

No. 24-11239-D

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

KATIE WOOD, *Plaintiff-Appellee*,

AV SCHWANDES, *et al.*, *Plaintiffs*,

v.

FLORIDA DEPARTMENT OF EDUCATION, FLORIDA STATE BOARD OF
EDUCATION, COMMISSIONER OF EDUCATION, EDUCATION PRACTICES
COMMISSION, MONESIA BROWN, *in her official capacity as member of
Defendant Education Practices Commission, et al.*, *Defendant-
Appellants*,

HILLSBOROUGH COUNTY SCHOOL BOARD, *et al.*, *Defendants*.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:23-cv-00526-MW-MAF

**BRIEF OF AMICUS CURIAE LINGUISTIC SOCIETY OF
AMERICA IN SUPPORT OF APPELLEE**

Jeffrey S. Trachtman
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
jtrachtman@kramerlevin.com
Telephone: 212-715-9175

Daniel N. Lerman
Kramer Levin Naftalis & Frankel LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
dlerman@kramerlevin.com
Telephone: 202-775-4524

Counsel for Amicus Curiae

(Wood v. Florida Department of Education)

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Circuit Rule 29-1, the Linguistic Society of America (LSA) certifies that the following have an interest in the outcome of this appeal:

1. Akerman LLP, Counsel for Defendant
2. Altschuler Berzon LLP, Counsel for Plaintiffs-Appellees
3. Ameerally, Aadil, Defendant-Appellant
4. Baltzer, James, Attorney for Plaintiffs-Appellees
5. Barr, Jared, Defendant-Appellant
6. Boyd, Sam, Attorney for Plaintiffs-Appellees
7. Brown, Monesia, Defendant-Appellant
8. Butcher, Michael, Defendant-Appellant
9. Byrd, Esther, Defendant-Appellant
10. Chriss, Simone, Attorney for Plaintiffs-Appellees
11. Christie, Grazie, Defendant-Appellant

(Wood v. Florida Department of Education)

12. Colon, Elayne, Defendant-Appellant
13. Commissioner of Education, Defendant-Appellant
14. Consovoy McCarthy PLLC, Counsel for Defendants-Appellants
15. Copenhaver, Ann, Defendant-Appellant
16. Diaz Jr., Manny, Florida Commissioner of Education
17. Doe, Jane, Plaintiff-Appellee
18. Education Practices Commission, Defendant-Appellant
19. Finberg, James M., Attorney for Plaintiffs-Appellees
20. Fleisher, Aaron S., Attorney for Plaintiffs-Appellees
21. Florida Department of Education, Defendant-Appellant
22. Florida Virtual School Board of Trustees, Defendant
23. Fox, James D., Attorney for Defendant
24. Garcia, Kelly, Defendant-Appellant
25. Gibson, Benjamin, Defendant-Appellant

(Wood v. Florida Department of Education)

26. Goodwin, Joseph, Defendant-Appellant
27. Grosholz, Jeffrey J., Attorney for Defendant
28. Henry, Benjamin, Defendant-Appellant
29. Hillsborough County School Board, Defendant
30. Holley, Timothy, Defendant-Appellant
31. Holshouser, Eric J., Attorney for Defendant
32. Innerst, Lisa, Defendant-Appellant
33. Johnson, Jeffrey, Defendant-Appellant
34. Jones, Colin, Attorney for Plaintiffs-Appellees
35. LaPee, Kenneth, Defendant-Appellant
36. Lee County School Board, Defendant
37. Lerman, Daniel N., Attorney for Amicus Curiae Linguistic Society of America
38. Lewis, Mason, Defendant-Appellant

(Wood v. Florida Department of Education)

39. Linguistic Society of America, Amicus Curiae in Support of Plaintiff-Appellee
40. Magar, MaryLynn, Defendant-Appellant
41. Makar, Mikala, Attorney for Defendant
42. Margolin, Jason L., Attorney for Defendant
43. Marsey, J. David, Attorney for Defendant
44. McCoy, Scott D., Attorney for Plaintiffs-Appellees
45. Monfared, Neema M., Attorney for Defendant
46. Murphy, Sallie, Defendant-Appellant
47. Petty, Ryan, Defendant-Appellant
48. Plaza, Christine, Defendant-Appellant
49. Raben, Carli, Attorney for Plaintiffs-Appellees
50. Roetzel & Andress PA, Counsel for Defendant
51. Rogers Towers PA, Counsel for Defendant
52. Rosenthal, Jonathan, Attorney for Plaintiffs-Appellees

(Wood v. Florida Department of Education)

53. Rowe, Kevin, Defendant-Appellant
54. Rumberger Kirk & Caldwell PA, Counsel for Defendant
55. Schwandes, AV, Plaintiff-Appellee
56. Shapiro, Daniel, Attorney for Defendants-Appellants
57. Shaw, Charles, Defendant-Appellant
58. Siegel, Jodi, Attorney for Plaintiffs-Appellees
59. Sloan, Orenthya, Defendant-Appellant
60. Snyder, Marc, Defendant-Appellant
61. Soto, Diego, Attorney for Plaintiffs-Appellees
62. State Board of Education, Defendant-Appellant
63. Stone, Jessica, Attorney for Plaintiffs-Appellees
64. Southern Poverty Law Center, Counsel for Plaintiffs-Appellees
65. Thomas, Malcolm, Defendant-Appellant
66. Tompkins, Jordan, Defendant-Appellant

(Wood v. Florida Department of Education)

67. Trachtman, Jeffrey S., Attorney for Amicus Curiae Linguistic Society of America
68. Vitagliano, Daniel M., Attorney for Defendants-Appellants
69. Walker, Hon. Mark E., United States District Judge (N.D. Fla.)
70. Weir, Bryan, Attorney for Defendants-Appellants
71. Wilks, Kathy, Defendant-Appellant
72. Wood, Katie, Plaintiff-Appellee

Appellants are government officials or entities of the State of Florida, and Appellees are individuals. Amicus curiae Linguistic Society of America is a scholarly membership society. No publicly traded company or corporation has an interest in the outcome of this case or appeal. Per Circuit Rule 29-1 Amicus certifies that the certificate of interested parties contained herein is complete.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	6
I. LINGUISTICS AND COMMON SENSE DEMONSTRATE THAT FLORIDA HAS NO EDUCATIONAL INTEREST IN SUPPRESSING TEACHERS’ USE OF THEIR PREFERRED PRONOUNS	7
A. Gendered Third-Person Pronouns And Titles Do Not Make A Truth Claim About The Referent’s Biological Sex.....	8
B. The State’s Professed Concern That Children Will Be Confused By Teachers’ Use Of Their Preferred Pronouns Is Misplaced.....	17
II. LINGUISTIC PRINCIPLES FURTHER CONFIRM THAT MS. WOOD’S USE OF HER PREFERRED PRONOUNS CONSTITUTES HER SPEECH ON A MATTER OF PROFOUND PUBLIC CONCERN	23
A. Ms. Wood’s Use Of Her Preferred Pronouns And Honorific Title Is Speech As A Citizen, Not Speech Pursuant To Her Government Duties.....	25
B. Ms. Wood’s Use Of Her Preferred Pronouns And Title Address A Matter Of Public Concern	26
CONCLUSION	28

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006)	3, 5, 7, 23
<i>Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31</i> , 585 U.S. 878 (2018)	27
<i>Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791 (11th Cir. 2022) (en banc)	28
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	4
<i>MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.</i> , 512 U.S. 218 (1994)	15
<i>Meriwether v. Hartop</i> , 992 F.3d 492 (6th Cir. 2021)	27
<i>Pickering v. Board of Education of Township High School District 205, Will County</i> , 391 U.S. 563 (1968)	3
 Statutes	
1 U.S.C. § 1	15
Fla. Stat. § 1000.071	<i>passim</i>
 Other Authorities	
Alastair Pennycook, <i>The Politics of Pronouns</i> , 48 Eng. Language Teaching J. 173 (1994)	9

TABLE OF AUTHORITIES—Continued

	Page(s)
Ayumi Miyazaki, <i>Japanese Junior High School Girls’ and Boys’ First-Person Pronoun Use and Their Social World</i> , in <i>Japanese Language, Gender, and Ideology: Cultural Models and Real People 256</i> (Shigeko Okamoto & Janet S. Shibamoto Smith eds., 2004).....	11
Ben Zimmer, <i>Ms.</i> , N.Y. Times Mag. (Oct. 23, 2009), https://www.nytimes.com/2009/10/25//FOB-onlanguage-t.html	25
Dennis Baron, <i>What’s Your Pronoun?</i> (2020).....	10, 27
Elin McCready, <i>The Semantics and Pragmatics of Honorification: Register and Social Meaning</i> (Oxford University Press 2019)	9
Evan D. Bradley et al., <i>Singular ‘They’ and Novel Pronouns: Gender-Neutral, Nonbinary, or Both?</i> , 4 Proc. of the Linguistic Soc’y of Am. 36:1 (2019)	13
Jennifer E. Arnold et al., <i>Children’s Use of Gender and Order-of-Mention During Pronoun Comprehension</i> , 22 Language & Cognitive Processes 527 (2007)	13
Jennifer E. Arnold et al., <i>My Pronouns Are They/Them: Talking About Pronouns Changes How Pronouns Are Understood</i> , 28 Psychonomic Bull. & Rev. 1688 (2021)	18
Katie Wales, <i>Personal Pronouns in Present-Day English</i> (Cambridge University Press 1996)	8
Kirby Conrod, <i>Pronouns and gender in language</i> , in <i>The Oxford Handbook of Language and Sexuality</i> (Rusty Barrett & Kira Hall eds., Oxford University Press 2020).....	20

TABLE OF AUTHORITIES—Continued

	Page(s)
Lal Zimman, <i>Transgender Language Reform: Some Challenges and Strategies for Promoting Trans-Affirming, Gender-Inclusive Language</i> , 1 <i>J. of Language & Discrimination</i> 84 (2017)	24
Merriam Webster Dictionary Online, https://www.merriam-webster.com/dictionary/female	16
Michael Silverstein, <i>Indexical Order and the Dialectics of Sociolinguistic Life</i> , 23 <i>Language & Commc'n</i> 193 (2003).....	9
Nat’l Library of Med., Nat’l Insts. of Health, <i>MedlinePlus, Androgen Insensitivity Syndrome</i> , https://medlineplus.gov/genetics/condition/-insensitivity-syndrome/ (last updated Apr. 1, 2024)	14
New Oxford American Dictionary (2015)	16, 17
Oxford English Dictionary Online (2024).....	15
Paul Bloom, <i>How Children Learn the Meanings of Words</i> (2000)	18
R. Brown & A. Gilman, <i>The Pronouns of Solidarity</i> , in T. Sebeok, <i>Style in Language</i> (MIT Presws 1960)	8, 9
Random House Dictionary of the English Language.....	17
Sally McConnell-Ginet, <i>Gender and Its Relation to Sex: The myth of ‘Natural’ Gender</i> , in <i>The Expression of Gender</i> 3 (Greville G. Corbett ed., 2014).....	11
Susan A. Speer, <i>The Interactional Organization of the Gender Attribution Process</i> , 39 <i>Sociology</i> 67 (2005)	10

STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Linguistics is the scientific study of language. Linguists typically base their analyses about language on empirical observations of the complex patterns that structure language as it is used. The Linguistic Society of America (LSA), founded in 1924, is a scholarly society whose members comprise students, faculty, and linguists working in academia, government, non-profit organizations, and industry sectors. The mission of LSA is to advance the scientific study of language.

LSA advocates for evidence-based public policy on issues related to language and in support of linguistics and the profession. As part of that approach, LSA rejects prescriptivism—which seeks to determine which language variants are inherently superior to others and to police their use by speakers—in favor of a descriptive approach that describes the way language functions. *Amicus* writes to explain why Florida’s view of how pronouns and titles function is unsupported by the linguistic literature.

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amicus* certifies that no person or entity, other than *Amicus* or its counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

INTRODUCTION AND SUMMARY OF ARGUMENT

Last year, the Florida legislature passed, and the Governor signed, a law effectively barring transgender and non-binary teachers from using their chosen pronouns in the classroom. *See* Florida H.B. 1069 (2023) (enacting Fla. Stat. § 1000.071). Subsection 1 of that law declares that the “policy” of every public K-12 school is “that a person’s sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person’s sex.” Fla. Stat. § 1000.071(1). And subsection 3 implements that “policy” by decreeing that:

An employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if such preferred personal title or pronouns do not correspond to his or her sex.

Fla. Stat. § 1000.071(3).

Katie Wood is an experienced math teacher at Lennard High School in Ruskin, Florida. Ms. Wood “lives, dresses, and presents as a woman in all aspects of her life.” Appellee’s Br. (Jul. 24, 2024), Dkt. 35 (“Wood Br.”) at 5. That applied to her classroom, too, where her practice was to “introduc[e] herself as Ms. Wood and us[e] female pronouns to refer to herself at work.” *Id.* Section 1000.071, which declared Florida’s “policy”

that this practice was “false,” changed all that. After seeking an accommodation from the school’s administration (which later made clear that its hands were tied by the statute), Ms. Wood was forced to restyle herself as “Teacher Wood” and avoid classroom references to her gender identity. *Id.* at 8-9.

Ms. Wood brought suit in the district court, which granted her motion for a preliminary injunction on the ground that she was likely to succeed on her claim that Section 1000.071 violates her First Amendment rights under the framework set forth in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and *Pickering v. Board of Education of Township High School District 205, Will County*, 391 U.S. 563 (1968). Order at 23-45, No. 23-cv-00526 (N.D. Fla. Apr. 9, 2024), Dkt. 82. Specifically, the court held, under the first step of the *Pickering-Garcetti* test, that Ms. Wood speaks as a citizen about a matter of public concern when she provides her preferred title and pronouns. *Id.* at 23-39. It further held, under the second step of the test, that the State lacked an adequate justification for treating Ms.

Wood differently from any other member of the public based on its needs as an employer. *Id.* at 39-45.²

The district court was right, and this Court should affirm for the reasons stated in Ms. Wood’s brief. We write here to add a linguistic perspective to the issues presented and show why, as a matter of well-accepted linguistic principles, the State’s arguments to the contrary lack merit.

At the interest-balancing step of the *Pickering-Garcetti* test, courts ask whether the “employee’s speech interests are outweighed by ‘the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 528 (2022) (quoting *Garcetti*, 547 U.S. at 417). Application of that balancing test here tilts decisively in Ms. Wood’s favor.

The State contends that Ms. Wood’s significant free-speech interests are outweighed by its interests in prohibiting “false” speech and preventing “confusion” among students regarding the meaning and use

² The district court further held that the remaining preliminary injunction factors favored Ms. Wood. *Id.* at 45-56.

of pronouns. Appellant’s Br. (June 3, 2024), Dkt. 23 (“State Br.”) at 44-50. But Florida’s assertion that Ms. Wood’s choice of title and pronouns is “false” is refuted by decades of linguistic research into the ways that people actually use pronouns and honorifics: as indicators of social identities rather than factual representations as to “biological” characteristics.

That leaves Florida with its argument that allowing teachers like Ms. Wood to identify as “Ms. Wood” rather than “Teacher Wood” would be confusing. That contention, too, is refuted by the linguistic literature—and common sense. If anything, it is the State’s mandate that will confuse students—not Ms. Wood’s use of language that accurately reflects her gender identity and presentation.

To be sure, *Pickering-Garcetti* interest balancing applies only if the speech at issue is an employee’s, not the government’s, and is on a matter of public concern. *Garcetti*, 547 U.S. at 421, 423. Here, Florida contends that Ms. Wood speaks for the government when she uses her preferred pronouns, and not for herself. Br. 19-34. But again, Florida has things exactly backwards. Ms. Wood’s choice of pronouns is not part of Lennard High’s curriculum; it is part of her identity that, under Section 1000.071,

exists everywhere in her life but the classroom. Scholarship in linguistics, which has long studied the social basis of gendered pronouns, confirms as much. It also shows—along with the very existence of Section 1000.071—that pronoun usage in the classroom is plainly a matter of public concern.

ARGUMENT

Florida contends that Section 1000.071 promotes its interest in preventing the false and confusing use of pronouns and honorifics by its schoolteachers, and that that interest outweighs Ms. Wood’s interest in identifying herself in a way that conforms with her gender identity. It also contends that, when she uses her preferred pronouns, Ms. Wood is not speaking as a citizen on a matter of public concern in the first place. The State is wrong on both counts; scientific linguistic research, and principles from that discipline, demonstrate that the State’s arguments rest on a flawed assumption about how people use and interpret pronouns in practice.

I. LINGUISTICS AND COMMON SENSE DEMONSTRATE THAT FLORIDA HAS NO EDUCATIONAL INTEREST IN SUPPRESSING TEACHERS' USE OF THEIR PREFERRED PRONOUNS

The second step of the *Pickering-Garcetti* test balances Florida's purported interest in restricting Ms. Wood's use of her preferred pronouns against her interests in identifying herself in class the same way she does everywhere else. *See Garcetti*, 547 U.S. at 421, 423. That balance weighs in favor of Ms. Wood, whose interests are substantial (*see* Wood Br. 52-53), and against the State, which asserts interests that are wholly illusory. As Ms. Wood correctly explains, "[t]o resolve this case, the Court need not decide whether Florida is correct" that Ms. Wood is making a "false" claim about her sex, Wood Br. 44 (quoting Fla. Stat. § 1000.071(1)), because Ms. Wood is constitutionally entitled to express a contrary view. But linguistic research supports separate grounds for affirmance: Florida is simply incorrect that Ms. Wood's preferred pronouns should be understood in the first place to be a factual representation of her "biological" sex, and there is no likelihood of confusion if Ms. Wood is permitted to introduce herself with the same pronouns that she has used for two years. Florida's interests are therefore woefully insufficient to trump Ms. Wood's free-speech interests.

A. Gendered Third-Person Pronouns And Titles Do Not Make A Truth Claim About The Referent's Biological Sex

The State relies heavily on its purported interest in suppressing the use of “preferred personal title or pronouns [that] do not correspond” to a teacher’s “sex,” which the State declares to be an “immutable biological trait.” *See* State Br. 2 (quoting § 1000.071(1), (3)). Florida bases that interest on the premise that preferred pronouns and titles make a claim about the “biological sex,” as defined by the State, of the referent (that is, the person to whom the pronoun refers), and that that claim is false when a pronoun typically used for people of one “biological” sex is used for a person of a different sex. But pronouns and titles like those at issue here make no such factual claim.

Pronouns are a class of function words that act as “useful ‘shorthand’ referring expressions,” substituting for nouns or noun phrases. Katie Wales, *Personal Pronouns in Present-Day English* at 4 (Cambridge University Press 1996). As such, they help interlocutors keep track of who is being discussed and facilitate economy of expression. Pronouns also allow speakers to position themselves and others both grammatically and socially. *See* R. Brown & A. Gilman, *The Pronouns of*

Solidarity at 264-65, in T. Sebeok, *Style in Language* (MIT Press 1960); Alastair Pennycook, *The Politics of Pronouns*, 48 *Eng. Language Teaching J.* 173, 175-76 (1994); Michael Silverstein, *Indexical Order and the Dialectics of Sociolinguistic Life*, 23 *Language & Commc'n* 193, 204-11 (2003). While honorific titles (like “Mr.” or “Ms.”) are in some respects different from pronouns, each of these forms of reference likewise conveys information about a person’s social characteristics, and each often serves as an expression of respect, “anchoring linguistic agents in social hierarchies and relationships.” Elin McCready, *The Semantics and Pragmatics of Honorification: Register and Social Meaning* at 1 (Oxford University Press 2019).

Pronouns in the world’s languages thus encode contextual and personal characteristics like formality, politeness, social distance, social status, place of origin, religious role, age, and gender—and not, as the State would have it, an objective truth claim. For example, it is often said that Spanish speakers use the more polite, formal “usted” pronoun when addressing someone who is older or higher status, and the informal “tu” for people of the same or lower status or age. When a Spanish speaker refers to someone as “usted,” however, the speaker is not making a truth

claim about the referent's actual age or status; instead, the pronoun may be used simply to show respect for a less-familiar interlocutor. Gendered pronouns are similarly selected based on a gender-attribution process that draws on contextual, socially malleable information, *see, e.g.*, Susan A. Speer, *The Interactional Organization of the Gender Attribution Process*, 39 *Sociology* 67, 83-85 (2005), often including, as here, a statement from the referent about which pronouns they want or expect others to use, *see, e.g.*, Dennis Baron, *What's Your Pronoun?* 1, 20-21 (2020).

The State's bid to suppress Ms. Wood's statements about her pronouns is at war with these empirically supported findings. Even accepting, *arguendo*, Florida's assertion that "a person's sex is an immutable biological trait," Fla. Stat. § 1000.071(1), gendered pronouns do not function to make a fixed "factual" assertion about biology. Rather, they are socially conditioned signifiers, as vividly illustrated by the broad variation in different languages' use of pronouns with respect to gender. Take Finnish and Farsi, for example. Like many languages, they use no gendered pronouns at all. Hebrew and Arabic, by contrast, use gendered pronouns—even where English does not (*e.g.*, for the second person

“you”). The Mohawk language maintains two separate third-person pronouns meaning “she.” How does a Mohawk speaker decide which to use? As with pronouns and honorifics, generally, it depends on whether she wants to show respect and deference or endearment and closeness—and that choice is influenced, too, by the perceived refinement, assertiveness, and toughness of the referent. Marianne Mithun, *Gender and Culture*, in *The Expression of Gender* 131, 138 (Greville G. Corbett ed., 2014). Japanese speakers, for their part, have a veritable menu of first-person pronouns at hand. They deploy them creatively, for socially conditioned reasons—like the well-documented use of a traditionally masculine first-person pronoun by girls.³

And while some linguists have described English gendered pronouns as connoting “sex,”⁴ they have largely done so in contrast to gendered pronouns used arbitrarily in contexts unrelated to human

³ Ayumi Miyazaki, *Japanese Junior High School Girls’ and Boys’ First-Person Pronoun Use and Their Social World*, in *Japanese Language, Gender, and Ideology: Cultural Models and Real People* 256, 256-262 (Shigeko Okamoto & Janet S. Shibamoto Smith eds., 2004).

⁴ See generally, e.g., Sally McConnell-Ginet, *Gender and Its Relation to Sex: The myth of ‘Natural’ Gender*, in *The Expression of Gender* 3 (Greville G. Corbett ed., 2014).

gender (for example, the use of gendered language for inanimate nouns in Romance languages, or the English convention that ships and countries receive feminine pronouns). Indeed, even scholars who previously described pronouns as marking “sex” now typically use them to refer to concepts like “gender identity” or “notional gender.” *See, e.g.,* McConnell-Ginet, *supra*, at 3. That makes sense because “biological sex” is far from the only input in selecting pronouns; “pronominal usage cannot be understood without considering sociocultural gender and the ideas about sex and sexuality current at a given time.” *Id.* at 6.

Study after study confirms that speakers attend to social context (including gender stereotypes), and not just physiological information, when deciding which gendered pronoun to apply. For example, one study showed participants photos of people playing rugby or dancing ballet (stereotypically masculine and feminine activities, respectively). *See generally* Speer, *supra*. In attributing gender based on those photos, participants were less certain about the gender of men dancing ballet or women playing rugby—despite an unambiguous male or female physiological presentation. *Id.* at 71-83. In another study, when children were shown stuffed animals dressed in stereotypically male or female

ways, they correspondingly referred to them to as “he” or “she.” Jennifer E. Arnold et al., *Children’s Use of Gender and Order-of-Mention During Pronoun Comprehension*, 22 *Language & Cognitive Processes* 527 (2007). Stuffed animals, of course, have no biological sex. And when participants in a third study were asked to assign a clearly male, clearly female, or ambiguous headshot to a passage about a person referred to as “he,” “she,” “they,” or “ze,” the results suggested rich social context, not a strict binary. Of one group shown unambiguous photos, nearly one in five made an unexpected choice (like selecting a masculine photo for someone referred to as “she” in the passage). Another group, shown a mix of clearly gendered and ambiguous photos, was much likelier to choose a gender-ambiguous headshot when the passage used “she.” Evan D. Bradley et al., *Singular ‘They’ and Novel Pronouns: Gender-Neutral, Nonbinary, or Both?*, 4 *Proc. of the Linguistic Soc’y of Am.* 36:1, 3-5 (2019). Those studies confirm that people do not, as the State assumes, use pronouns and honorifics as a truth claim about biological sex, but rather respond to a range of social and cultural cues.

Even as to “biological sex” (as opposed to gender identity), moreover, Florida’s statute tacitly acknowledges that traditional English

pronouns are insufficient to describe the full sweep of human sex expression. For example, the statute carves out exceptions for individuals born with sex-linked genetic conditions such as “XX or XY sex reversal” and “XY disorder of sex development.” Fla. Stat. § 1000.071(1); *see* Nat’l Library of Med., Nat’l Insts. of Health, *MedlinePlus, Androgen Insensitivity Syndrome*, <https://medlineplus.gov/genetics/condition/androgen-insensitivity-syndrome/> (last updated Apr. 1, 2024). These ad hoc exceptions betray the incoherence of the State’s central claim—that it is “false” to ascribe to a person a pronoun that does not correspond to their genetic “sex.” Why is it “false” for one person with XY chromosomes to refer to herself as “she,” but not another? The State gives no answer.⁵

With the basic tenets of language (and its real-world usage) cutting against the statute’s premise, Florida retreats to a selective and misleading recitation of dictionary definitions relating pronouns to sex. *See* State Br. 28. The State’s reliance on those dictionary definitions is

⁵ Indeed, the State’s brief states that “he” necessarily refers to “a person bearing an X and Y chromosome pair.” State Br. 28. But the statute itself refutes that contention, acknowledging that certain “XY” individuals—“disorder[ed],” in the State’s view—*can* permissibly ask students to refer to them as “she” (or any other pronoun) instead of “he.” Fla. Stat. § 1000.071(1).

flawed, for several reasons. To begin with, more up-to-date, comprehensive dictionaries than those Florida cites make clear that “he” and “she” need not relate exclusively to “biological sex.” *Cf. MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225-26 (1994) (criticizing reliance on “dictionary definitions contained in, or derived from, a single source”). So, for example, the gold-standard Oxford English Dictionary (2024) defines “he” and “she” by reference to both “sex” and “gender”—the latter defined as referring to a set of social and cultural traits, not biological ones. *See She*, *Oxford English Dictionary Online*, https://www.oed.com/dictionary/she_pron1?tab=meaning_and_use#23218774 (a “woman, *or* person of the female sex” (emphasis added)). It also explains that “she” is used for non-biologically female referents like the moon (def. I.2.a.iii), countries (def. I.2.a.iv), and so on. “He,” for its part, has historically functioned as a generic pronoun for people of any sex. *See, e.g.*, 1 U.S.C. § 1 (“words importing the masculine gender include the feminine as well”). The Oxford English Dictionary further lists “trans woman” among other derivations (like businesswoman) in its entry for “woman.” *Woman*, *Oxford English Dictionary Online*, <https://www.oed.c>

om/dictionary/woman_n?tab=compounds_and_derived_words&tl=true#14234972.

The State’s definitional analysis also assumes that “she” refers to “female,” and that “female,” in turn, refers exclusively to biological sex—*i.e.*, “the sex that can bear offspring or produce eggs.” State Br. 28. But while that is, of course, one definition of “female,” it is not the only one. Dictionaries *also* define “female” to include “having a *gender identity* that is the opposite of male.” *Female, Merriam Webster Dictionary Online*, <https://www.merriam-webster.com/dictionary/female> (emphasis added). The State’s cherry-picked definitions of “he/she” and “male/female” therefore do not reflect the full definitional scope of any of those terms.

Even Florida’s favored dictionaries make Ms. Wood’s point—at least when one considers text that the State elides. Florida cites the New Oxford American Dictionary for the definition of “female,” but omits the first two words of the first definition (“*of or* denoting the sex that can bear offspring or produce eggs”) and the entire second definition (“relating to or *characteristic of* women or female animals”). State Br. 28 (emphasis added). And, of course, the State skips right over the same dictionary’s definition of “misgender”: “[to] refer to (someone, especially a transgender

person) using a word, especially a pronoun or form of address, that does not correctly reflect the gender with which they identify.” *Misgender*, New Oxford American Dictionary (2015). The State is similarly selective in its quotation (*id.*) of the Random House Dictionary of the English Language, which uses the word “female” in the first definition of she and “woman” in the second—as well as “anything considered, as by personification, to be feminine” in the third. In short, the dictionary definitions selectively cited by the State do not reflect the real-world use of pronouns—and fail, on their own terms, to support the State’s contention that gendered pronouns refer exclusively to “biological sex.”

B. The State’s Professed Concern That Children Will Be Confused By Teachers’ Use Of Their Preferred Pronouns Is Misplaced

Florida also asserts an interest in stamping out “false” pronoun selection because, it says, children are likely to be confused by teachers’ use of their preferred pronouns. As Ms. Wood explains, however (Br. 49), there is no record evidence supporting that concern. Indeed, the linguistic literature demonstrates that, if anything, it is the State’s usage, not Ms. Wood’s, that would be confusing to students.

Children are highly adept at learning the languages that surround them, and children raised in many world languages may eventually learn dozens of pronouns, even without formal education on the topic. Children also learn hundreds of other ways to refer to particular people in their lives: by first name, by last name, by nickname, by title, and myriad combinations thereof. That much is common sense. And it is confirmed by literature suggesting that children come into contact with many names, including nicknames, and do not find them confusing. *See* Paul Bloom, *How Children Learn the Meanings of Words* 128-29 (2000). Ignoring that reality, the State marshals little more than a slip of the tongue in the proceedings below. Because Ms. Wood’s counsel momentarily used the pronoun “she” (not “they”) for Ms. Wood’s co-plaintiff during a hearing, Florida says, this pronoun business is simply too complicated for students to master. *See* State Br. 48-49.

But that gotcha moment makes Ms. Wood’s point, not the State’s. With experience comes understanding. Research shows that conversations about pronouns, and exposure to different pronoun uses, are associated with greater facility in comprehending and using transgender people’s pronouns. *See generally* Jennifer E. Arnold et al.,

My Pronouns Are They/Them: Talking About Pronouns Changes How Pronouns Are Understood, 28 *Psychonomic Bull. & Rev.* 1688 (2021). That is unsurprising, in the same way that saying a challenging surname becomes easier with practice. And in both cases, the effort—rewarded with facility—is a matter of basic respect for the referent. That respect is inseparable from the linguistic role of pronouns and titles. A lawyer in court (or student in class, for that matter) may just as easily inadvertently refer to a woman who prefers to go by “Ms.” as “Mrs.” But such a slip-up hardly suggests that the speaker is hopelessly confused about the socially determined meanings of those terms—let alone that clarifying the referent’s preferred title would lead to unending classroom “disruption.” State Br. 49.

Even assuming, *arguendo*, Florida’s unsupported premise that the use of too many unfamiliar pronouns could confuse children (State Br. 9-10), that concern simply isn’t present here; Ms. Wood, after all, uses the standard pronouns “she” and “her.” Nor is the State’s concern present in the overwhelming majority of similar cases in which transgender individuals use binary pronouns conforming to their gender identity—or even in most cases involving individuals preferring non-binary pronouns.

The vast majority of people who do not wish to be referred to as *he* or *she* are happy to be referred to as *they*.⁶ And singular “they” has been used for centuries for many reasons that have nothing to do with gender identity. Indeed, “they” has emerged as the most common pronoun for nonbinary people precisely because of its long history of being used in gender-neutral contexts. The extension from using “they” as a matter of convenience—for example, when the referent’s gender is unknown or irrelevant—to using “they” as a signifier of respect for the referent’s gender identity is driven by natural processes of language change. See Baron, *supra*, at 149, 153-54. And linguistic research has repeatedly shown that younger generations of English speakers already make wider use of singular *they*, suggesting that students may already be more adept with the pronoun than older adults. See Kirby Conrod, *Pronouns and gender in language* at 11-17, in *The Oxford Handbook of Language and Sexuality* (Rusty Barrett & Kira Hall eds., Oxford University Press 2020).

Ultimately, Florida’s “confusion” argument circles back to its unsupported assumption that pronouns make a specific truth claim about “biological sex.” See State Br. 48 (“the use of biologically incongruous

⁶ Baron, *supra*, at 127.

pronouns can confuse schoolchildren”). As explained above, that premise is incorrect—and thus does nothing to substantiate the State’s “confusion” argument. It simply does not follow that “a teacher using biologically incongruous pronouns can undermine the meaning of ‘sex’ that Florida has recognized in statute, as well as portions of Florida’s curriculum that address sex-based issues.” State Br. 48. There is no evidence that students understood Ms. Wood’s title and pronouns to be making a factual claim about her “biological” sex rather than her gender identity and presentation, and thus no basis to assume that those pronouns created any confusion about the issues reflected in the State’s “policy” or “curriculum.”

Indeed, it is only the State’s attempt to interfere with Ms. Wood’s clear social communication that is likely to confuse students. One would certainly expect confusion—not clarity—if a teacher who identifies as female, presents as female, and previously used feminine pronouns began referring to herself as “Mr.,” which the State regards as ‘factually accurate.’ “Teacher Wood”—another of the State’s preferred formulations—fares no better. Students are still forced to ignore the reality that Ms. Wood plainly identifies as female, while using an

awkward formulation not used for any other teacher. Indeed, Ms. Wood’s declaration below confirmed that her adoption of “Teacher Wood” resulted in just that sort of confusion. Wood Decl. ¶ 15, Dkt. 11-1 (“The title change took away from instructional time because it took many conversations during many periods over several days for my students to stop questioning me about it.”).

And because students are free under the statute to refer to Ms. Wood as “Ms.” (and many likely would do so, given her gender identity and presentation), the statute creates a disconnect between how Ms. Wood must refer to herself, on the one hand, and how many students and other third parties refer to her, on the other. *See id.* (“Although most students continue to call me Ms. Wood, others have switched to Teacher Wood.”). It is hard to see how any of that is simpler than allowing Ms. Wood to use the pronouns and title that correspond to her gender identity. From a linguistic perspective, this is a problem entirely of the State’s making.

* * *

In sum, the linguistics literature makes clear that the State’s purported interests in prohibiting “false” speech and avoiding student

“confusion” are not advanced by Section 1000.071’s ban on teachers’ use of preferred pronouns. Leaving aside Ms. Wood’s powerful free-speech interests under the *Pickering-Garcetti* balancing test, her use of feminine pronouns and honorifics simply does not constitute—and cannot be assumed to be understood as—a factual representation as to the “biological” sex she was assigned at birth. As a matter of linguistic scholarship and common understanding, they merely signify her gender identity and presentation, and as such there is no reason (or record evidence) to think they created any confusion for students, or that they will do so in the future. Florida’s purported justifications for forcing its viewpoint on its citizens are thus wholly illusory, and the Court should disregard them.

II. LINGUISTIC PRINCIPLES FURTHER CONFIRM THAT MS. WOOD’S USE OF HER PREFERRED PRONOUNS CONSTITUTES HER SPEECH ON A MATTER OF PROFOUND PUBLIC CONCERN

Pickering-Garcetti interest balancing applies if speech is private (not government) speech and on a matter of public concern. *Garcetti*, 547 U.S. at 421, 423. Well-established linguistic principles support the conclusion that Ms. Wood’s speech is her own speech—not Florida’s—and that it addresses a matter of deep public concern. Ms. Wood’s use of her

preferred pronouns and honorifics is a central part of her identity, situating her in her relevant social context and conveying the same kind of respect for her identity that other pronouns and honorifics routinely convey. And while that makes her speech in some sense very personal, it is also speech that addresses one of the most heated public debates of the day—recognition of, and respect for, transgender and non-binary people. Indeed, stating one’s own pronouns communicates a stance that pronouns should not be assumed based on “biological” sex but are rather a matter of self-definition—which is why it is a widely recommended way for non-transgender people to show their support for trans people’s pronouns. Lal Zimman, *Transgender Language Reform: Some Challenges and Strategies for Promoting Trans-Affirming, Gender-Inclusive Language*, 1 J. of Language & Discrimination 84, 95 (2017). Because Ms. Wood’s speech is private speech on this important matter of public concern, the *Pickering-Garcetti* balancing framework addressed above applies.

A. Ms. Wood’s Use Of Her Preferred Pronouns And Honorific Title Is Speech As A Citizen, Not Speech Pursuant To Her Government Duties

Chosen pronouns and titles go to a person’s core identity and do not owe their existence to a teacher’s government position. As discussed in Point I above, pronouns and honorific titles are tools to identify individuals *qua* individuals in their relevant social context; they are not part of academic curricula or a teacher’s extracurricular duties. They are selected by people, and used for people, as a matter of respect and social context. *See* McCready, *supra*, at 1. That is easy enough to understand in other contexts. To take one example, no one would think that a married teacher’s choice to go by “Ms.” rather than “Mrs.” was a part of the curriculum, or otherwise made pursuant to her government duties—let alone that such a teacher was misrepresenting something about her identity or marital status.⁷ By the same token, no one would think that an email from a state lawyer containing a common signature line listing

⁷ Nor would any student believe that a married teacher’s use of “Mrs.” was somehow a commentary by the government that a woman is defined by her marital status. *See generally* Ben Zimmer, *Ms.*, N.Y. Times Mag. (Oct. 23, 2009), <https://www.nytimes.com/2009/10/25/magazine/25FOB-onlanguage-t.html> (describing social significance and evolution of feminine honorifics).

their preferred pronouns as “he/him” constitutes a position by the government regarding the sender’s gender identity or sex assignment at birth. So too here.

Indeed, as the district court explained (at 26), “[t]aken to its extreme, Defendants’ argument permits the State to rename public school teachers”—which would discard much of the social context that informs a person’s choice of gendered forms of reference. It is no answer that “the State may regulate the speech of public school teachers within the scope of their employment to ensure, for example, that teachers convey truthful information to their students,” or that the State may suppress the use of preferred pronouns because “the teacher is communicating incorrect information to his students.” State Br. 29, 31. As explained above, gendered pronouns do not make a truth claim about their referents’ “biological sex,” and are not understood to do so. The State’s government-speech argument simply assumes the (wrong) premise.

B. Ms. Wood’s Use Of Her Preferred Pronouns And Title Address A Matter Of Public Concern

While Ms. Wood’s preferred pronouns and title are, of course, personal to her, her speech on the matter goes directly to core public

discourse. Indeed, her stifled desire to use the same pronouns in class that she uses in every other aspect of her life “concerns a struggle over the social control of language.” *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021). And the language at issue pertains to a “controversial subject[]”—namely, “gender identity,” a “sensitive political topic[]” of “profound value and concern to the public.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 913-14 (2018) (internal quotation marks omitted). Indeed, as the district court found and the State conceded, “the use of preferred pronouns and titles has produced a passionate political and social debate.” Order at 35, Dkt. 82 (quoting State Defs.’ Consol. Resp. in Opp’n to Plfs.’ Mots. for Prelim. Inj. at 9, Dkt. 60).

The fact that preferred-pronoun use is a matter of public concern is plain from the very statute that spurred this lawsuit—and to anyone who reads the news. That social import is recognized by leading linguistic scholars. *See, e.g.*, Dennis Baron, *What’s Your Pronoun?* 2-5, 17-18 (2020). And surely Florida would not seek to control teachers’ use of their preferred pronouns and titles in the classroom if it did not itself see the issue as an important social question. Nor would other authorities in

Florida and around the country commission task forces and promulgate rules on the issue if it were not a matter of public concern. *See Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 797-98 (11th Cir. 2022) (en banc) (discussing “Best Practices Guidelines,” developed after “a comprehensive review of LGBTQ issues affecting students,” that urge “School District personnel, upon request, [to] address students consistent with their gender identity pronouns”) (footnote omitted).

By publicly sharing her preferred title and pronouns with students, Ms. Wood has weighed in on that matter of public concern. In seeking to express its own views on the subject while stifling Ms. Wood and others who disagree, Florida violates the First Amendment.

CONCLUSION

The district court’s order should be affirmed.

Respectfully submitted.

Dated: July 31, 2024

/s/ Jeffrey S. Trachtman

Jeffrey S. Trachtman
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
jtrachtman@kramerlevin.com
Telephone: 212-715-9175

Daniel N. Lerman
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
dlerman@kramerlevin.com
Telephone: 202-775-4500

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface and type-style requirements of Rule 32 and contains 5,457 words.

/s/ Jeffrey S. Trachtman

CERTIFICATE OF SERVICE

I hereby certify that four copies of the foregoing brief were sent to the Clerk of Court, 56 Forsyth Street, N.W., Atlanta, GA 30303, and that the brief was electronically filed with the Court and served on all counsel of record via the CM/ECF system, on this 31st day of July, 2024.

/s/ Jeffrey S. Trachtman