does not possess a constitutional interest in the grades his students ultimately receive. *See Parate*, 868 F.2d at 829. In other words, a university may change a student's grade administratively, but it may not preclude a professor from communicating his personal evaluations to his students. *Id*. at 829. By failing to change Wickham's grade administratively, and instead ordering Professor Bennet to change a previously assigned change, Petitioner unconstitutionally compelled Professor Bennet's speech, which severely burdens a protected activity. *Id.* at 828.

In *Piarowski*, the Seventh Circuit weighed the interests of both parties in order to strike a balance. *See Piarowski v. Ill. Cmt. Coll. Dist. 515*, 759 F.2d at 628 (holding that universities do not have *carte blanche* to regulate the expression of ideas of its faculty members). Ultimately, the Seventh Circuit in *Piarowski* held that the university's interests did not justify forbidding the professor to display his art anywhere on campus, but the school's interests did permit its directive, which ordered the professor to move his art to a more appropriate gallery in the building. *Id*. at 630 (explaining that the

professor's expression of ideas were regulated, rather than suppressed, by relocating the art). Balancing the competing interests of both parties invites this Court to allow a professor to assign grades according to the professor's judgment, while permitting the university to terminate the professor when, or if, such grade assignments violate the school's standards or policies. Courts have used a similar balancing test to weigh the interests of both parties in determining whether or not a public employee's speech outweighs the interests of the employer in regulating that speech. *See Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

The Fourth Circuit has held that if a public employee's speech fails to touch upon matters of public concern, the employer may regulate it without infringing on any of the employee's constitutional rights. *Urofsky v. Gilmore*, 219 F.3d 401, 406–407 (4th Cir. 2000) (holding that any inquiry of whether or not a public employee's speech touches upon a matter of public concern does not involve a determination of how interesting or important the subject is). Professor Bennet's case differs from *Urofsky* because the professors in *Urofsky* challenged the constitutionality of a state statute that prohibited their conduct, whereas in the present case, no state statute exists prohibiting Professor Bennet's assignment of the letter grade of "F." *See Urofsky*, 219 F.2d at 405–06. In fact, no CSP policy prohibits such an assignment of the letter grade "F," which explains why Petitioner's actions violate her constitutionally protected right to speech. *See Settle v. Dickson County. Sch. Bd.*, 53 F.2d 152, 155 (6th Cir. 1995) (holding that, as long as no positive law or school policy is violated, professors possess broad authority to assign grades based on the merits of their students work).

B. The Supreme Court's *Pickering* test tilts in favor of Professor Bennet because Petitioner's interests in restricting her speech do not outweigh Professor Bennet's protected rights.

Because a university serves the dual role as both a public employer that provides public services, and as a governmental entity, operating under the constraints of the First Amendment, the Supreme Court determines whether a public employee's speech addresses a matter of public concern before granting it constitutional protection. *See Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (citing *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)). In *Pickering*, the Supreme Court balanced the interests of the public employee's interest—to comment on matters of public concern—with the employer's interests in promoting the efficiency of the public services it performs through its employees. *Id.* at 568 (concluding that a teacher's opportunity to contribute to public debate outweighs the school administration's interests when a teacher's proper performance and daily duties in the classroom are unaffected or interfered with).

Because grades constitute an important aspect of an educator's teaching style, and because Professor Bennet's assignment of grades fails to disrupt the efficiency and daily operations of CSP, Petitioner's interests in compelling Professor Bennet to change a previously assigned grade does not outweigh Professor Bennet's employee-speech rights. *See Pickering*, 391 U.S. at 572 (emphasizing the essentiality for teachers to speak freely on questions of public concern without fear of retaliatory dismissal).

The Supreme Court has held that citizens necessarily accept certain limitations on their freedoms upon entering government service. *See Garcetti v. Cebellos*, 391 U.S. 410, 418 (2006). (analyzing whether the First Amendment protects a government

employee from discipline based on employee's speech made pursuant to his official duties). However, this Court has long held that teachers do not shed the constitutional rights that they enjoy as citizens merely upon their condition as public employees. *Keyishian v. Bd. of Regents*, 385 U.S. 589, 592 (1967) (noting that even legitimate and substantial governmental purposes cannot be pursued by means that stifle fundamental liberties when the end can be more narrowly achieved). Professor Bennet should not be expected to abandon her First Amendment right to speech when the school's efficiency and functions are unharmed, and Petitioner possessed the ability to achieve its ends by changing Wickham's grade administratively.

C. *Garcetti* does not apply to Professor Bennet because the present case involves matters of scholarship and teaching.

Admittedly, governmental entities have broad discretion to restrict speech when it acts in its role as an employer. *Garcetti,v. Ceballos,* 391 U.S. at 418 (adding that supervisors must ensure that their employees' official communications are accurate and sound). Because public employees may potentially express views that impair proper performance of governmental functions, the Supreme Court in *Garcetti* held that an employee's speech made pursuant to his official duties does not warrant the same degree of strict scrutiny that the First Amendment requires. *Id.* at 423 (holding that the supervisors in that case had the authority to take proper corrective action). This Court should not consider termination to be the proper corrective action for Professor Bennet simply doing her job, and assigning grades fairly and appropriately. Such a determination would cast a "pall of orthodoxy" over the classroom, and would not

safeguard the academic freedom that this Court regards as vital to American schools. *See Keyishian v. Bd. of Regents*, 385 U.S. at 603.

Furthermore, Professor Bennet's assignment of grades constitutes symbolic speech, whereas the employee's speech made pursuant to his official duties in *Garcetti* constituted work product. *Garcetti v. Ceballos*, 547 U.S. at 423. Unlike the assignment of grades, the work product in *Garcetti* demanded attention from the employee's supervisors. *Id*. at 423. If this Court were to apply *Garcetti* to the present case, and demand that Petitioner oversee every single grade that every professor assigns to every student, a largely inefficient task would be unfairly imposed on CSP, which would truly impair Petitioner's daily operations and functions. *See Garcetti*, 547 U.S. at 423. In fact, such a task would indeed disrupt the efficiency and daily operations that the *Pickering* test seeks to account for and preserve by balancing competing interests. *See Pickering*, 391 U.S. at 572. For the following reasons, this Court should not apply *Garcetti* to Professor Bennet's case. *See Garcetti,* 391 U.S. at 423. Because the Supreme Court failed to extend the holding in *Garcetti* to matters of scholarship and teaching, this Court need not apply *Garcetti* to Professor Bennet's case. *Id*. at 425.

CONCLUSION AND PRAYER

The Sixteenth Circuit correctly held that Petitioner violated Professor Bennet's constitutional rights because grades are a form of symbolic speech protected by the First Amendment, and Professor Bennet's assignment of grades meets the standard laid out in *Spence*. Because Petitioner possessed the ability to change Wickham's grade administratively, yet insisted on compelling Professor Bennet to change it, Petitioner's directive was unnecessary. By unjustifiably precluding Professor Bennet from

communicating a message to her student through the assignment of a letter grade, Professor Bennet merely exercised her constitutional rights in refusing to follow Petitioner's directive to change a previously assigned grade. Her refusal was not an act of insubordination because her conduct qualifies as symbolic speech, and it was not a refusal to conform to Petitioner's standards or policies, since the "F" that Professor Bennet assigned to Wickham complied with the university's grading policies. Although Professor Bennet assigned the "F" pursuant to her official duties, the Supreme Court failed to apply *Garcetti* to matters involving scholarship or teaching, such as the present case. Accordingly, Respondent respectfully prays this Court affirm the Sixteenth Circuit's holding that academic freedom extends to both the professor and the university, and grants the injunctive and monetary relief that Professor Bennet seeks.

Respectfully Submitted,

/s/ *Ana Zabalgoitia*

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March 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail to William Collins, Esq., Counsel of Record, 41 Rosings Ave., S. Pemberley, PM 19115.

APPENDIX

U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.