

Self-Misgendering Mandates and the First Amendment Official Duty Doctrine

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ABSTRACT

*Across the federal government and a growing number of states, public employers are directing transgender, nonbinary, and gender-nonconforming employees to misgender themselves. Executive orders declaring a binary conception of sex to be federal policy have hardened into operational commands as agencies purge pronoun features from email platforms and personnel systems, while states have barred educators from sharing self-identifying pronouns in the classroom and stripped pronouns from public employees' email signature blocks. Although the First Amendment implications of rules governing how public employees address others are well represented in the scholarly literature, mandates compelling employees to misgender themselves have received comparatively little attention. The gap is consequential. In *Wood v. Florida Department of Education*, the Eleventh Circuit held that a transgender teacher's use of her own preferred title and pronouns in the classroom was speech "pursuant to" her official duties under *Garcetti v. Ceballos* and therefore categorically excluded from First Amendment protection.*

*This Article argues that Wood's formalist reasoning cannot be squared with *Kennedy v. Bremerton School District*, which requires a practical, context-sensitive inquiry into whether speech owes its existence to a public employee's job duties. Drawing on post-*Garcetti* precedent, linguistic scholarship on the identity-expressive function of pronoun self-designation, and emerging critiques of government-speech capture, the Article demonstrates that self-identification is not a task the government hires any employee to perform. It is instead a foundational act of personal identity expression that public employees carry with them into the workplace as private citizens. The Article then develops a doctrinal framework distinguishing addressee-oriented pronoun rules from self-misgendering mandates and shows why the latter constitute citizen speech subject to public-concern analysis and Pickering balancing rather than categorical exclusion under the official duty doctrine.*

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INTRODUCTION

While the First Amendment implications of gender-affirming and binary-based policies for third-party address are well-represented in the scholarly literature, mandates directing transgender, nonbinary, or gender-nonconforming government employees to misgender *themselves* have received comparatively little attention.¹ Self-misgendering mandates pose First Amendment problems distinct from those governing third-party address in that the former compel individuals to deny or elide a fundamental belief as to their *personal* identity. Further, while addressee-oriented policies may be more easily situated in certain cases within the scope of a given government employee's official duties, classifying self-identifying pronoun use as official-duty speech would effectively collapse the distinction between governmental speech and a public employee's right to speak as a citizen on matters of public concern.

Existing First Amendment scholarship on gender-pronoun mandates centers on addressee-oriented laws and policies involving public employees' use of pronouns to refer to, or address, third parties such as students or coworkers.² Addressee-oriented rules cut both ways along the political divide. On the one hand, gender-affirming laws or policies require public employees to use preferred pronouns consistent with the self-identified gender identity of third parties as a condition of employment, or interpret statutory protections against sex- or gender-identity-based discrimination to encompass civil liability for intentional and repeated misgendering.³ On the other, a growing number of states are advancing

¹ Emily Gold Waldman's article, which addresses self-misgendering mandates in the school-specific context and is discussed extensively in Part III.B, is a notable exception. *From Garcetti to Kennedy: Teachers, Coaches, and Free Speech at Public Schools*, 11 BELMONT L. REV. 239, 262-63 (2024) (arguing that, under *Kennedy*, unlike educators' use of others-addressing gender pronouns to refer to students, K-12 educators' use of self-identifying pronouns falls outside the delivery of the educational program and therefore constitutes citizen speech subject to the public-concern analysis and *Pickering* balancing).

² See, e.g., Caroline Mala Corbin, *When Teachers Misgender: The Free Speech Claims of Public School Teachers*, 1 J. FREE SPEECH L. 615, 636-38 (2022) (arguing that in-class choice of gender pronouns to address students is government speech under *Garcetti* and thus school districts may prohibit teachers' misgendering of students); Phillip Seaver-Hall, *School Pronouns and the Compelled-Speech Objection*, 75 MERCER L. REV. 579, 588-599 (2024) (contending that most K-12 compelled-speech arguments against gender-affirming pronoun policies fail both government-employee-speech and academic-freedom tests); see also generally Charles J. Russo, *Controversies over the Free Speech Rights of Educators to Avoid Using Pronouns Inconsistent with Their Religious Beliefs: "The Beginning of the End" or "the End of the Beginning?"*, 23 AVE MARIA L. REV. 145 (2025) (contending that others-addressing gender-affirming pronoun policies violate educators' First Amendment rights to free speech and free exercise).

³ See, e.g., U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-2024-1, ENFORCEMENT GUIDANCE ON HARASSMENT IN THE WORKPLACE § IV(B)(1) (Apr. 29, 2024) (providing that "[h]arassing conduct based on sexual orientation or gender identity includes . . . repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity . . ."); CAL. EDUC. CODE §§ 220, 220.3(a) (West 2025) (barring state-funded educational

binary-based rules for addressing third parties that prohibit public employees from using, or being required to use, others' preferred gender pronouns if inconsistent with an addressee's birth-assigned sex.⁴

The need for critical assessment of self-identifying pronoun mandates has only taken on more urgency since the advent of the second Trump administration. Taking their cues from President Trump's wide-ranging binary-sex directives,⁵ many federal and state agencies have moved aggressively to extend binary-based rules beyond K-12 educators to cover public sector employees generally.⁶ What is more, early state-level measures shielding employees from adverse employment actions or civil liability for misgendering *others* have, increasingly, been extended by governors' orders and agency directives to prohibit transgender, nonbinary, and gender-nonconforming employees from referring to *themselves* using their own self-identified pronouns.⁷

Some might dismiss self-misgendering mandates as having limited impact relative to other developments in the ever-widening gender-culture war, but that would be a mistake. Transgender people disproportionately work in public employment,⁸ no doubt at least in part due to the pervasive harassment and

institutions and programs from discriminating on the basis of sexual orientation, gender identity, or gender expression and providing that employees and contractors employed by public school districts and charter schools "shall not be required to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent"); N.Y.C. HUM. RTS. COMM'N, LEGAL ENFORCEMENT GUIDANCE ON DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR EXPRESSION 1–2, 5 (Feb. 15, 2019), <https://www.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf> [<https://perma.cc/QD5E-GDQK>] (recognizing "[i]ntentional or repeated refusal to use a person's name, pronouns, or title" as gender-identity discrimination).

⁴ See, e.g., TENN. CODE ANN. § 49-6-5102 (2025) (barring compelled use of gender-affirming pronouns in public K-12 schools, higher education, and state employment); FLA. STAT. § 1000.071(2)–(4) (2025) (barring school districts from requiring K-12 students or employees to use gender-affirming titles and pronouns and prohibiting K-12 employees and contractors from providing their preferred pronouns where inconsistent with biological sex); IDAHO CODE § 67-5909B (2025) (prohibiting adverse employment action against state employees for declining to identify their pronouns or address a person using a name or pronoun inconsistent with their sex and establishing private cause of action for injunctive relief, damages, and attorneys' fees); Montana Free to Speak Act, H.B. 400, 2025 Mont. Laws 275, 3 (H.B. 400) (to be codified at MONT. CODE ANN. § 49-1-1X3) (prohibiting disciplinary or other consequences against any state employee for declining to identify their own pronouns or refusing to address a person with a name, title, or pronoun inconsistent with the person's sex); WYO. STAT. ANN. § 9-14-601(a)-(b) (prohibiting the state and its political subdivisions from requiring "an employee to refer to another employee using that employee's preferred pronouns" as a condition of employment, contract, or other benefit, and establishing a civil remedy for individuals subjected to adverse action for refusing to use another employee's preferred pronouns to seek injunctive or declaratory relief).

⁵ See *infra* Part I.

⁶ See *infra* Part II.B.

⁷ See *infra* Part II.C.

⁸ See, e.g., CHRISTY MALLORY, WILLIAMS INST., IMPACT OF EXECUTIVE ORDER IMPOSING RESTRICTIONS ON TRANSGENDER STUDENTS IN K-12 SCHOOLS 3 (Feb. 2025),

discrimination transgender and nonbinary employees report experiencing in the private sector.⁹ Such mandates therefore threaten to further isolate transgender and nonbinary people from American life by driving them from the public-facing, public-sector employment that, for many, represents one of the few viable pathways to gainful employment.

The harms of these mandates are not merely economic. Public-health research documents that misgendering¹⁰ and deadnaming¹¹ correlates with anxiety, depressive symptoms, and heightened perceptions of anti-transgender stigma,¹² and that employment discrimination against transgender workers is associated with lower access to health care and adverse social determinants of health.¹³ Workplace-specific research shows that transgender employees already confront

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/DEI-Schools-EO-Feb-2025.pdf> [https://perma.cc/HB7P-TJZ5] (positing that 11% of transgender workers are employed in K-12 education); BRAD SEARS, ET AL., WILLIAMS INST., WORKPLACE EXPERIENCES OF LGBTQ PUBLIC SECTOR EMPLOYEES 11 (Jan. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Sector-Workplace-Jan-2025.pdf> [https://perma.cc/LSR6-9REP] (finding 9 percent of LGBTQ public sector employees identify as transgender or nonbinary); JODY L. HERMAN & ANDREW R. FLORES, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 6 (Aug. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Aug-2025.pdf> [https://perma.cc/2PRA-XBYD] (estimating there are over 2.1 million transgender adults in America).

⁹ See, e.g., BRAD SEARS, ET AL., WILLIAMS INST., WORKPLACE EXPERIENCES OF TRANSGENDER EMPLOYEES 26 (Nov. 2024), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Workplace-Discrimination-Nov-2024.pdf> [https://perma.cc/6V6Z-SH9A] (finding 82% of transgender employees reported “experiencing discrimination or harassment at work, including being fired, not hired, not promoted, or verbally, physically, or sexually harassed because of their sexual orientation or gender identity” at some point in their lives).

¹⁰ Jennifer Ervin, et al., *Gender Identity and Sexual Orientation: A Glossary*, 77 J. EPIDEMIOLOGY & COMMUNITY HEALTH 344, 346 (2023) (defining misgendering as “to relate to a person or use language (either intentionally or unintentionally) in a way that does not align with their affirmed gender”).

¹¹ *Id.* (defining a “dead name” as “the former name a person no longer uses (because it does not align with their current gender identity or lived experience).”).

¹² See, e.g., Kevin A. McLemore, *A Minority Stress Perspective on Transgender Individuals’ Experiences with Misgendering*, 3 STIGMA & HEALTH 53, 59 (2018); Kevin A. McLemore, *Experiences with Misgendering: Identity Misclassification of Transgender Spectrum Individuals*, 14 SELF & IDENTITY 51, 51 (2014). Among young people, the consequences are still more severe. One study found that transgender and nonbinary young people whose pronouns were respected reported lower rates of past-year suicide attempts than those whose pronouns were not respected (11% versus 17%), and after controlling for relevant factors, pronoun respect was associated with 31% lower odds of a past-year suicide attempt. THE TREVOR PROJECT, PRONOUN USAGE AND MENTAL HEALTH IMPACTS OF PRONOUN RESPECT IN TGNB YOUNG PEOPLE 1, 3 (2025), <https://storage.googleapis.com/trevor-web-public/2025/12/2d8ecf6e-pronoun-usage-and-mental-health-impacts-of-pronoun-respect-in-tgnb-young-people.pdf> [https://perma.cc/8MXN-8WWX].

¹³ See, e.g., Amy R. Baugher, et al., *Prevalence of Discrimination and the Association Between Employment Discrimination and Health Care Access and Use*, 73 MORBIDITY & MORTALITY WEEKLY REPORT SUPPL. 51, 54 (2024), <http://cdc.gov/mmwr/volumes/73/su/pdfs/su7301a6-H.pdf> [https://perma.cc/D7VW-WX6J] (finding transgender women’s experience of employment discrimination “associated with poor social determinants of health and lower health care access and use”).

disproportionate harassment, lower earnings, and a higher likelihood of concealing or delaying transition to avoid mistreatment, including quitting their jobs altogether.¹⁴ Further, while the existing literature focuses on the effects of being misgendered by others, the harm of compelled self-misgendering is, if anything, more acute, requiring individuals not merely to endure an external indignity but actively participate in the denial of their own identity. These data underscore that binary-sex pronoun policies do not merely threaten to rearrange workplace etiquette but would write the precarity transgender and non-binary workers already face into their public-sector job descriptions.

Self-misgendering mandates vary in scope, ranging from categorical statutory prohibitions to agency-level policies eliminating pronouns from official communications. However, they all share the same constitutional flaw in converting public employees' personal mode of self-reference into a regulated act of state service, subject to government control. What is more, regardless of the category of employee affected or the measure's exact scope, these directives confront litigants with the self-same obstacle to First Amendment claims—that is, the disqualifying threshold established by the U.S. Supreme Court in *Garcetti v. Ceballos* (2008), which held that government employee speech “pursuant to” official duties is categorically excluded from First Amendment protection.¹⁵

Some courts have interpreted *Garcetti* so broadly that any speech occurring in the workplace or related to job functions tends to be swept in.¹⁶ On that doctrinal

¹⁴ SEARS, ET AL., WORKPLACE EXPERIENCES OF TRANSGENDER EMPLOYEES, *supra* note 9, at 2 (noting transgender employees “are significantly more likely to report [adverse employment] experiences than cisgender LGBTQ employees.”); *see also* F.V. v. Barron, 286 F. Supp. 3d 1131, 1138 (D. Idaho 2018) (“More than seventy-five percent of transgender workers take steps to avoid ... mistreatment at work by hiding or delaying their gender transition, or by quitting their job.”).

¹⁵ *Garcetti v. Ceballos*, 547 U.S. 410, 421–22 (2006).

¹⁶ *See, e.g.*, Millspaugh v. Cobb Cnty. Fire & Emergency Servs., No. 22-10132, 2022 WL 17101337, at *23–26 (11th Cir. Nov. 22, 2022) (holding a firefighter's voicemail to a county commissioner's office expressing public safety concerns about firetrucks being out of service due to inadequate staffing was unprotected official-duty speech despite addressing a matter of public concern and bypassing his chain of command); Fernandez v. Sch. Bd. of Miami-Dade Cnty., 898 F.3d 1324, 1329–34 (11th Cir. 2018) (holding a public school principal and assistant principal spoke pursuant to their official duties when they campaigned to convert their school to charter status, because the effort was within their administrative responsibilities); Brown v. Chi. Bd. of Educ., 824 F.3d 713, 714–15 (7th Cir. 2016) (holding that a teacher's impromptu in-class lesson on the harms of racial epithets after discovering a student note containing lyrics with the n-word was speech pursuant to his official duties, and thus unprotected); Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 967 (9th Cir. 2011) (holding that a teacher's in-class display of patriotic banners containing phrases such as “In God We Trust” was speech pursuant to his official duties because the banners were hung pursuant to a district policy permitting teachers to decorate classrooms and reasoning that a teacher speaks as an employee and not a citizen whenever “speaking to his class in his classroom during class hours”); Weintraub v. Bd. of Educ. of City Sch. Dist. of City of N.Y., 593 F.3d 196, 203 (2d Cir. 2010) (holding that a teacher's union grievance protesting the administration's refusal to discipline a student who threw books at him because the grievance was based on the teacher's concern with “maintain[ing] classroom discipline,” which the court reasoned was “an indispensable prerequisite to effective teaching and classroom learning.”); Renken v. Gregory, 541

background, public employees, particularly those in public-facing roles, are especially vulnerable to self-identifying pronoun policies recast as straightforward government-speech regulation. Indeed, in the first U.S. Court of Appeals ruling on the subject, *Wood v. Florida Department of Education* (2025), the Eleventh Circuit took precisely that formalist path.¹⁷ Relying on an inappropriately expansive reading of the *Garcetti* official-duty test, the court upheld Florida's law mandating K-12 educators to self-misgender against the First Amendment challenge of a transgender high school teacher. The teacher's in-class introduction of her preferred pronouns—verbally, on her whiteboard and syllabus, and via a “she/her” pin—was, the court reasoned, “pursuant to” her duties under *Garcetti* and therefore unprotected.¹⁸

This Article reassesses the applicability of *Garcetti* to self-misgendering mandates in light of the practical inquiry the U.S. Supreme Court has modeled in post-*Garcetti* precedents. It concludes that self-identifying pronoun use falls squarely outside the scope of public employees' official duties, regardless of the form or context of gendered self-reference and no matter the nature of their duties. However, a limiting principle bears noting at the outset. This Article's argument that self-identifying pronoun usage falls outside *Garcetti*'s official-duty bar applies only to self-referential speech (i.e., how a public employee identifies herself) and not to addressee-oriented speech (i.e., how an employee refers to or addresses others). An employee's refusal to use a student's or coworker's preferred pronouns falls into the latter category. Because such refusals dictate the manner in which the employee performs the very communicative tasks she is hired to perform, they likely sit more comfortably within *Garcetti*'s scope-of-duty bar, as federal courts have held.¹⁹ The self/addressee distinction is thus both the foundation and the limiting principle of this Article's framework.

A properly disciplined application of *Garcetti* to self-misgendering mandates would fend off the worst consequences of *Wood*'s logic. First, if left unchallenged, *Wood* represents a ready-made template for governments to extend binary-sex pronoun mandates to every category of public employment and encompass all self-identifying pronoun use, regardless of its form (e.g., verbal, written) or context (e.g., verbal introductions, nameplates, email signatures), all

F.3d 769, 773–75 (7th Cir. 2008) (holding that a professor's complaints to administrators about the university's proposed use of federal grant funds were made pursuant to his official duties, because administering the grant as its principal investigator “fell within the teaching and service duties that he was employed to perform”).

¹⁷ See 142 F.4th 1286.

¹⁸ See *id.* at 1291–92.

¹⁹ Federal courts have largely treated K–12 teacher-to-student pronoun usage as conduct within the scope of official duties under *Garcetti*. See, e.g., *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 417–19 (4th Cir. 2026) (holding, 2-1, that a substitute teacher's classroom pronoun usage to address students fell within her official duties and rejecting her free-speech and free-exercise challenges to Montgomery County's Student Gender Identity Guidelines); *Kluge v. Brownsburg Cmty. Sch. Corp.*, 64 F.4th 861, 883–87 (7th Cir. 2023) (treating in-class use of student names and pronouns as part of teaching duties but resolving the dispute under Title VII's religious-accommodation framework rather than the First Amendment).

while insulating these policies from First Amendment challenge. Second, because the Eleventh Circuit's rationale in *Wood* contains no limiting principle tied to gender, the same logic could be extended to reach racial, religious, and other core identity markers.²⁰

To avoid this result, *Garcetti* must be recognized not as a broad license for compelled self-designation but the content- and context-sensitive practical inquiry modeled in *Kennedy* and *Lane*.²¹ Applying that practical inquiry to self-misgendering mandates yields the conclusion that public employees' First Amendment challenges survive the *Garcetti* threshold, even where such policies allow substitution of a neutral title (e.g., "Teacher X"), and even where such policies extend only to communications made by a government employee using an employer-provided communication platforms, as in the case of policies barring personal gender pronouns from being included in government employees' email signatures. And if self-identifying pronoun use clears the *Garcetti* threshold, the government can no longer categorically prohibit it but will instead be subject to public-concern analysis and *Pickering* balancing, under which it must prove a sufficiently weighty interest in the efficiency of public services or workplace operations to outweigh public employees' fundamental stake in defining the terms

²⁰ Public employers have increasingly restricted markers of core identity other than gender (e.g., ethnic and tribal affiliations, religious and political messages, identity-affiliated flags) in employees' email signatures and office displays, on the same premise the Eleventh Circuit embraced in *Wood* and that its reasoning would insulate from First Amendment challenge. See, e.g., S.D. SCH. OF MINES & TECH., *Email Brand Guidelines*, <https://brand.sdsmt.edu/applications/email/> [<https://perma.cc/5SBU-3WTS>] (last visited May 30, 2026) (interpreting and extending the South Dakota Board of Regents Communications and Branding Policy, which bars the "[i]nclusion of information . . . not listed," to prohibit "personal quotes, pronouns, tribal affiliations, micro-credentials, external organization membership, or non-university approved images" in "all forms of communications, including email correspondence."); UNIV. OF CENT. ARK., *E-mail Signature Guidelines*, <https://uca.edu/toolkit/e-mail-signature-guidelines/> [<https://perma.cc/9NDJ-36XW>] (last visited May 30, 2026) (providing that employee email signatures must "represent the university and the views of the university, not personal viewpoints," and barring "quotations . . . that are personal, political, religious, racist, jokes, or other viewpoints"); Memorandum from Douglas A. Collins, Sec'y of Veterans Affairs, Public Display or Depiction of Flags Throughout Department of Veterans Affairs Facilities (VIEWS 12780704) (Feb. 12, 2025), <https://department.va.gov/public-display-or-depiction-of-flags-throughout-va/> [<https://perma.cc/KV6S-CG49>] (instituting a policy barring flags, other than approved flags such as the American flag and the flags U.S. states and territories, from being publicly "display[ed] or depict[ed]" . . . by VA employees in all VA facilities, workplaces, buildings, common areas, and public areas, including . . . [i]ndividual offices [and] cubicles," and rescinding the agency's prior "Flying the Flag During Pride Month" memorandum).

²¹ See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 529 (2022) (explaining that official-duty analysis "is an inquiry this Court has said should be undertaken 'practical[ly]' rather than with a blinkered focus on the terms of some formal and capacious written job description") (quoting *Garcetti*, 547 U.S. at 424); *Lane v. Franks*, 573 U.S. 228, 239–40 (2014) (concluding "the Eleventh Circuit read *Garcetti* far too broadly" in holding a public employee lacked First Amendment protection where he learned of the subject matter pertaining to the testimony in question in the course of his employment, when in fact "[t]he critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties").

of their own identity. Self-misgendering mandates are unlikely to satisfy even that intermediate burden, for reasons explained in Part III.

Against this doctrinal and practical backdrop, the Article proceeds in three Parts. Part I surveys the current federal landscape, tracing the acceleration of gender-pronoun regulation by the executive branch since January 2025, including in the form of binary-sex pronoun funding and investigatory priorities as well as system-wide guidance aimed at regulating how federal employees identify themselves in official communications.

Part II turns to the states, first examining Florida’s “Don’t Say They” self-misgendering mandate before mapping categories of indirect addressee-oriented regimes, from school-specific parental notice requirements and misgendering shields to all-of-government frameworks, along with the spate of 2025 gubernatorial and agency directives extending binary-sex pronoun mandates to government communications platforms. These measures demonstrate a clear trend, shifting from narrow, classroom-focused addressee mandates to broad, identity-policing restrictions encompassing addressee-oriented and self-identifying pronoun use by state and local employees regardless of employment type.

On this background, Part III develops the Article’s doctrinal core. It situates *Garcetti* within the modern public-employee speech framework, reads *Lane*, *Kennedy*, and *Lindke* as requiring a practical, agency-inflected official-duty inquiry, and, drawing on linguistic and philosophical accounts of pronoun usage, argues that public employees’ pronoun self-designation is paradigmatic citizen speech rather than official-duty expression across K–12, higher education, and the broader public sector. Part III also critiques statutory and judicial efforts, including the Eleventh Circuit’s decision in *Wood v. Florida Department of Education* (2025), to manufacture “official duties” for identity speech by legislative fiat and by treating all on-the-job expression as government owned. Finally, Part III applies post-*Garcetti* precedents to self-misgendering mandates outside the K–12 educational context, concluding gendered self-reference falls squarely on the side of citizen speech regardless of the form or context and no matter the nature of the employee’s duties. Accordingly, courts weighing First Amendment challenges to self-misgendering mandates should conclude official-duty screening is inapposite and proceed to public-concern and *Pickering* balancing.

I. FROM THIRD-PARTY ADDRESS TO SELF-REFERENCE: THE RISE OF FEDERAL AND STATE PUBLIC-EMPLOYEE PRONOUN MANDATES

This Part traces the federal government’s rapid shift toward an integrated, binary-sex regulatory framework governing pronoun usage across the executive branch. It begins with Executive Order 14,168, which declares “biological truth” to be federal policy and directs agencies to reinterpret federal law accordingly. That statement of principle quickly hardened into operational control through OPM’s implementation memoranda, which required agencies to eliminate all recognition of self-identified pronouns from federal information systems, disable pronoun-

prompting features in email and collaboration platforms, and scrub existing pronoun fields from signatures and personnel profiles. These technical mandates, framed as matters of “data accuracy,” function in practice as compelled self-definition by reclassifying employees’ use of gender-affirming pronouns as conduct performed “in the scope” of federal service.²²

This Part also documents how the Trump administration exported this binary-based regime beyond civilian employment. Executive orders addressing military readiness and K–12 education, for example, attempted to extend the same definitional and linguistic controls to service members, teachers, and students, sometimes as federal funding conditions, and sometimes by conscripting state and local prosecutors into joint enforcement efforts. Finally, Part I examines the Trump administration’s remaking of the U.S. Equal Employment Opportunity Commission’s position on pronoun-related workplace harassment as a portent of broader efforts to reverse statutory and administrative recognition of gender-identity-based non-discrimination protections after *Bostock*. Critically, once the EEOC’s quorum was restored in October 2025, the Commission regained authority “to authorize certain types of litigation, issue and rescind regulations and guidance and formally set enforcement priorities under Title VII of the Civil Rights Act of 1964.”²³

Taken together, these federal measures exhibit a highly organized and effective effort to enshrine binary-sex definitions in federal and state agency operations and reframe employees’ gender-identifying pronouns as government speech subject to the state’s managerial control. What began with *Bostock* with the expansion of statutory non-discrimination protections to gender identity has thus, in a matter of months, been inverted into a regime of prohibition, mirroring the logic embraced by the Eleventh Circuit in *Wood* to uphold Florida’s K-12 employee self-identification mandate.

By reclassifying employees’ gender-affirming self-reference as conduct performed within the scope of government service, these federal measures lay the groundwork for the argument, accepted by the Eleventh Circuit in *Wood* and examined *infra* Part III, that self-identifying pronoun usage falls within *Garcetti*’s official-duty bar. Developing a doctrinal defense to that characterization is thus essential to preserving public employees’ ability to identify themselves on their own terms.

A. Institutionalizing Binary-Based Pronoun Usage in the Federal Workforce

On the first day of his second term in office, President Trump issued Executive Order 14,168, titled “Defending Women From Gender Ideology

²² See *infra* notes 29–31 and accompanying text (discussing OPM memoranda requiring agencies to eliminate pronoun-identification features from federal information systems).

²³ See David E. Schwartz, Emily D. Safko & Angela S. White, *EEOC Restored Quorum Marks Next Stage of Federal Enforcement*, N.Y. L.J., Dec. 4, 2025.

Extremism and Restoring Biological Truth to the Federal Government.”²⁴ The Gender Ideology Order declares it federal policy that “male” and “female” are the only recognized sexes, and that sex is “not changeable” but “grounded in fundamental and incontrovertible reality.”²⁵ The Order further directs executive agencies to interpret federal law and policy consistent with the Order’s binary-based definitional framework.²⁶ It also tasks the U.S. Attorney General, Secretary of Labor, and other agency leadership with prioritizing “investigations and litigation” to enforce the segregation of single-sex spaces and promote a binary view of sex.²⁷ And it specifically identified the EEOC’s 2024 *Enforcement Guidance on Harassment in the Workplace*, which had recognized repeated and intentional misgendering as sex-based harassment, for review and revision.²⁸

While certain of the Gender Ideology Order’s provisions could at first glance be read as merely symbolic language for certain corners of the federal workforce, the Order quickly hardened into an operational command as federal information systems were repurposed across agencies as tools for enforcing ideological conformity. This began when, a little over week after the Gender Ideology Order’s issuance, the U.S. Office of Personnel Management (“OPM”) disseminated a government-wide directive requiring all federal agencies to rescind or terminate all grants, programs, policies, or job positions that “inculcate or promote gender ideology.”²⁹

Importantly, the OPM memorandum further mandated exclusive use of binary sex-only references in all official documents, forms, and personnel systems, and directed agency heads to “[r]eview agency email systems such as Outlook and turn off features that prompt users for their pronouns.”³⁰ A subsequent OPM memorandum in July reiterated this policy, specifying that full compliance with the Gender Ideology Order required agencies to confirm they had successfully purged agency email and other communications platforms of pronoun features.³¹

Following the OPM directives, multiple agencies reportedly began systematically disabling pronoun fields in email clients and collaboration platforms

²⁴ Exec. Order No. 14,168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025), 90 Fed. Reg. 8615 (Jan. 30, 2025).

²⁵ *Id.* § 2, 90 Fed. Reg. at 8615.

²⁶ *Id.*

²⁷ *Id.* § 5, 90 Fed. Reg. at 8617.

²⁸ *Id.* § 7(c)(iv), 90 Fed. Reg. at 8617–8618.

²⁹ U.S. Off. of Personnel Management, *Memorandum: Initial Guidance Regarding President Trump’s Executive Order Defending Women* 1 (Jan. 29, 2025), <https://www.opm.gov/media/yv1h1r3i/opm-memo-initial-guidance-regarding-trump-executive-order-defending-women-1-29-2025-final.pdf> [https://perma.cc/XL8C-BMTX].

³⁰ *Id.*

³¹ Charles Ezell, Acting Director, U.S. Off. of Personnel Management, *Updated Guidance Regarding Executive Order 14,168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* 2 (July 10, 2025), <https://www.opm.gov/chcoc/transmittals/2025/Defending%20Women%20Guidance%20Memo%2007-10-2025.pdf> [https://perma.cc/H9B4-MH92].

such as Office 365, Teams, and Slack.³² Automated tools were also deployed to scrub existing pronouns from employees' email signatures and directory profiles.³³ As such, OPM's directive, while framed as a matter of "data accuracy," effectively censored the expression of self-identified gender by federal employees within official correspondence.

The White House has taken great pains to externalize this message as well, repurposing its communications staff to advertise its pronoun-repression policy by applying it to reporters, reflecting a broader governmental effort to delegitimize gender self-identification. For instance, in early April, White House Press Secretary Karoline Leavitt replied "[a]s a matter of policy, we do not respond to reporters with pronouns in their bios," to an email from a *New York Times* reporter inquiring about the potential closing of a famed climate research observatory.³⁴ A White House spokesperson later confirmed to *Axios* that it is the White House's official policy to ignore reporters whose emails contain gender pronouns in the signature,³⁵ and the White House released a statement to news outlets in which Leavitt reiterated the policy and stated "[a]ny reporter who chooses to put their preferred pronouns in their bio clearly does not care about biological reality or truth and therefore cannot be trusted to write an honest story."³⁶

Beyond civilian employment, the administration has rolled out similar measures across the executive branch. It is worth noting, however, that at least one agency reversed course after acknowledging its directive prohibiting pronoun identification contravened a congressional statute. In Executive Order 14,183, titled "Prioritizing Military Excellence and Readiness," the Trump administration attempted to justify the exclusion of transgender people from military service based in part on its contention that "shifting pronoun usage or use of pronouns that inaccurately reflect an individual's sex" is "inconsistent" with the U.S. military's "high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity."³⁷ Executive Order 14,183 further directed the U.S. Secretary of Defense to update medical standards for military appointment, enlistment, induction, and retention accordingly, and to "promptly issue directives

³² Dell Cameron, *Pronouns Are Being Forcibly Removed From Government Email Signatures*, WIRED, Feb. 3, 2025, <https://www.wired.com/story/pronouns-removed-government-email-signatures/> [https://perma.cc/P8GB-BHEK].

³³ *Id.*

³⁴ Michael M. Grynbaum, *Pronouns in Bio? You May Not Get a Response From the White House*, N.Y. TIMES, Apr. 8, 2025, <http://www.nytimes.com/2025/04/08/business/media/white-house-journalists-pronouns.html> [https://perma.cc/GH9H-HHZZ].

³⁵ Sareen Habeshian, *White House will Ignore Reporters with Gender Pronouns in Email Signature*, AXIOS, Apr. 9, 2025, <https://www.axios.com/2025/04/09/white-house-gender-pronouns-reporters>.

³⁶ Deepti Hajela, *Pronouns in Some Reporters' Email Signatures Get a Stony Response from Trump Administration*, ASSOCIATED PRESS, Apr. 10, 2025, <https://apnews.com/article/white-house-emails-pronouns-transgender-7cec13e2872bb07459bc3a630160577d> [https://perma.cc/6WN4-ABKL].

³⁷ Exec. Order No. 14,183, *Prioritizing Military Excellence and Readiness* § 2 (Jan. 27, 2025), 90 Fed. Reg. 8757, 8757 (Feb. 2, 2025).

... to end invented and identification-based pronoun usage.”³⁸

As a result, in February 2025 the U.S. Air Force issued a directive prohibiting airmen and civilian employees’ use of preferred pronouns in their email signatures and correspondence.³⁹ However, the Department of Defense reversed course, acknowledging that Congress barred such prohibitions by statute in a provision in the National Defense Authorization Act signed into law by former President Joe Biden in 2023, overriding the policy.⁴⁰ Specifically, the U.S. Code expressly provides that the Secretary of Defense “may *not* require or prohibit” pronoun identification in official correspondence, underscoring that many of the administration’s binary-based directives rest on executive fiat rather than legislative mandate.⁴¹ A Senate-reported version of the Fiscal Year 2026 National Defense Authorization Act would have repealed the above-referenced pronoun provision and eliminated various other statutory provisions involving diversity, equity, and inclusion programs at the U.S. Department of Defense, but that repeal was not included in the final version of the Act as enacted.⁴²

Despite the failed DOD repealer, OPM’s binary-based pronoun directives have been operationalized across other federal agencies and embedded into the information architecture of the federal workforce and beyond. What might have been read initially as a symbolic statement became, through technical implementation, a means of ensuring that even inadvertent or residual expressions of public employees’ gender identity were expunged across virtually every unit in the executive branch. Further, by conflating personal pronouns with official duties, the OPM directives preview the logic animating the Eleventh Circuit’s decision upholding Florida’s self-misgendering mandate in *Wood v. Florida Department of Education*. By embedding its pronoun-suppression policy directly into federal communication systems and broadcasting the policy through its treatment of the press, the executive branch reframed gendered self-identification as an act of state service subject to the state’s managerial control. What appears as technical compliance (e.g., turning off a pronoun prompt, deleting signature fields) functions as compelled self-definition by design.

³⁸ *Id.* § 4(a)–(b), 90 Fed. Reg. at 8757–58.

³⁹ Thomas Novelty, *Air Force Backtracks on Banning Personal Pronouns from Email Signatures*, MILITARY.COM, Apr. 4, 2025, 5:10 P.M. ET, <https://www.military.com/daily-news/2025/04/04/air-force-backtracks-banning-personal-pronouns-email-signatures.html> [<https://perma.cc/83XZ-PMZZ>].

⁴⁰ *Id.*

⁴¹ 10 U.S.C. § 986 (emphasis added).

⁴² National Defense Authorization Act for Fiscal Year 2026, S. 2296, 119th Cong. § 920(e) (as reported by S. Comm. on Armed Servs., July 15, 2025); *see also* National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60 (2025) (enacted without the proposed repeal of 10 U.S.C. § 986).

B. Gender Pronouns in Education as Ideological Battleground: Executive Order 14,190

The Trump administration's next overt gender-pronoun directive, Executive Order 14,190, titled "Ending Radical Indoctrination in K–12 Schooling," reaches beyond the federal workforce to extend the binary-based approach into state and local school systems.⁴³ The Order specifically conditions federal funding on schools' refusal to honor transgender or nonbinary students' preferred gender pronouns or facilitate "social transition" of minors.⁴⁴ Further, by defining "social transition" to include mere use of a student's preferred name or pronouns (even with a parent's written consent),⁴⁵ the K-12 Order equates mere linguistic recognition with unlawful "indoctrination," leveraging the federal funding stream to state education agencies to effectively nationalize school district policy on teachers' and students' speech.

A companion provision directs the U.S. Attorney General to coordinate enforcement with state and local prosecutors.⁴⁶ This is an unusual move that weaponizes federalism, multiplying educators' exposure to civil and criminal liability by pressing prosecutors in conservative-led states into the service of the federal bureaucracy's pronoun-suppression efforts. This intergovernmental enforcement structure creates a climate of uncertainty likely to chill teachers' speech and induce over-compliance with federal dictates, even where such compliance risks violation of other civil-rights laws requiring gender-affirming treatment of students. As the Williams Institute has warned, the K-12 Schooling

⁴³ Exec. Order No. 14,190, Ending Radical Indoctrination in K-12 Schooling (Jan. 29, 2025), 90 Fed. Reg. 8853 (Feb. 3, 2025). In yet another executive order, the Trump administration targeted schools with gender-affirming school athletics policies but without invoking pronoun usage, "social transition," or similar terminology. *See* Exec. Order No. 14,201, Keeping Men Out of Women's Sports §§ 1 & 3(a)(iii) (Feb. 5, 2025), 90 Fed. Reg. 9279, 9279 (Feb. 11, 2025) (directing federal agencies to withhold federal funds to educational programs that allow the participation of transgender women and girls in women's sports and to "oppose male competitive participation in women's sports more broadly, as a matter of safety, fairness, dignity, and truth"); *see also* § 3(a)(iii), 90 Fed. Reg. at 9279 (instructing the Secretary of Education to "prioritize Title IX enforcement actions against educational institutions" that require cisgender female students to "compete with or against or to appear unclothed before males").

⁴⁴ *Id.* § 3(b)(iii), 90 Fed. Reg. at 8854–55 (directing the U.S. Secretaries of Education, Defense, and Health and Human Services, in consultation with the U.S. Attorney General, to "prevent or rescind Federal funds . . . from being used . . . to directly or indirectly support or subsidize the social transition of a minor student, including through school staff or teachers or through deliberately concealing the minor's social transition from the minor's parents").

⁴⁵ *Id.* § (2)(e), 90 Fed. Reg. at 8854 (defining "social transition" as "the process of adopting a 'gender identity' or 'gender marker' that differs from a person's sex," including by "modifying a person's name (e.g., 'Jane' to 'James') or pronouns (e.g., 'him' to 'her')" as well as "calling a child 'nonbinary.'").

⁴⁶ *Id.* § 3(c)(iii), 90 Fed. Reg. at 8855 (directing the U.S. Attorney General to "coordinate with State attorneys general and local district attorneys in their efforts to enforce the law and file appropriate actions against K-12 teachers and school officials who violate the law by . . . unlawfully facilitating the social transition of a minor student.").

Order's threat of federal enforcement actions "will likely create confusion and uncertainty for schools, individual teachers, and staff," given that "[i]f schools choose to comply with the order out of fear of legal action or loss of federal funding," they risk "increased litigation against the schools under other federal and state laws" requiring gender-affirming approaches.⁴⁷

Executive Order 14,187 extends the K-12 Schooling Order's logic to healthcare settings, directing federal agencies to terminate support for "the so-called [medical] 'transition' of a child from one sex to another," and declares the federal government "will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures."⁴⁸ In so doing, the Order effectively reframes medically accepted treatment as moral deviance and signals the administration's intent to reorient federal biomedical policy toward linguistic and ideological conformity and away from scientific consensus.

While each Order's primary targets are medical or curricular rather than linguistic, their definitional provisions reinforce the same premise underlying the OPM directives, specifically that gender self-identification by government employees and federally funded actors is a regulable incident of public service rather than an exercise of personal expression. This integrated approach, linking pronoun regulation, curricular control, and medical-care restrictions through a sign set of binary-sex-definitions, demonstrates that the Trump administration's executive orders and corresponding state-level measures are not isolated policy choices but represent a coordinated effort to subject gender identity to governmental control across every domain of public employment.

C. Dismantling the Gender-Pronoun Jurisprudence of the U.S. Equal Employment Opportunity Commission

The above directives coincided with a significant shift in the enforcement priorities of the U.S. Equal Employment Opportunity Commission ("EEOC") under the second Trump administration that threatens to reverse prior agency precedents, including those interpreting Title VII's protection to extend to repeated and intentional misgendering.

The Commission first held that discrimination against transgender

⁴⁷ CHRISTY MALLORY, WILLIAMS INST., IMPACT OF EXECUTIVE ORDER IMPOSING RESTRICTIONS ON TRANSGENDER STUDENTS IN K-12 SCHOOLS 7 (Feb. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/DEI-Schools-EO-Feb-2025.pdf> [<https://perma.cc/9N2C-5ZT5>].

⁴⁸ Exec. Order No. 14,187, Protecting Children From Chemical and Surgical Mutilation § 1 (Jan. 28, 2025), 90 Fed. Reg. 8771, 8771 (Feb. 3, 2025). The Order redefines gender-affirming medical care as "chemical and surgical mutilation," encompassing not only surgical procedures but puberty blockers and hormones, *id.* § 2(c); directs the withholding of federal research and education funds to medical institutions providing gender-affirming medical care to youth under nineteen, *id.* § 4; and directs the U.S. Attorney General to prioritize investigations and prosecutions "to end deception of consumers, fraud, and violations of the Food, Drug, and Cosmetic Act" with respect to puberty blockers, hormones, and surgical treatments for transgender youth, *id.* § 8(c).

employees is cognizable under Title VII in 2012,⁴⁹ and in subsequent decisions deepened that protection. For instance, in *Jameson v. U.S. Postal Service* (2013), the EEOC recognized that intentional misuse of an employee's preferred name and pronouns may rise to the level of sex-based discrimination or harassment.⁵⁰ Later, in *Complainant v. Department of Veterans Affairs* (2014), the Commission held a government employer's refusal to change a transgender employee's personnel records to reflect his new name and gender for over a year, together with hostility directed at him due to his transition, was severe or pervasive enough to create a sex-based hostile environment.⁵¹ The EEOC extended this reasoning in *Lusardi v. Department of the Army* (2015) to hold that a government agency's restrictions on a transgender woman's ability to use a common women's restroom facility constituted disparate treatment based on sex and that, together with hostile remarks including intentional misgendering, contributed to a sex-based hostile work environment.⁵²

These rulings culminated during the Biden administration with the Commission's issuance, in April 2024, of updated harassment guidance recognizing that repeated and intentional misgendering constitutes a form of sex-based harassment prohibited by Title VII.⁵³ Meanwhile, other federal agencies had already embraced the position as a matter of workplace policy.⁵⁴ However, the EEOC's updated guidance drew opposition foreshadowing the wave of binary-sex mandates to come, with EEOC Commissioner Andrea Lucas publishing a dissenting statement at the time decrying the 2024 guidance as "effectively eliminat[ing] single-sex workplace facilities and imping[ing] on women's . . . rights to freedom of speech and belief."⁵⁵

⁴⁹ *Macy v. Holder*, No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012) (holding discrimination claims based on transgender status cognizable under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination because of sex).

⁵⁰ *Jameson v. U.S. Postal Serv.*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013).

⁵¹ *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014).

⁵² *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Apr. 1, 2015).

⁵³ U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-2024-1, ENFORCEMENT GUIDANCE ON HARASSMENT IN THE WORKPLACE § IV(B)(1) (Apr. 29, 2024), *vacated by* *Texas v. Equal Empl. Opportunity Comm'n*, No. 2:24-CV-173-Z, 2025 WL 1414332, at *21–22 (N.D. Tex. May 15, 2025) (vacating EEOC's 2024 enforcement guidance classifying misgendering and denial of bathroom access as sex-based discrimination under Title VII, holding it "contravenes Title VII's plain text by expanding the scope of 'sex' beyond the biological binary: male and female" and "misread[s]" *Bostock*).

⁵⁴ *See, e.g.*, Nat'l Insts. Health Sexual & Gender Minority Rsch. Off., *Gender Pronouns in the Workplace Resource Gender Pronouns & Their Use in Workplace Communications 1* (last updated Jan. 2022), <https://drive.google.com/file/d/1QQuOldDFIta0X99JWyGRN5i7bevUiykf/view> [<https://perma.cc/FLM2-KDYF>] ("Intentional refusal to use someone's correct pronouns is equivalent to harassment and a violation of one's civil rights.").

⁵⁵ U.S. Equal Emp. Opportunity Comm'n, *Dissenting Statement of Commissioner Andrea R.*

Just under nine months later, Lucas was named Acting Chair by President Trump, and Lucas declared her intent to radically reposition the EEOC with respect to gender-identity protections.⁵⁶ While conceding her inability to rescind the 2024 Harassment Guidance at the time given the absence of a quorum, Lucas announced on January 28, 2025 that removing “gender ideology” from the Commission’s operations would be a lead priority in compliance, investigations, and litigation, with the aim of “defend[ing] the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work.”⁵⁷ That pronouncement, contemporaneous with the OPM directives discussed above, also announced the agency’s purge of nonbinary gender markers from discrimination charge forms and removal of the EEOC’s internal pronoun-selection app,⁵⁸ a feature that allowed employees to display their gender pronouns in Outlook emails and Microsoft Teams, which a transgender former EEOC employee who led the development and implementation of the app described as “providing a simple but effective safeguard against misgendering transgender and nonbinary employees.”⁵⁹

Shortly thereafter, in February, the EEOC dropped seven pending lawsuits alleging discrimination against transgender or nonbinary employees.⁶⁰ By April, the agency had instructed staff to code all new gender-identity discrimination charges as meritless, and only in July, after sustained criticism from lawmakers, advocacy groups, and some EEOC field offices, did the EEOC’s Director of the Office of Field Programs authorize the processing of a narrow class of gender-

Lucas re: EEOC Enforcement Guidance on Harassment in the Workplace (Apr. 29, 2024), https://www.eeoc.gov/sites/default/files/2025-01/Lucas_Statement_re_Harassment_Guidance_%284.2024%29.pdf.

⁵⁶ U.S. Equal Emp. Opportunity Comm’n, Press Release, President Appoints Andrea R. Lucas EEOC Acting Chair (Jan. 21, 2025), <https://www.eeoc.gov/newsroom/president-appoints-andrea-r-lucas-eeoc-acting-chair>.

⁵⁷ U.S. Equal Emp. Opportunity Comm’n, Press Release, Removing Gender Ideology and Restoring the EEOC’s Role of Protecting Women in the Workplace (Jan. 28, 2025), <https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace>.

For most of 2025, the EEOC operated without the three-member quorum required to authorize systemic or pattern-or-practice litigation, promulgate or rescind enforcement guidance, or formally set enforcement priorities, though it continued investigation and mediation of individual charges. Schwartz, Safko & White, *supra* note 23. The Senate’s October 2025 confirmation of a third commissioner restored the Commission’s full decisional authority under Title VII, reactivating enforcement powers unavailable during the quorum lapse. *Id.*

⁵⁸ *Id.*

⁵⁹ Marc Seawright, Formal Complaint of Discrimination, EEOC Complaint No. 2025-0023, at 4 (June 13, 2025), *available at* https://katzbanks.com/wp-content/uploads/250613-Seawright-No.-2025-0023-Formal-Complaint-Remedies-and-Exhibits_Redacted.pdf [https://perma.cc/XG9T-R3QJ].

⁶⁰ Claire Savage, *EEOC Instructs Staff to Sideline All New Transgender Discrimination Cases, Employees Say*, AP NEWS, Apr. 18, 2025, <https://apnews.com/article/transgender-discrimination-gender-civil-rights-88def3b2a735f09cb79d37fc1125b095> [https://perma.cc/DTX6-DTU7].

identity complaints limited to hiring, firing, or promotion.⁶¹ Even so, the unpublished agency directive reportedly leaves unclarified whether gender-identity claims alleging harassment or retaliation remain eligible. Moreover, even claims falling within the parameters of hiring, firing, or promotion are to be subjected to heightened review by senior attorney advisors, with final approval resting with Acting Chair Andrea Lucas.⁶² This represents a stark departure from prior enforcement practices, leaving unclear to what extent if any harassment or retaliation claims based on gender identity remain viable before the Commission.⁶³

After the U.S. Senate restored the Commission's quorum in October 2025, the EEOC regained its capacity to formalize a new Title VII enforcement posture consistent with the Trump administration's anti-"gender ideology" priorities.⁶⁴ The EEOC formally rescinded the 2024 Harassment Guidance in its entirety by a 2-1 vote in January 2026,⁶⁵ and in February issued a 2-1 decision in *Selena S. v. Driscoll* disregarding *Lusardi* and finding that "Title VII permits a federal agency employer to maintain single-sex bathrooms and similar intimate spaces. And it permits a federal agency employer to exclude employees, including trans-identifying employees, from opposite-sex facilities."⁶⁶ A month later, the EEOC upheld an OPM policy permitting insurers to limit gender-affirming care from health insurance coverage for federal workers against a Title VII and Rehabilitation Act challenge by transgender federal employees.⁶⁷

The EEOC's retrenchment completes the transformation of federal-workforce pronoun policy. Having initially recognized that persistent misgendering could constitute a form of sex-based harassment under Title VII, the Commission has recast recognition as ideological excess and dignitary harm into an act of disloyalty to "biological reality." The practical effect is a regime in which the federal government no longer enforces statutory prohibitions against gender-identity-based harassment but instead polices the very expressions that once gave rise to such claims. This inversion of Title VII's shield into a sword mirrors the broader shift in binary-based jurisdictions to shackle public employees' personal-identity speech into their "official duties." As with the OPM directives, the EEOC's new enforcement posture anticipates the logic of *Wood*, in which the Eleventh Circuit treated a public-school teacher's in-class pronoun self-identification as

⁶¹ Julian Mark, *EEOC to Consider Some Transgender Discrimination Cases after Months-Long Pause*, WASH. POST, July 10, 2025, <https://www.washingtonpost.com/business/2025/07/10/eec-transgender-discrimination/> [<https://perma.cc/V3ZE-G8NS>].

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Schwartz, Safko & White, *supra* note 23.

⁶⁵ U.S. Equal Emp. Opportunity Comm'n, Press Release, EEOC Commission Votes to Rescind 2024 Harassment Guidance (Jan. 23, 2026), <https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance>.

⁶⁶ *Selina S. v. Driscoll*, No. 2025003976, at *3, 5–6 (EEOC Feb. 26, 2016), <http://eeoc.gov/sites/default/files/2026-02/2025003976.pdf>.

⁶⁷ *Sam T. v. Off. of Pers. Mgmt.*, EEOC Appeal Nos. 0120172750, 0120172751, 2020000643 & 2021005019 (EEOC Mar. 24, 2026), https://www.eeoc.gov/sites/default/files/2026-03/0120172750%200120172751%202020000643%202021005019%20decision_Redacted_0.pdf.

speech “pursuant to” her official duties under *Garcetti*.⁶⁸ Like *Wood*, the EEOC’s repositioning treats compelled conformity as a pre-condition of public-facing employment. Should that framework be extended to the broad federal workforce, it would strip First Amendment protection from virtually any act of gendered self-reference by a government employee.

D. The Coming Federalization of Gendered-Pronoun Expression?

These executive measures and policy reversals mark a profound transformation in the federal government’s relationship to gendered expression in the workforce. The steady expansion of sex-based non-discrimination principles to gender identity to public employees that began with *Bostock* has, in a few short years, devolved into the weaponization of the administrative state to compel ideological conformity and reclassify gender-affirming pronoun usage as government speech subject to state supervision. Across domains, including education, health care, military service, and even press relations, President Trump’s return to the Oval Office marks the transformation of public-employees’ use of gender-affirming pronouns into an act capable of *violating* federal policy, rather than a matter of complying with statutory non-discrimination provisions or mere professional courtesy. By recharacterizing public employees’ use of gender-affirming pronouns as a violation of federal policy, the Trump administration has extended the reach of government employment to the core of employees’ individual identity.

Moreover, legislation introduced in Congress would extend the range of binary-sex speech policies in the federal workforce still further. For instance, the Safeguarding Honest Speech Act, introduced in the U.S. Senate in March of 2025, would if enacted prohibit the use of federal funds to require federal employees or contractors to use “another person’s preferred pronouns if they are incompatible with such person’s sex” or “a name other than a person’s legal name when referring to such person.”⁶⁹ The legislation would also create a private right of action for employees or contractors to bring civil suits against federal agencies or departments responsible for violations and recover injunctive relief, monetary damages, and attorneys’ fees.⁷⁰

There is also proposed legislation that would, if enacted, amend Title VII of the Civil Rights Act to extend binary-sex speech protections to the private sector. The Restoring Biological Truth to the Workplace Act, introduced in both the House and Senate in the summer of 2025, would amend Title VII by creating a new protected basis prohibiting employers from taking adverse action against employees for “covered expression” that “describes, asserts, or reinforces the

⁶⁸ See *Wood v. Fla. Dep’t of Educ.*, 142 F.4th 1286, 1291–92 (11th Cir. 2025).

⁶⁹ Safeguarding Honest Speech Act, S. 839, 119th Cong. § 2(a) (2025).

⁷⁰ *Id.* § 2(b).

binary or biological nature of sex,” including through use of gendered pronouns.⁷¹ The bill defines “covered expression” broadly to encompass expression “inside or outside of a workplace, through means including speech, writing, or a depiction, or owning or using an item that contains speech, writing, or a depiction, and includes the use of pronouns,” thereby extending statutory protection to a wide range of sex-essentialist expression.⁷² It further bars employers from penalizing employees for requesting or using single-sex restrooms or similar facilities corresponding to their sex.⁷³

Finally, in a marked departure from the usual structure of Title VII claims, the Act would foreclose employers from asserting job-relatedness or business necessity as a defense to any claim brought under the new provision.⁷⁴ Additionally, the bill expands Title VII’s retaliation clause to include retaliation based on expression asserting the binary or biological nature of sex.⁷⁵ Taken together, the proposal would significantly broaden Title VII’s substantive scope by conferring a federal right to engage in biologically binary sex expression free from employer regulation.⁷⁶

Neither bill has advanced beyond committee referral as of this writing. Perhaps intended more to signal political alignment with the Trump administration than to reach the floor in the 119th Congress, the significance of these bills lies less in their enactment prospects than their demonstration of some federal officials’ desire to codify binary-sex pronoun mandates across an ever-expanding range of employment, including public, federally funded, and even private sector employment.

Taken together, these federal actions represent a more centralized and ideologically uniform approach to restricting self-identifying pronouns than the state-level measures examined *infra* Part II. By embedding binary-only definitions into the interpretive frameworks of *all* federal executive agencies, Executive Order 14,168 and the OPM directive essentially preempt agency discretion in choosing whether to adopt inclusive pronoun policies. Moreover, the EEOC’s retreat from recognizing misgendering as harassment, and its heightened review and narrowing of gender-identity claims, signals a departure from prior federal policy and the positions still held by several federal courts of appeals. The unmistakable trend is toward the complete prohibition of transgender and non-binary government employees from using personal gender pronouns for self-reference while also curtailing these employees’ existing remedies for repeated and intentional misgendering.

⁷¹ Restoring Biological Truth to the Workplace Act, H.R. 4554 / S.2037, 119th Cong. § 2 (2025).

⁷² *Id.*

⁷³ *Id.* (protecting an employee who “requests or uses a single-sex area that is a bathroom, changing area, or other area where physical privacy is desirable”).

⁷⁴ *Id.*

⁷⁵ *Id.* § 3.

⁷⁶ *See id.* §§ 2–3.

II. STATE-LEVEL BINARY-SEX PRONOUN POLICIES AND THE EMERGING SHIFT
TOWARD SELF-MISGENDERING MANDATES

What began with Florida's trendsetting Parental Rights in Education Act of 2022 (known as the "Don't Say Gill" Bill by its critics), which initially targeted only "[c]lassroom instruction" on sexual orientation and gender identity,⁷⁷ quickly expanded to target public-school pronoun policies. After Florida enacted a raft of pronoun-related provisions in 2023 barring school districts from requiring K-12 public school employees and students to use preferred gender pronouns when addressing or referring to transgender or non-binary persons, other states swiftly followed suit with similar legislation focused on K-12 school employees.

This section traces the emerging shift in state-level pronoun policies from largely defensive legislation aimed at shielding K-12 public school employees from legal consequences for misgendering to aggressive regulatory efforts to police transgender and non-binary employees' own self-description. Amidst the rapidly diversifying landscape of state and local binary-sex pronoun measures, Florida remains the only state to have enacted a direct prohibition on employees' use of gender pronouns for self-identification. By contrast, most state pronoun legislation to date focuses on insulating public employees from discipline for misgendering coworkers and students. Even within that subset, states differ markedly in scope, operative phrasing, and enforcement design. However, beginning with the flood of federal-level binary-sex pronoun measures released upon President Trump's inauguration to a second term in January 2025, an ever-increasing number of state bills, gubernatorial directives, and agency-level policies have moved to affirmatively bar transgender and non-binary public employees from using preferred pronouns for *self*-reference. The unmistakable trend is toward the further expansion of self-misgendering mandates across the public sector, barring *any* government employee in *any* role from using self-referential pronouns that diverge from sex assigned at birth.

As documented in the Introduction, empirical evidence links misgendering to significant psychological harm. These findings underscore the practical stakes of the indirect mandates discussed below. Even where a statute does not explicitly bar gender-affirming self-reference, the cumulative regulatory pressure can produce the same self-censoring effect, and, correspondingly, the same harm. This Part maps how states have begun to operationalize those conditions in law, trending toward enshrining binary self-reference as the default condition of public employment.

⁷⁷ 2022 Fla. Sess. Law Serv. (H.B. 1557) (codified at FLA. STAT. § 1001.42(8)(c)(3) (2025)). For discussion of later amendments to the Florida 2022 curriculum ban and its interrelationship with Florida's self-misgendering mandate, see *infra* Part II.A.

A. Direct Restrictions on Self-Reference: Florida's "Don't Say They" Bill and Self-Misgendering Mandate

The first self-misgendering mandate was adopted by Florida in May 2023, squarely prohibiting K–12 employees and contractors from providing students their personal title or pronouns where “not correspond[ing] to his or her sex.”⁷⁸ Signed by Governor Ron DeSantis as part of the “Let Kids Be Kids” bill package, DeSantis boasted at the time of his signature: “As the world goes mad, Florida represents a refuge of sanity and a citadel of normalcy.”⁷⁹ Among other pronoun-specific provisions contained in H.B. 1069, the law barred all K-12 public or charter school employees, when acting “within the scope of their employment duties,”⁸⁰ from “provid[ing] 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.”⁸¹ H.B. 1069 further authorized the Florida Board of Education to adopt rules to administer and enforce the bill’s provisions,⁸² and in August 2023 the Board duly amended Florida’s Principles of Professional Conduct for the Education Profession with a final rule subjecting educators to revocation or suspension of their teaching certificates, along with any “other penalties as provided by law,” for violations.⁸³

Florida’s self-misgendering mandate is but one of several pronoun-related provisions ushered in by H.B. 1069, a bill whose myriad restrictions on gender-pronoun usage led its critics to call it the “Don’t Say They” law.⁸⁴ For instance, on top of the self-misgendering mandate, the law declared Florida’s established “policy” to be “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

⁷⁸ 2023 Fla. Sess. Law Serv. Ch. 2023-105 (H.B. 1069), *codified at* FLA. STAT. § 1000.071(3) (2025).

⁷⁹ Fla. Governor’s Off., Press Release, Gov. Ron DeSantis Signs Sweeping Legislation to Protect the Innocence of Florida’s Children (May 17, 2023), <https://www.flgov.com/eog/news/press/2023/governor-ron-desantis-signs-sweeping-legislation-protect-innocence-floridas> [<https://perma.cc/Q3FM-938D>].

⁸⁰ 2023 Fla. Sess. Law Serv. Ch. 2023-245 (H.B. 5101), *codified at* FLA. STAT. § 1000.071(6) (2025) (limiting the scope of H.B. 1069).

⁸¹ 2023 Fla. Sess. Law Serv. Ch. 2023-105 (H.B. 1069), *codified at* FLA. STAT. § 1000.071(3) (2025).

⁸² FLA. STAT. § 1000.071(5) (2025).

⁸³ FLA. ADMIN. CODE ANN. r. 6A-10.081(2)(a)(14) (2025); *see also* Eesha Pendharkar, *Florida Board of Education Restricts Bathroom Access and Pronoun Use for Trans Students*, EDUCATION WEEK, July 21, 2023, <https://www.edweek.org/leadership/florida-board-of-education-restricts-bathroom-access-and-pronoun-use-for-trans-students/2023/07> [<https://perma.cc/6TW4-6P4G>] (noting Florida’s Department of Education failed to clarify “whether parents can request that teachers honor their children’s pronouns when they differ from their sex assigned at birth.”).

⁸⁴ *See* NAT’L EDUC. ASSOC., WHAT YOU NEED TO KNOW ABOUT FLORIDA’S “DON’T SAY GAY” AND “DON’T SAY THEY” LAWS, BOOKS BANS, AND OTHER CURRICULA RESTRICTIONS 2 (2023), https://www.nea.org/sites/default/files/2023-06/30424-know-your-rights_web_v4.pdf [<https://perma.cc/YE8N-JYA5>].

sex.”⁸⁵ Additionally, the bill erected two addressee-oriented pronoun shields: First, the law prohibited school districts from requiring a K-12 student “provide his or her preferred personal title or pronouns or be penalized or subjected to adverse or discriminatory treatment for not providing [them].”⁸⁶ Second, the law barred school districts from requiring K-12 teachers or students to “refer to another person using that person’s preferred personal title or pronouns if such personal title or pronouns do not correspond to that person’s sex.”⁸⁷

Florida’s self-misgendering mandate and the larger “Don’t Say They” measure of which it is a part are the culmination of Florida’s trendsetting Parental Rights in Education Act of 2022 (known as the “Don’t Say Gay” Bill by its critics). That earlier package, which barred “[c]lassroom instruction” on sexual orientation and gender identity primarily for students in kindergarten through the third grade,⁸⁸ led to the proliferation of similar measures in other states.⁸⁹ However, not to be outdone, the Florida legislature later extended the ban through the eighth grade,⁹⁰ and in February 2023 the Florida Department of Education adopted a final rule extending the ban through grade twelve.⁹¹

Notably, Florida’s self-misgendering mandate has fared better in the federal courts⁹² than its restrictions on classroom instruction, increasing the likelihood of a

⁸⁵ FLA. STAT. § 1000.071(1) (2025); *see also* FLA. STAT. § 1001.21(7) (2025) (defining “sex” as “the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.”).

⁸⁶ *Id.* § 1000.071(4),

⁸⁷ *Id.* § 1000.071(2).

⁸⁸ Parental Rights in Education Act, ch. 2022-022, § 1(8)(c)(3), 2022 Fla. Laws 248 (codified at FLA. STAT. § 1001.42 (2025)) (“Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”).

⁸⁹ *See* Caroline Mala Corbin, *The Government Speech Doctrine Ate My Class: First Amendment Capture and Curriculum Bans*, 76 STAN. L. REV. 1473, 1479–83 (2024) (describing state-level curriculum bans modeled on Florida’s “Don’t Say Gay” and Stop W.O.K.E. Act that excise certain subjects and viewpoints on sexual orientation, gender identity, and race from the public-school curriculum).

⁹⁰ *See* 2023 Fla. Sess. Law Serv. ch. 2023-105, *codified at* FLA. STAT. § 1001.42(8)(c)(3) (2025) (“Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in prekindergarten through grade 8, except when required [by abstinence, HIV/AIDS, and STD instruction]. If such instruction is provided in grades 9 through 12, the instruction must be age-appropriate or developmentally appropriate for students in accordance with state standards.”).

⁹¹ FLA. ADMIN. CODE ANN. R. 6A-10.081(2)(a)(6)–(7) (2025) (prohibiting teachers from “intentionally provid[ing] classroom instruction to students in grades 9 through 12 on sexual orientation or gender identity unless such instruction is either expressly required by state academic standards . . . or is part of a reproductive health course or health lesson for which a student’s parent has the option to have his or her student not attend.”).

⁹² *See* Wood v. Fla. Dep’t of Educ., 142 F.4th 1286 (11th Cir. 2025) (reversing preliminary injunction against Florida’s self-misgendering mandate for public school K-12 employees on First Amendment grounds); *cf.* Wood v. Fla. Dep’t of Educ., 729 F. Supp. 3d 1255 (N.D. Fla. 2024) (granting preliminary injunction on First Amendment grounds).

fresh wave of copy-cat self-misgendering measures in other states given Florida's success in defending its self-misgendering mandate in the courtroom. For instance, with respect to its classroom-instruction ban, after a constitutional challenge to the classroom-instruction ban was initially dismissed for lack of Article III standing, plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit, but the appeal was dismissed in 2024 when Florida reached a settlement agreeing to certain limiting interpretations.⁹³ Among other concessions, Florida stipulated that the statute "restricts only *teaching* on the topics of sexual orientation and gender identity in a classroom setting," not "mere discussion of them," and that the statute in no way reaches classroom "debate" or student-to-student discussion.⁹⁴

In settling the case, Florida stipulated that teachers are not prohibited by the Don't Say Gay Bill's curriculum ban from "refer[ring] to *themselves* and their spouse (and their own children)."⁹⁵ But this settlement provision offers no protection to transgender employees, because it leaves untouched Florida's statute requiring that all pronoun usage conform to birth-assigned sex, such that a transgender employee's use of gender-affirming pronouns to refer to herself remains prohibited even in the context of discussing her own family. The carve-out thus reinforces rather than mitigates the disproportionate impact of Florida's anti-"woke" policies on transgender, gender-nonconforming, and nonbinary K-12 public employees.

The settlement's narrow carveouts are less likely to signal retrenchment than recalibration, as Florida's legislature appears primed to generalize the binary-sex pronoun framework beyond schools and into public employment, at least with respect to others-addressing pronoun usage. On December 3, 2025, the Freedom of Conscience in the Workplace Act was introduced in the Florida legislature, proposing to extend a binary-sex others-addressing pronoun framework across public employment more generally, declaring as state policy that sex is "immutable" and that pronouns inconsistent with sex are "false," while barring state and local employers from compelling employees or contractors to use an addressee's preferred pronouns inconsistent with sex, and likewise preventing employees from requiring their employer to use the employee's preferred pronouns inconsistent with sex.⁹⁶ The proposal would have also restricted public-employer job forms to male/female designations and created enforceable protections with administrative and civil remedies and prevailing-party attorneys' fees for

⁹³ *M.A. v. Fla. State Bd. of Educ.*, No. 4:22-CV-134-AW-MJF, 2023 WL 2631071, at *1 (N.D. Fla. Feb. 15, 2023), *appeal dismissed sub nom. Armstrong ex rel. v. Fla. State Bd. of Educ.*, No. 23-10866-GG, 2024 WL 1348273 (11th Cir. Mar. 22, 2024).

⁹⁴ Settlement Agreement, *Armstrong ex rel. M.A. v. Fla. State Bd. of Educ.*, No. 23-10866 (11th Cir. Mar. 20, 2024), ECF No. 57-2, at 3 (emphasis added).

⁹⁵ *Id.* at 5 (emphasis added); *see also generally* Catherine Jean Archibald, *Still Problematic, Even Post-Settlement: Florida's "Don't Say Gay" Law and the Federal Constitution*, 28 CHAP. L. REV. 1 (2024) (arguing that, despite the limiting interpretations negotiated in the settlement, the law and its progeny are violative of the First Amendment Free Speech and Establishment Clauses as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment).

⁹⁶ Fla. H.B. 641, § 2, 2026 Reg. Sess. (Fla. 2026) (proposing FLA. STAT. § 110.1051(2)–(6)).

employees who face adverse action based on “religious, moral, conscience-based, or biology-based” objections to “gender ideology.”⁹⁷

While such others-addressing regimes have been adopted in other states as discussed *infra* Part II.B, with respect to self-misgendering mandates, Florida’s “Don’t Say They” provision is unique as the first and most direct provision explicitly conditioning continued public employment on an employee’s willingness to describe their own gender in state-approved terms. The next subsection situates that mandate within a broader, rapidly developing architecture of “indirect” pronoun rules including others-addressing regulations, private enforcement devices, and notice-and-consent requirements the combined effect of which is to render gender-affirming self-reference untenable, creating what amounts to compelled self-misgendering through regulatory accumulation.

B. Indirect Constraints: Addressee-Oriented Rules, Private Rights of Action, and Notice-and-Consent Requirements

A growing number of state pronoun statutes regulate gendered language through “others-addressing” rules governing how government employees may refer to students, coworkers, or members of the public. What began with Florida’s 2023 “Don’t Say They” legislation targeted to the K-12 context has rapidly expanded into broader public-sector regimes, with states adopting addressee-oriented protections through various combinations of parental-consent mandates, notice requirements, liability shields, and private rights of action, each of which indirectly pressure public employees to suppress gender-affirming usage and, in practice, avoid pronoun discourse altogether.

The following discussion catalogs addressee-oriented pronoun restrictions adopted by states since 2023, starting with narrower school-specific regimes and progressing to the all-of-government frameworks, like Tennessee’s, that increasingly extend pronoun mandates to public employees across the full apparatus of state governance. Each of these regulatory mechanisms bears on the doctrinal question taken up in Part III, in that by recasting employees’ gender-affirming usage as conduct subject to institutional correction rather than personal expression, they supply the factual predicate for the argument that pronoun self-designation falls within *Garcetti*’s official-duty bar.

1. School-Specific Consent, Notice, and Liability Shields

Arkansas’ 2023 “Given Name Act” requires written parental consent before public K-12 and higher education employees may use a minor student’s pronouns inconsistent with biological sex or a name other than that on the student’s birth certificate, but shields such employees from adverse employment actions for declining to address a student with their preferred name and pronouns despite a

⁹⁷ *Id.*

parent's consent.⁹⁸ The same year, following the Arkansas' blueprint, Montana prohibited compelling any person to use pronouns that do not align with a child's sex, even with written parental consent.⁹⁹

Not all school-specific regimes rely on parental-consent mechanisms, however. Some states achieve comparable regulatory pressure through liability shields and anti-discipline provisions alone, demonstrating the range of tools available to construct an environment hostile to transgender, nonbinary, and gender-nonconforming government employees. For instance, West Virginia's variation protects others-addressing binary-sex-based pronoun usage in K–12 schools while omitting the parental-consent and private-enforcement mechanisms seen elsewhere.¹⁰⁰ Specifically, the statute provides that county board and public charter school employees may not be required to use a student's preferred pronouns and immunizes school employees from civil liability or adverse employment action for misgendering.¹⁰¹ School entities are likewise protected from civil liability for employees' use of binary-sex pronouns.¹⁰² Further, although the West Virginia measure purports to preserve existing rights under the West Virginia Human Rights Act,¹⁰³ the statute offers no avenue for students or parents to enforce gender-affirming usage and does not regulate employee self-identification. As a result, West Virginia's approach represents a narrow but potent school-specific regime, privileging misgendering while precluding schools from adopting gender-inclusive pronoun practices.

In contrast, Louisiana's Given Name Act of 2024 bears more directly on the self-reference question at the heart of this Article. Unlike the Arkansas and West Virginia models, which regulate how employees address others, Louisiana's Act includes unique inquiry-prohibition and corrective-action provisions.¹⁰⁴ Specifically, the Act prohibits public-school governing authorities from adopting a policy that "provides for an inquiry" into an employee's or student's pronouns or preferred name where inconsistent with the person's biological sex or legal name or a derivative.¹⁰⁵ The Louisiana law extends this one-directional regime across all categories of public and charter school employment, defining covered employees to include "any individual working in any capacity ... including but not limited to teachers and other school employees, school bus operators, extracurricular

⁹⁸ Act 542, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (codified at ARK. CODE § 6-1-108).

⁹⁹ S.B. 518, 68th Leg., Reg. Sess. (Mont. 2023) (codified at MONT. CODE § 40-6-703(1)(f)).

¹⁰⁰ W. Va. S.B. 474, Acts 2025, c. 151, Reg. Sess. (codified at W. VA. CODE ANN. § 18-5-30) (enacted as § 18-5-29 by S.B. 474 but compiled at § 18-5-30 following the same-session enactment of a separate § 18-5-29 by S.B. 154).

¹⁰¹ *Id.* § 18-5-30(b)(1)–(3).

¹⁰² *Id.* § 18-5-30(c).

¹⁰³ *Id.* § 18-5-30(e).

¹⁰⁴ Given Name Act, Act No. 680, § 3(B)(1)–(2), 2024 La. Acts (codified at LA. REV. STATS. §§ 17:2122 & 3996(B)(82)); *see also id.* § 3996(B)(82) (incorporating the pronoun provisions as a non-waivable requirement for charter schools).

¹⁰⁵ LA. REV. STATS. § 17:2122(B)(1)–(2)).

personnel, and independent contractors.”¹⁰⁶ Further, if an employee uses gender-affirming names or pronouns for a minor student, the Louisiana Act empowers parents to demand the principal take “corrective action” to ensure the student is addressed according to the student’s biological sex and legal name, as well as statutory remedies should the principal or any employee intentionally refuses to take corrective action.¹⁰⁷ Remedies for refusal are expansive: Any employee, parent, or student who has reached the age of majority may bring a private civil action for injunctive relief, monetary damages, reasonable attorneys’ fees and costs, and “any other appropriate relief.”¹⁰⁸

Louisiana’s enforcement regime represents one end of the regulatory spectrum. At the other end, several states have adopted more limited provisions that nonetheless contribute to the broader architecture of pronoun regulation by signaling institutional disapproval of gender-affirming usage even in the absence of robust enforcement mechanisms. For instance, North Carolina,¹⁰⁹ Indiana,¹¹⁰ and Iowa¹¹¹ have all adopted statutes requiring parental *notice* for any name or pronoun changes requested by K-12 students but not enacted legislation containing carve-outs for objectors. Similarly, in 2023 the Kentucky legislature enacted, over the veto of Governor Andy Beshear, a bill barring local school districts from requiring school personnel or students to use students’ preferred pronouns without overriding local districts’ preferred-name requirements.¹¹²

Still other states have imposed conditions on funding and programs for institutions of public higher education related to pronoun policies or curricular matters. Oklahoma bars state colleges and universities from using state funds or other resources to “[m]andate any person to disclose his or her pronouns,”¹¹³ and Mississippi bans its public colleges and universities from “[m]aintain[ing] any programs, including academic programs or courses, or offices that promote or

¹⁰⁶ *Id.* § 17:2122(C)(1)(a)–(b); *see also id.* § 17:2122(A)(1). Students enjoy similar protections, in that they may not be disciplined for declining to use someone else’s gender-affirming name or pronoun or for declining to identify their own pronouns. *Id.* § 17:2122(C)(1)(c).

¹⁰⁷ *Id.* § 17:2122(C)(2).

¹⁰⁸ *Id.* § 17:2122(D)(1)–(2).

¹⁰⁹ S.B. 49, 2023–24 Sess., S.L. 2023-106 (N.C. 2023) (codified at N.C. GEN. STAT. § 115C-76.45(a)(5)).

¹¹⁰ House Enrolled Act No. 1608, 123d Gen. Assemb., 1st Reg. Sess. (Ind. 2023) (P.L. 248-2023) (codified at IND. CODE § 20-33-7.5(2)).

¹¹¹ S.F. 496, 90th Gen. Assemb., Reg. Sess. § 14 (Iowa 2023) (codified at IOWA CODE § 279.78).

¹¹² 2023 Ky. Acts Ch. 132, § 1(5)(b)–(c) (Ky. 2023) (codified at KY. REV. STAT. § 158.191); *see also* Gov. Andy Beshear, *Veto Message from the Governor of the Commonwealth of Kentucky Regarding Senate Bill 150 of the 2023 Regular Session*, Mar. 24, 2023, <https://apps.legislature.ky.gov/record/23rs/sb150/veto.pdf> [https://perma.cc/KUG3-EK7U] (justifying veto of pronoun provisions given the bill “turns educators and administrators into investigators that must listen in on student conversations and then knock on doors to confront and question parents and families about how students behave and/or refer to themselves or others”).

¹¹³ Okla. S.B. 796, 59th Leg., 1st Reg. Sess. (2025) § 1(A)(6) (codified at OKLA. STATS. 3251(A)(6)).

endorse ... concepts promoting ... gender-neutral pronouns[.]”¹¹⁴

The trajectory of failed bills in this space is also instructive, both because some foreshadowed measures later enacted elsewhere and because they reveal the escalatory spiral in state-level attempts to recast pronoun usage as regulable employee conduct. An Oklahoma bill introduced in 2025 that died in committee would have prohibited school personnel from *asking* a student to address *them* with pronouns inconsistent with the staffer’s biological sex absent written parental consent.¹¹⁵ Meanwhile, a 2025 Arizona bill would have combined parental consent requirements with explicit protections for employees refusing to use others’ preferred pronouns on the basis of “religious or moral convictions” but was vetoed by Arizona’s governor.¹¹⁶ And, in Alabama, a failed 2025 bill sought to prohibit the display of pride flags or other insignias relating to sexual orientation and gender identity and bar teachers and all other K-12 public school employees from intentionally addressing a student using pronouns inconsistent with the student’s biological sex, even when parental consent had been obtained.¹¹⁷ However, defeated bills in some states presaged successful variations in others. Some proposals have sought to legislate pronoun restrictions for all government employees. For the past three years, for instance, a bill proposing to prohibit all government workplaces and state-funded nonprofits from requiring the use of pronouns inconsistent with biological sex has been introduced in the Florida legislature but ultimately failed to pass each session.¹¹⁸ What has yet to succeed in Florida, however, has found increasing purchase in the jurisdictions described in Parts II.B.2 and II.B.3 below.

Taken together, inquiry prohibitions, one-way speech shields, parent-triggered corrective-action mechanisms, and private rights of action operate to suppress gender-affirming pronoun usage by public school employees. Even without an express ban on self-reference, these measures hold out the threat of formal parental complaints, corrective-action procedures, employer discipline, and monetary liability to deter school personnel from using gender-affirming identifiers. Meanwhile, no school employee may be penalized for refusal. In this way, even addressee-oriented binary-sex pronoun policies function as a systemic deterrent to transgender, nonbinary, and gender-nonconforming individuals

¹¹⁴ Miss. Laws 2025, Ch. 491 (H.B. No. 1193), § 3(f) (enacted Apr. 17, 2025) (codified at Miss. CODE ANN. § 37-191-5(f)). *But see* Jackson Fedn. of Teachers v. Fitch, 799 F. Supp. 3d 571, 586–88 (S.D. Miss. 2025) (granting statewide preliminary injunction against certain sections of Mississippi’s law on First Amendment and vagueness grounds).

¹¹⁵ Okla. H.B. 1361, 60th Leg., 1st Reg. Sess. (2025) § 1(B)(1) (providing that “[s]chool personnel shall not: . . . [a]sk a student to address them by a pronoun or alternate name that is inconsistent with the school personnel’s biological sex without written permission from the student’s parent or legal guardian”).

¹¹⁶ S.B. 1002, 57th Leg., 1st Reg. Sess. (Ariz. 2025).

¹¹⁷ Ala. H.B. 244 & H.B. 246, 2025 Reg. Sess.

¹¹⁸ Fla. H.B. 1495 & S.B. 440, 2025 Reg. Sess.; *see also* James Fatora, THEM, Mar. 31. 2025, *Florida’s New “Don’t Say Gay or Trans” Bill Would Encourage Workplace Misgendering*, <https://www.them.us/story/florida-dont-say-gay-trans-bill-workplace-misgendering> [<https://perma.cc/E2AK-PKSM>].

employed in K-12 school settings. These school-centered regimes have also paved the way for the ever-broadening statewide frameworks including those that extend to pronoun self-reference, and, in doing so, furnish a regulatory background for the argument, critiqued *infra* Part III, that public employees' self-reference is an incident of their official duties.

2. Template Others-Addressing Statutes: Idaho, Wyoming, and Montana

Idaho's 2024 "Compulsory Gender Language" law assembled the basic components now being replicated in other states: a statewide prohibition on compelled use of preferred pronouns, a ban on requiring employees to identify their own pronouns, a broad definition of covered "government employees" reaching every sector of public employment, and a private right of action authorizing damages, fees, and injunctive relief.¹¹⁹ These laws set the trajectory for the 2025 wave of "Free to Speak," "Biological-Sex Language," and "Parental Rights" bills in Montana and other states, as well as Tennessee's all-of-government expansion discussed below, several of which share near-identical text, suggesting the circulation of model legislation designed to regulate pronouns in government workplaces and public schools.

Idaho's Compulsory Gender Language enactment is particularly sweeping in that it defines covered "government employee[s]" to include all personnel across state agencies, counties, municipalities, public universities, community colleges, school districts, special districts, and other political subdivisions.¹²⁰ Within this all-embracing definition, Idaho bars adverse action against any employee who refuses to identify their own pronouns or who declines to use a name, title, or pronoun for another person that is inconsistent with that person's legal name or sex "*regardless of the scope of [the] employee's official duties.*"¹²¹ Idaho further reinforces these others-addressing shields with an expansive private right of action authorizing injunctive relief, damages, attorney's fees, and other remedies against any public employer or educational institution that violates the statute.¹²²

For employees in Idaho's public schools and public higher-education institutions, the statute goes further still. It prohibits teachers and professors from using a minor student's chosen name, title, or pronouns without written parental consent, even as it immunizes them from discipline for refusing to use the student's preferred identifiers.¹²³ This dual structure of affirmatively restricting gender-affirming usage while protecting refusals illustrates a regulatory design aimed not merely at insulating misgendering from consequence, but at discouraging public employees' participation in gender-affirming practices altogether.

¹¹⁹ See Compulsory Gender Language, 2024 Idaho Sess. Laws 314 (H.B. 538) (codified at IDAHO CODE § 67-5909B (2025)).

¹²⁰ IDAHO CODE § 67-5909B(1)(a).

¹²¹ *Id.* § 67-5909B(2) (emphasis added).

¹²² *Id.* § 67-5909B(5).

¹²³ *Id.* § 67-5909B(3).

Wyoming's 2025 enactment resembles the framework of the Idaho law but is somewhat narrower and more targeted.¹²⁴ Like Idaho, Wyoming prohibits the state and its political subdivisions from requiring any employee to use a coworker's preferred pronouns as a condition of employment, contracting, or receipt of any employment-related benefit.¹²⁵ But Wyoming's law is limited to intra-employee interactions and does not extend to employee-student or employee-customer relationships. Equally important, unlike Idaho's damages-and-fees regime, Wyoming pairs its prohibition with a more modest enforcement mechanism, authorizing only declaratory and injunctive relief for individuals subjected to adverse action for declining to use a coworker's preferred pronouns.¹²⁶

Montana's Free to Speak Act of 2025 exemplifies the trend toward broad, biologically framed misgendering protections grounded in addressee-oriented speech.¹²⁷ The statute defines covered employees to include all persons employed or contracted by state agencies, local governments, public universities, community colleges, school districts, special districts, and other political subdivisions.¹²⁸ Within that capacious definition, it bars adverse action against any public employee who declines to identify their own pronouns or who refuses to address another person by a name, title, or pronoun inconsistent with that person's legal name or biological sex, "*regardless* of the scope of the employee's official duties."¹²⁹ It further bars the state and its political subdivisions from "penaliz[ing] or tak[ing] an adverse action against" any non-employee "person[s]" on the same bases.¹³⁰ Montana's law then layers on an expansive private right of action, authorizing injunctive relief, damages, attorneys' fees, and "any other appropriate relief" against public employers and public schools that violate these provisions within a two-year limitations period.¹³¹ The result is a statewide "biological-sex pronoun" shield that simultaneously immunizes misgendering and invites litigation against agencies that attempt to enforce inclusive practices.

The incremental expansion of binary-sex pronoun statutes outside the school-specific context modeled by Idaho, Wyoming, and Montana set the stage for the integrated all-of-government approach adopted by Tennessee in 2025, when the state extended a school-specific 2023 measure to state and local employees statewide. This all-of-government approach, described in more detail below, brings to bear the full range of regulatory mechanisms experimented with by other states to enforce gender conforming expression across its entire workforce.

¹²⁴ 2025 Wyo. Sess. Laws 62 (codified at WYO. STAT. ANN. § 9-14-601(a)–(b)).

¹²⁵ WYO. STAT. ANN. § 9-14-601(a).

¹²⁶ *Id.* § 9-14-601(b).

¹²⁷ *See* Montana Free to Speak Act, H.B. 400, Laws 2025, ch. 275 (eff. May 1, 2025) (to be codified at MONT. CODE ANN. § 49-1-1X3).

¹²⁸ Montana Free to Speak Act, §§ 2(1) & 2(7).

¹²⁹ *Id.* § 3(2) (emphasis added).

¹³⁰ *Id.* § 3(3).

¹³¹ *Id.* § 4.

3. Toward All-of-Government Binary-Sex Pronoun Frameworks

Tennessee’s all-of-government framework expands the scope of binary-sex pronoun policies still further.¹³² Liability shields, anti-discipline provisions, and mandatory annual notice requirements reinforce the law’s overarching design as a comprehensive, biologically fixed pronoun regime intended to prevent the adoption or enforcement of gender-inclusive practices across state government. After declaring that “the use of names and pronouns ... is a matter of free speech or expression” and that no individual “should ever be compelled to affirm a belief with which [they] disagree,” the law outlines a unified framework of pronoun-use protections and prohibitions for K–12 public schools, institutions of higher education, and state employees.¹³³

Tennessee’s law is perhaps most notable for extending others-addressing rules beyond K-12 schools and squarely into state-agency employment, an expansion enacted in 2025, explicitly situating state-employee pronoun usage as a matter of protected First Amendment expression. The preamble of the statute governing state employees and contractors begins by pronouncing that employees “do not shed their constitutional rights to freedom of speech and expression while at work,” and that the use of names and pronouns in state employment is itself a form of protected speech.¹³⁴ It further announces state employees or contractors “should never be compelled to affirm a belief” with which they disagree, in language plainly alluding to compelled-speech doctrine.¹³⁵

To serve these purported interests, Tennessee’s law prohibits compelling any state employee or contractor to use a preferred name or pronoun inconsistent with the individual’s legal name or birth sex¹³⁶ or requiring an employee or contractor to provide their own pronouns.¹³⁷ The law also shields state personnel from both civil liability and adverse employment consequences for deadnaming and misgendering,¹³⁸ as well as declining to use another’s preferred identifiers.¹³⁹ It further provides that neither the state nor its agencies are civilly liable when employees misgender others.¹⁴⁰ To ensure compliance, each state board, commission, department, agency, and state contractor must issue an annual

¹³² 2023 Tenn. Pub. Acts 448, § 1 (S.B. 466) (codified at TENN. CODE ANN. § 49-6-5102 (2026)); *see also* 2025 Tenn. Pub. Acts 453, § 1 (S.B. 937) (codified at TENN. CODE ANN. § 8-50-121 (2026)) (extending provisions to all state employees and contractors as well as students and contractors of public schools).

¹³³ TENN. CODE ANN. § 49-6-5102(a)(3)–(4) (2026); *see also* TENN. CODE ANN. § 8-50-121(a)(3)–(4) (2026)).

¹³⁴ 2025 Tenn. Pub. Acts 453, § 3(a)(1), (3) (S.B. 937).

¹³⁵ *Id.* § 3(a)(4).

¹³⁶ *Id.* § 3(b)(1)(A)–(B).

¹³⁷ *Id.* § 3(d).

¹³⁸ *Id.* §§ 3(b)(2)(A)–(B) (barring civil liability) & 3(b)(3)(A)–(B) (barring adverse employment consequences).

¹³⁹ *Id.*

¹⁴⁰ *Id.* § 3(c)(1)–(2).

standalone notice informing their employees of the statutory prohibition on compelled disclosure.¹⁴¹

Collectively, these provisions make Tennessee's all-employee pronoun regime arguably the most comprehensive others-addressing pronoun legislation in the country. The statute not only prohibits compelled gender-affirming speech in state workplaces but converts misgendering and refusal to identify one's own pronouns into legally protected conduct, reinforced by civil and disciplinary immunity provisions and mandatory annual notices.¹⁴² In effect, Tennessee's approach places the state's entire government workforce within a biologically fixed pronoun framework designed to prevent the adoption or enforcement of gender-inclusive naming and pronoun practices. And while invoking the First Amendment prohibition on compelled speech as its lodestar, the statute nowhere extends the same solicitude to transgender or non-binary employees' self-referential speech, pointedly omitting protection for those who seek to identify themselves using gender-affirming pronouns.¹⁴³ This asymmetry is constitutionally telling, revealing that biological-sex pronoun mandates are designed not merely to protect religious or conscience-based objections but to construct a one-directional speech regime in which binary-sex conformity is privileged while gender-affirming self-reference is left structurally unprotected.

4. Consolidating the Emerging Binary-Sex Pronoun Architecture

Taken together, these parallel state measures reveal a rapidly consolidating architecture of binary-sex pronoun regulation, with Tennessee's all-of-government regime representing the most far-reaching approach to policing pronouns across K–12, higher education, and state and local government employment. Even in those jurisdictions with narrower provisions, the measures privilege the refusal to use gender-affirming identifiers while simultaneously constraining gender-affirming usage by establishing enforcement mechanisms to empower employees, parents, and sometimes third parties to challenge deviations from biological-sex naming and pronoun conventions.

Federal legislative proposals track and reinforce this emerging architecture, aiming to extend addressee-oriented rules into federal employment and education funding. Bills introduced in Congress in 2025 such as the PROTECT Kids Act and the Empower Parents to Protect Their Kids Act would condition federal education funding on robust parental-consent requirements for any change in a minor's recorded name, pronouns, or sex-based accommodations, and in some instances create private rights of action for parents alleging schools facilitated gender

¹⁴¹ *Id.* § 3(e).

¹⁴² *Id.* § 3(b)–(e).

¹⁴³ *See id.*

transition without parental consent.¹⁴⁴ Together with the executive orders detailed *supra* Part I, these congressional proposals confirm that the addressee-oriented model is no longer confined to a handful of state legislatures but is consolidating into a bipartisan, multi-level regulatory norm. And as these regimes proliferate, their practical effect extends well beyond the others-addressing conduct they formally regulate. Agencies anticipating political retribution, parental complaints, private litigation, or federal funding conditions increasingly adopt prophylactic measures—such as standardized scripts barring pronoun disclosure, removal of pronouns from email signatures, wholesale prohibition of pronoun discussion—that suppress employee self-reference as a byproduct of others-addressing enforcement.¹⁴⁵

The result is that "others-addressing" regimes matter not only for what they regulate directly (i.e., how employees refer to students, coworkers, or members of the public) but for making increasingly untenable the ability of transgender and non-binary public employees to assert their own gender identity in the workplace without incurring institutional scrutiny, public challenge, termination, or civil liability. The gubernatorial orders and agency-level directives examined in the next section complete this regulatory picture by translating the statutory architecture mapped above into operational rules that directly govern how public employees identify themselves in official communications, bringing the "indirect" pressure of others-addressing regimes into direct contact with the self-reference question at the core of this Article's doctrinal analysis.

C. Pronoun Restrictions Adopted by Gubernatorial Orders, Agency Directives, and Budgetary Provisions

While statutes have largely confined themselves to others-addressing pronoun use in the K-12 context, non-statutory measures—most often agency-level standards or gubernatorial directives—have extended pronoun restrictions to public employees' self-identifying speech. These measures vary from direct prohibitions on stating or displaying one's own pronouns to indirect frameworks that encourage or require agencies to adopt internal rules achieving still greater effect.

¹⁴⁴ See Parental Rights Over the Education and Care of Their Kids Act (PROTECT Kids Act), H.R. 2616, 119th Cong. § 2 (2025) (would require public elementary and middle schools receiving Elementary and Secondary Education Act of 1965 funds to obtain parental consent before changing a minor's gender markers, pronouns, or name on any school form, or changing a minor's sex-based accommodations, including locker rooms or bathrooms); Empower Parents to Protect their Kids Act, H.R. 5116 / S. 2702, 119th Cong. (2025) (would condition all federal K–12 education funding on schools' adoption of strict parental-consent rules effectively prohibiting all gender-affirming communication, accommodation, or support for minors without parental approval, while creating a private right of action for parents to challenge contrary school conduct).

¹⁴⁵ See *supra* note 20 (state university policies barring pronouns and other identity markers from employee email signatures and federal agency directive barring employees from displaying identity-affiliated flags in the workplace); *supra* notes 39–40 and accompanying text (describing the U.S. Air Force directive removing personal pronouns from airmen's and civilian employees' email signatures).

For example, while Tennessee's statute discussed above extends to all K-12 state employees and contractors,¹⁴⁶ its operative language reaches only *others-addressing* pronoun use. The state's non-statutory measures fill that gap by barring employees' self-identification through agency branding and communications standards rather than legislation. Since the law's passage, Tennessee state agencies have issued policies, sometimes under separate branding or communications standards, that bar employees from including pronouns in email signatures or other official communications.¹⁴⁷ In March 2025, for instance, the Tennessee Department of Health issued updated branding standards barring inclusion of gender pronouns in employee email signatures. The rule applies agency-wide and covers all forms of official communication.¹⁴⁸

Similarly, though Texas has yet to enact a statewide pronoun statute, in January 2025 Governor Greg Abbott issued a directive to all state agencies instructing them to "reject woke gender ideologies" and ensure that workplace communications reflect a binary sex framework.¹⁴⁹ The directive spurred agency-level rules barring pronoun disclosure in official channels. For instance, in one publicized incident, the Texas Real Estate Commission ordered removal of pronouns from staff signature blocks, and a program manager was terminated for refusing to comply.¹⁵⁰

The Oklahoma Department of Mental Health & Substance Abuse Services similarly barred pronouns in employee email signatures, causing several employees to resign in protest.¹⁵¹ Additionally, at the higher-education level, the South Dakota Board of Regents revised its statewide communications and branding policy in December 2023 to prohibit the inclusion of not only pronouns but tribal affiliations in the official email signatures of employees at all six public universities.¹⁵²

¹⁴⁶ 2025 Tenn. Pub. Acts 453 (S.B. 937/H.B. 1270).

¹⁴⁷ Anita Wadhvani, *Tennessee Department of Health Bars Employees from Using Preferred Pronouns*, TENN. LOOKOUT, (Mar. 17, 2025, at 12:13 ET), <https://tennesseelookout.com/2025/03/17/tennessee-department-of-health-bars-employees-from-using-preferred-pronouns/> [https://perma.cc/YY9C-GEPE].

¹⁴⁸ *Id.*; see also Tenn. Dep't of Health, Communication Policy Branding Standards (Mar. 5, 2025).

¹⁴⁹ Press Release, Tex. Governor's Off., Governor Abbott Directs Texas State Agencies to Reject Woke Gender Ideologies (Jan. 30, 2025), <https://gov.texas.gov/news/post/governor-abbott-directs-texas-state-agencies-to-reject-woke-gender-ideologies> [https://perma.cc/LC6W-EX95].

¹⁵⁰ Deepa Fernandes, James Perkins Mastromarino, & Grace Griffin, *Why a Texas State Worker Refused to Remove Email Signature Pronouns—and Got Fired*, WBUR HERE & NOW, (Mar. 12, 2025), <https://www.wbur.org/hereandnow/2025/03/12/email-pronouns-firing> [https://perma.cc/HLX8-F7YN].

¹⁵¹ Sierra Pfeifer, *Stitt Celebrates Mental Health Agency Resignations over 'Pronoun Ban'*, OKLA. VOICE, (Feb. 17, 2025), <https://oklahomavoice.com/briefs/stitt-celebrates-mental-health-agency-resignations-over-pronoun-ban/> [https://perma.cc/XNE5-A4NJ].

¹⁵² S.D. BD. OF REGENTS, POL'Y MANUAL 1:7:6, 2.2.3–2.2.4, COMM'NS. & BRANDING (rev. Dec. 2023) (prohibiting "[i]nclusion of information . . . not listed" by Communications and Branding Policy in employees' official communications), <https://public.powerdms.com/SDRegents/tree/documents/1778536> [https://perma.cc/8JLC-E5D7];

A similar tightening of signature-block rules has occurred in Indiana. In January 2025, the Indiana Department of Natural Resources rescinded an earlier policy that had permitted “preferred pronouns” in employee email signatures and issued revised guidance, circulated in bolded and underlined type, explaining that staff may include only a limited set of information in their signatures and must delete prior formats that fall outside those bounds.¹⁵³ Kansas has moved even further by hard-wiring pronoun removal into its budget process, in the form of a 2025 appropriations provision conditioning certification to the state finance council on all state agencies’ having “removed gender identifying pronouns or gender ideology from email signature blocks on state employee’s email accounts and any other form of communication,”¹⁵⁴ and implementing guidance from the Kansas Board of Regents directs state universities to scrub gender-identifying pronouns and “gender ideology” from employee signatures and other official communications.¹⁵⁵ These internal rules operate as categorical self-reference bans for the affected agencies.

Having mapped the accelerating proliferation of federal and state binary-sex pronoun restrictions, this Article turns in Part III to the doctrinal question these measures jointly pose. Namely, whether self-identifying pronoun usage constitutes speech “pursuant to” a public employee’s official duties under *Garcetti*, or whether it is citizen speech entitled to First Amendment protection and *Pickering* balancing.

III. SELF-IDENTIFYING PRONOUNS AND THE OFFICIAL-DUTY INQUIRY

The federal and state measures surveyed in Parts I and II share a common doctrinal premise that public employees’ gendered self-reference is an incident of government service subject to managerial control. Whether framed as OPM data-accuracy compliance, a state statutory prohibition, or a gubernatorial directive, each measure implicitly characterizes self-identifying pronoun usage as speech “pursuant to” the employee’s official duties. By doing so, the measures weaponize

see also S.D. SCH. OF MINES & TECH., [https://brand.sdsmt.edu/applications/email/\[https://perma.cc/5UQP-JN7H\]](https://brand.sdsmt.edu/applications/email/[https://perma.cc/5UQP-JN7H]) (“Please note that this policy prohibits personal quotes, pronouns, tribal affiliations, micro-credentials, external organization membership, or non-university approved images.”).

¹⁵³ Hayleigh Colombo, *A ‘Target on Me’: State Employees Told Not to Use ‘Preferred Pronouns’ in Emails*, INDIANAPOLIS STAR, (Mar. 20, 2025), [https://www.indystar.com/story/news/politics/2025/03/20/indiana-mike-braun-administration-department-of-natural-resources-pronouns-email-signatures/82514106007/#\[https://perma.cc/4QH7-6NTU\]](https://www.indystar.com/story/news/politics/2025/03/20/indiana-mike-braun-administration-department-of-natural-resources-pronouns-email-signatures/82514106007/#[https://perma.cc/4QH7-6NTU]).

¹⁵⁴ 2025 Kansas Laws Ch. 117 (S.B. 125), § 161 (requiring “certif[ication] to the members of the state finance council that all state agencies have: . . . removed gender identifying pronouns or gender ideology from email signature blocks on state employee’s email accounts *and any other form of communication.*”) (emphasis added).

¹⁵⁵ *Kansas Board of Regents Diversity Equity and Inclusion Guidance for State Universities in Kansas*, Kan. BD. OF REGENTS (June 18, 2025), <https://www.k-state.edu/2025-federal-transition/DEI%20Guidance%20For%20State%20Universities%20in%20Kansas%206.18.2025.pdf> [https://perma.cc/2MMK-2XYN].

Garcetti's holding against transgender and non-binary public employees. The constitutional viability of self-misgendering mandates turns on whether that characterization withstands scrutiny under the practical, context-sensitive official-duty inquiry of the U.S. Supreme Court's post-*Garcetti* precedents. It does not. By contrast to an employee's use of pronouns to refer to others, which, under some circumstances, may fall within the ordinary duties of a public employee, an employee's use of self-identifying pronouns is properly and categorically treated as citizen speech.

Part III situates *Garcetti* within the modern public-employee speech framework, explains why pronoun self-designation is citizen speech under that framework, critiques the Eleventh Circuit's decision in *Wood* and related efforts to reclassify identity speech as government speech, and shows why the conclusion that self-identifying pronoun usage is pure citizen speech extends beyond the K–12 employment context.

A. *The Official-Duty Threshold in Public-Employee Speech Doctrine*

To assess self-misgendering mandates, it is necessary to begin with the Court's modern public-employee speech framework, particularly the threshold inquiry *Garcetti* adds to the familiar *Pickering*–*Connick* framework. That framework does not simply ask whether the speech occurs at work or concerns work; it is “an inquiry ... [that] should be undertaken ‘practical[ly],’ rather than with a blinkered focus on the terms of some formal and capacious written job description.”¹⁵⁶ This subpart traces this framework's evolution from *Pickering* and *Connick* to *Garcetti*, and then shows how *Lane*, *Kennedy*, and *Lindke* properly discipline the official-duty inquiry by insisting that courts look past formal job descriptions and labels to the substance and ordinary scope of the employee's duties.

1. From *Pickering/Connick* to *Garcetti*'s Official-Duty Screen

The Supreme Court's public-employee speech jurisprudence has long distinguished private-citizen speech, which receives First Amendment protection, from official-duty speech, which does not. The modern framework originates in the 1968 case *Pickering v. Board of Education*, which established a balancing test for public-employee speech claims weighing “the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.”¹⁵⁷

That inquiry tightened in *Connick v. Myers*, which clarified that public-employee speech claims generally fail, and do not proceed to *Pickering* balancing,

¹⁵⁶ *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 529 (2022) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 424 (2006)).

¹⁵⁷ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568.

“when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest.”¹⁵⁸ The *Connick* Court explained that, in deciding whether employee speech addresses a matter of public concern,¹⁵⁹ courts must look to the content, form, and context of the employee’s speech.¹⁶⁰ Further, provided the employee-speech claim survives the public-concern inquiry, the relative weight of the employee’s public-concern interest is to be incorporated into *Pickering* balancing, as “the State’s burden in justifying a particular discharge varies depending upon the nature of the employee’s expression.”¹⁶¹

The viability of public-employee speech claims narrowed further with *Garcetti v. Ceballos* (2006), in which the Court held that an internal memorandum authored by a prosecutor in the course of his official responsibilities as a calendar deputy constituted unprotected employee speech.¹⁶² The Court articulated a categorical rule that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”¹⁶³ Reasoning that “[r]estricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen” but instead “simply reflects the exercise of employer control over what the employer itself has commissioned or created,”¹⁶⁴ the *Garcetti* Court thus established the official-duty test as a new threshold inquiry, the failure of which is fatal to public employee free-speech claims.

2. Post-*Garcetti* Precedents: Practical Inquiry and Agency Turn

Read together, the post-*Garcetti* cases *Lane v. Franks*, *Kennedy v. Bremerton School District*, and *Lindke v. Freed* recast the *Garcetti* threshold as a functional, agency-law-inflected practical inquiry rather than a license to declare all on-the-job expression government speech. Indeed, in the years since *Garcetti*, the U.S. Supreme Court has repeatedly cautioned that “courts must not rely on ‘excessively broad job descriptions’ to conclude that a government employee is

¹⁵⁸ *Connick v. Myers*, 461 U.S. 138, 147 (1983).

¹⁵⁹ *Connick*, 461 U.S. at 146 (“When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment.”).

¹⁶⁰ *Connick*, 461 U.S. at 147–48; *see also* *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (citations omitted) (“Speech deals with matters of public concern when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ or when it ‘is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.’”).

¹⁶¹ *Connick*, 461 U.S. at 150.

¹⁶² *Garcetti v. Ceballos*, 547 U.S. 410, 424 (2006).

¹⁶³ *Id.* at 421.

¹⁶⁴ *Id.* at 421–22.

authorized to speak for the State.”¹⁶⁵ The official-duty inquiry should “be undertaken ‘practical[ly],’ rather than with a blinkered focus on the terms of some formal and capacious written job description,” because “[t]o proceed otherwise would be to allow public employers to use ‘excessively broad job descriptions’ to subvert the Constitution’s protections.”¹⁶⁶ The question is therefore not whether speech “*could* fit within the [public employee’s] job description” but whether it “*is actually* part of the job that the State entrusted the official to do.”¹⁶⁷

In *Lane v. Franks* (2014), the Court held that a public employee who provides truthful sworn testimony outside the course of their ordinary job duties speaks as a citizen on a matter of public concern, even if the testimony concerns information learned at work.¹⁶⁸ The *Lane* Court sharply rejected the overly expansive reading of *Garcetti* that led the Eleventh Circuit to reach the opposite conclusion below based on the fact that Lane learned of the subject matter of his testimony in the course of his employment as director of a program for underprivileged youth operated by Central Alabama Community College, while investigating and terminating the employment of an Alabama state representative who was on his program’s payroll but performed no work, a matter later forming the basis for federal corruption charges against the legislator.¹⁶⁹ But the Eleventh Circuit, the *Lane* Court explained, had read *Garcetti* “far too broadly.”¹⁷⁰

Emphasizing that “public employees do not renounce their citizenship when they accept employment,” and that “public employers may not condition employment on the relinquishment of constitutional rights,”¹⁷¹ the Court stressed that the “critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.”¹⁷² Testifying truthfully in court, the Court reasoned, arises from an independent obligation of citizenship, and any incidental employment-related expectations (such as dressing professionally) are “distinct and independent” from that civic duty.¹⁷³

Lane thus narrowed the official-duty screen by insisting that courts distinguish speech the government has hired the employee to deliver from speech

¹⁶⁵ *Lindke v. Freed*, 601 U.S. 187, 201 (2024) (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 529 (2022)).

¹⁶⁶ *Kennedy*, 597 U.S. at 529 (citing *Garcetti*, 547 U.S. at 424).

¹⁶⁷ *Lindke*, 601 U.S. at 201 (emphasis in original).

¹⁶⁸ *Lane v. Franks*, 573 U.S. 228, 231 (2014).

¹⁶⁹ *Lane*, 573 U.S. at 239 (criticizing the Eleventh Circuit for “read[ing] *Garcetti* far too broadly”).

¹⁷⁰ *Id.*

¹⁷¹ *Lane*, 573 U.S. at 236 (citations omitted).

¹⁷² *Lane*, 573 U.S. at 240.

¹⁷³ *Lane*, 573 U.S. at 239 (“When the person testifying is a public employee, he may bear separate obligations to his employer—for example, an obligation not to show up to court dressed in an unprofessional manner. But any such obligations as an employee are distinct and independent from the obligation, as a citizen, to speak the truth. That independent obligation renders sworn testimony speech as a citizen and sets it apart from speech made purely in the capacity of an employee.”) (emphasis added).

the employee is obliged to give as a citizen, even when both occur against the backdrop of public employment. Further, by continually substituting “ordinary” for “official” duties, *Lane* reinforced the importance of anchoring the *Garcetti* inquiry in the practical, day-to-day tasks the employee is actually expected to perform, rather than in a public employer’s abstract or post hoc characterizations of contested speech as part of the job.¹⁷⁴

Later, in *Kennedy v. Bremerton School District* (2022), the Court extended and sharpened the practical inquiry embraced by its earlier post-*Garcetti* precedents, holding that a high-school football coach’s brief, postgame prayers at midfield were not “speech ‘ordinarily within the scope’ of his duties as a coach.”¹⁷⁵ The Court stressed that when Coach Kennedy uttered the prayers he “did not speak pursuant to government policy,” “was not seeking to convey a government-created message,” and “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.”¹⁷⁶ Consequently, his prayers “did not ‘ow[e their] existence’” to his “responsibilities as a public employee.”¹⁷⁷

The *Kennedy* Court explicitly rejected the Ninth Circuit’s reasoning that, because he served as a role model to students and players and remained on duty after games, Coach Kennedy’s prayers fell within his official duties as a coach, explaining that “this argument commits the error of positing an ‘excessively broad job descriptio[n]’ by treating everything teachers and coaches say in the workplace as government speech subject to government control.”¹⁷⁸ Further, to treat such expression as state speech, the Court warned, would allow a school to fire a Muslim teacher merely for wearing a headscarf in the classroom.¹⁷⁹ Additionally, the Court held that the prayers’ delivery “‘within the office’ environment” of “the field of play” was not dispositive, instead emphasizing “the substance of Mr. Kennedy’s speech and the circumstances surrounding it.”¹⁸⁰ *Kennedy* therefore reaffirms that the *Garcetti* inquiry is context- and content-sensitive, not triggered simply because expression occurs at work, in uniform, or in view of co-workers, customers, or students.

Although *Lindke v. Freed* (2024) arises in the context of state action rather than public-employee speech doctrine, the same functional approach undergirds

¹⁷⁴ Compare *Lane*, 573 U.S. at 240 (explaining that “[t]he critical question under *Garcetti* is whether the speech at issue is itself *ordinarily* within the scope of an employee’s duties, not whether it merely concerns those duties.”) (emphasis added) and *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 529 (2022) (“When Mr. Kennedy uttered the three prayers that resulted in his suspension, he was not engaged in speech ‘*ordinarily* within the scope’ of his duties as a coach.”) (emphasis added) (quoting *Lane*, 573 U.S. at 240) with *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“[W]hen public employees make statements pursuant to their *official* duties, the employees are not speaking as citizens for First Amendment purposes”) (emphasis in original).

¹⁷⁵ *Kennedy*, 597 U.S. at 529 (quoting *Lane*, 573 U.S. at 240).

¹⁷⁶ *Id.* at 529–30.

¹⁷⁷ *Id.* at 530 (quoting *Garcetti*, 547 U.S. at 421).

¹⁷⁸ *Id.* at 530–31 (quoting *Garcetti*, 547 U.S. at 424).

¹⁷⁹ *Id.* at 531.

¹⁸⁰ *Id.* at 530.

both. There the Court held that whether a public official's social media activity is speech is attributable to the State depends on whether the official "possessed actual authority to speak on the State's behalf," and "purported to exercise that authority" when speaking.¹⁸¹ The *Lane* Court emphasized that, like in the public-employee speech doctrine, the determination "turns on substance, not labels," requiring courts to determine whether the official was *actually* exercising governmental authority rather than merely using the trappings of office.¹⁸² The Court further rejected any presumption that expression is state action simply because it occurs on an official's social media page or references official business.¹⁸³ As Daniel Harris has observed, in *Lindke* and other recent Supreme Court cases, the Court has arguably taken an "agency turn:" rather than relying on formal titles or generalized job descriptions, the Court asks whether the government has authorized the official, as principal, to speak or act in the way the plaintiff challenges.¹⁸⁴

The Court's emerging approach thus marries a functionalist inquiry with a skepticism of governmental attempts to recharacterize contested speech as government owned, a welcome development. Commentators have criticized courts' often-blunt application of *Garcetti* to foreclose First Amendment employee speech claims in certain contexts, particularly where identity-expressive speech is concerned.¹⁸⁵ At the same time, some scholars argue that *Garcetti*'s application to schools and universities must be tempered by a more sensitive approach to the speech at issue in order to safeguard student safety and development. For instance, Andrew Koppelman warns that misreading *Kennedy* as an unqualified expansion of employee-speech protections risks enabling school employees to engage in classroom conduct like misgendering or other mistreatment that affirmatively harms students and contradicts teachers' role in modeling civic inclusion.¹⁸⁶ And, to be sure, empirical and public-health-informed scholarship suggests that intentional misgendering harms well-being, impairs participation, and undermines equality, especially for transgender, nonbinary, and gender-nonconforming

¹⁸¹ *Lindke v. Freed*, 601 U.S. 187, 191 (2024).

¹⁸² *Lindke*, 601 U.S. at 197.

¹⁸³ *Lindke*, 601 U.S. at 197.

¹⁸⁴ See generally Daniel Harris, *The U.S. Supreme Court's Agency Approach to the First Amendment Rights and Duties of Public Employees*, 54 THE BRIEF (ABA) 54 (Winter 2025) (discussing how the U.S. Supreme Court has increasingly drawn on agency principles to determine whether government officials are acting in a private or official capacity for purposes of constitutional adjudication and how the private sector doctrine of apparent authority does not apply to the government).

¹⁸⁵ See, e.g., Hannah Daigle, Note, *Critical Race Theory Through the Lens of Garcetti v. Ceballos*, 20 FIRST AMEND. L. REV. 230, 231–32 (2022) (noting overinclusive application to educators); Jordan Zaia, Note, *Is Garcetti Too Cool for School?: Why Garcetti v. Ceballos Should Not Apply to School Teachers*, 34 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 734, 771–76 (2024) (advocating exclusion or narrowing of *Garcetti* in educational contexts).

¹⁸⁶ See Andrew Koppelman, *The Emerging First Amendment Right to Mistreat Students*, 73 CASE W. RES. L. REV. 1209, 1227–30 (2023).

students.¹⁸⁷ However, these concerns do not undercut the Court's recent agency-law turn so much as underscore why courts must attend both to who is speaking for the State and to the concrete effects of identity-directed expression in public educational environments.

Commentators have read *Kennedy* in particular as embodying what J. Israel Balderas terms "functional free speech protection," a principle that privileges real-world context and practical impact over rigid categories.¹⁸⁸ On this view, *Kennedy* narrows the scope of speech that can be deemed government speech by requiring courts to examine the nature of the speech at issue, the ordinary duties the employer actually expects, and whether the expression is compelled, scripted, or otherwise "commissioned or created" by the State.¹⁸⁹ Others worry that *Kennedy* blurs the analytical lines between free-speech and free-exercise claims and may shift the *Pickering* balance in favor of religious employees.¹⁹⁰ For purposes of self-misgendering challenges, however, what matters is not *Kennedy*'s free-exercise dimension but its methodological contribution, as *Kennedy*'s practice and context-sensitive analytical framework to the official-duty inquiry applies with full force to free-speech claim, including those that do not implicate the Free Exercise Clause.

The *Kennedy* Court's insistence on function over formalism in applying the official-duty test is also more doctrinally consistent, as it better aligns with the Court's broader First Amendment emphasis on content, form, and context. In *Snyder v. Phelps*, for example, the Court explained that in determining whether speech is on a matter of public concern, no single factor is dispositive and that courts must evaluate "all the circumstances of the speech, including what was said, where it was said, and how it was said."¹⁹¹ That same triad runs through *Lane*, *Kennedy*, and *Lindke*, with none permitting courts to treat location or audience alone as sufficient to convert personal expression into government speech. Instead, these post-*Garcetti* precedents align both tests to inquiring whether the State has,

¹⁸⁷ See Linnea Kelly, Comment, *Call Me by My Name: Protecting Chosen Name and Pronoun Policies in the Face of First Amendment Challenges*, 95 TEMP. L. REV. 327, 332–34 (2023) (summarizing studies on mental-health and participation effects).

¹⁸⁸ J. Israel Balderas, *Beyond Prayer: How Kennedy v. Bremerton Reshapes First Amendment Protections for Public Employee Speech*, 23 FIRST AMEND. L. REV. 203, 235 (2024) (describing the *Kennedy* Court's approach as "embodying 'functional free speech protection'—a principle that prioritizes the real-world context and practical impact of expression over rigid categorizations.").

¹⁸⁹ *Id.* at 234 ("By focusing on what public employees actually do on a routine basis, rather than what their job descriptions might theoretically encompass, *Kennedy* narrowed the scope of speech that can be considered government speech and thus unprotected by the First Amendment—by asking what is the "nature of the speech at issue."); see also Waldman, *supra* note 1, at 259, 262 (grounding argument for *Garcetti*'s inapplicability to teachers' use of self-identifying gender pronouns in *Kennedy*'s protection of non-instructional speech with private-citizen attributes).

¹⁹⁰ See generally Jared M. Hirschfield, *The Moving Goalposts of Public-Employee Speech: Kennedy v. Bremerton School District and Demonstrative Prayer*, 6 J. Free Speech L. 427 (2025) (arguing that *Kennedy* distorted public-employee speech doctrine by collapsing free speech and free exercise analysis and shifting the *Pickering* balance toward religious employees).

¹⁹¹ *Snyder v. Phelps*, 562 U.S. 443, 454 (2011) ("In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said.").

as a matter of agency, actually entrusted the employee with a given communicative task implicating a matter of public concern.

Finally, this practical inquiry is best understood as a response to the risk that governments will use sprawling job descriptions or statutory labels to “capture” contested speech. If employers can reclassify broad swaths of employee expression as “pursuant to official duties” merely because the speech occurs on government property, in front of co-workers or customers, or during work hours, then *Garcetti* becomes a mechanism for insulating viewpoint-based regulation from constitutional scrutiny. The Court’s post-*Garcetti* cases push in the opposite direction. They require a narrow, fact-specific assessment of whether the speech at issue is what the government actually hired the employee to say or do. When that standard is applied faithfully, identity-expressive speech such as pronoun self-designation cannot be conjured into state speech simply by utterance at the workplace.

Having clarified the scope and limits of the official-duty threshold, the next question is how this practical inquiry, informed by agency principles and a sensitivity to content, form, and context, applies to public employees’ own pronoun self-designation. Part III.B takes up that question, arguing that employees’ self-identifying pronoun usage does not “owe[] its existence to a public employee’s professional responsibilities” and therefore lies outside *Garcetti*’s official-duty bar.¹⁹²

B. Pronoun Self-Designation as Citizen Speech Under Kennedy’s Practical Official-Duty Inquiry

Applying the official-duty framework articulated by post-*Garcetti* precedents, pronoun self-designation by public employees is best understood as citizen speech, not as expression made pursuant to official duties. When government workers introduce or identify themselves using certain names, titles, or gendered pronouns, they are not simply delivering a scripted institutional message but communicating core aspects of their personal identity. This subpart explains why, under the “practical” analysis modeled by post-*Garcetti* precedents, self-identifying pronoun use does not “owe its existence” to a public employee’s duties.

1. Identity-Expressive and Linguistic Features of Pronoun Self-Designation

Self-designation—how a person introduces or refers to herself in linguistic form—is not a task the government hires an employee to perform. It is a foundational act of personal identity expression, not report-of-fact, and antecedent to and independent of the substantive work public employees perform. For this reason, efforts to categorize pronoun self-designation as official-duty speech fail the practical inquiry demanded by *Kennedy*, even and perhaps especially when

¹⁹² *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

legislators prescribe pronoun usage in the interest of “truth” or “accuracy,” because such framings concede the speech’s expressive character.

Linguistic scholarship strongly reinforces the centrality of pronoun use to expression of personal identity. Pronouns form a “closed set” of words used to substitute for nouns or noun phrases.¹⁹³ The grammatical complexity of pronouns lies not only in their substitutive function, but in the diverse classes they encompass, from personal pronouns like *I* and *you*, to demonstrative, reflexive (e.g., *myself*, *yourself*), indefinite (e.g., *anyone*, *nobody*), relative (e.g., *who*, *whom*, *that*) and even “logophoric” pronouns marking represented thought or speech, that structure how speakers refer to themselves and others.¹⁹⁴ Central to their function is the grammatical category of “person,” which encodes the deictic contrasts between first-person self-reference (*I/we*), second-person address (*you*), and third-person reference (*he/she/it/they*).¹⁹⁵

Beyond their grammatical function, pronouns are deeply bound up with social roles, status, and identity. Pronouns function similarly to honorifics as grammaticalized markers of social relationship, allowing speakers to for instance invoke gender to communicate stance, affect, or relational position.¹⁹⁶ Languages frequently elaborate on these person-distinctions, drawing contrasts such as inclusive versus exclusive *we*, honorific versus informal *you*, or even stylistically restricted forms like the royal or authorial *we*, underscoring how pronoun systems are deeply bound up with social roles, status, and identity.¹⁹⁷ By compelling or prohibiting certain pronoun usages, misgendering mandates therefore intervene directly in this deictic structure of “person,” dictating not only how public employees may address others (second- and third-person) but also how they may refer to themselves (first-person).¹⁹⁸ In this way, while others-addressing rules dictate how public employees may refer to others (second- and third-person), self-misgendering mandates intervene directly in the grammatical architecture of one’s own personhood by dictating how employees must *not* refer to themselves (first-person).

Self-misgendering mandates uniquely disrupt this structure by dictating that transgender and nonbinary employees may not use first-person forms that align with their own gender identity. Philosophers of language who analyze misgendering as a harmful “speech act” similarly conclude that such rules weaponize linguistic conventions to enforce an ontological binary, rather than to

¹⁹³ DAVID CRYSTAL, A DICTIONARY OF LINGUISTICS AND PHONETICS 391–92 (6th ed. 2008).

¹⁹⁴ *Id.* at 391–92.

¹⁹⁵ *Id.* at 358–59.

¹⁹⁶ Kirby Conrod, “Pronouns and Gender in Language,” in THE OXFORD HANDBOOK OF LANGUAGE AND SEXUALITY 21 (Kira Hall & Rusty Barrett, eds., 2020) (analogizing gender and honorific marking as a similarly grammaticalized form of social relationships and explaining that speakers may “invoke gender through pronouns intentionally to convey stance or affect, similarly to the uses of honorific pronouns”).

¹⁹⁷ *Id.* at 358–59.

¹⁹⁸ See *id.* at 358–59 (defining “person” as the grammatical category through which speakers distinguish self-reference, address, and reference to others).

clarify information.¹⁹⁹ Other linguistic research suggests that acceptance and usage of gender-neutral phrasings and pronouns is tied to endorsement or non-endorsement of a binary gender ideology,²⁰⁰ with some characterizing pronoun misuse as a form of symbolic violence that compounds systemic oppression of those with marginalized gender identities.²⁰¹

Historical and descriptive linguistics reinforce the conclusion that self-identifying pronouns function as paradigmatic markers of personhood rather than as factual reports the State may regulate in the interest of “truth” or “accuracy.” Linguists have documented the use of the singular *they* as a gender-neutral third-person singular pronoun in English since the late fourteenth century, undercutting claims that gender-inclusive pronoun usage is a novel or purely ideological innovation.²⁰²

Taken together, these linguistic and philosophical accounts converge on the simple but powerful point that when a speaker selects first-person pronouns and related honorifics, she is not reporting an external fact on behalf of the State but articulating a core dimension of self. That is precisely the sort of identity-expressive speech that, under *Kennedy*’s practical inquiry, presumptively belongs to the employee rather than the government.

2. The Practical Inquiry Applied: *Wood v. Florida Department of Education*

Recent litigation over Florida’s self-misgendering mandate makes this point concrete. On December 13, 2023, Katie Wood, a transgender high-school algebra teacher, filed suit in the U.S. District Court for the Northern District of Florida challenging the state’s self-misgendering mandate on First Amendment and other grounds.²⁰³ On April 10, 2024, then-Chief Judge Mark E. Walker held that Wood showed a likelihood of success on the First Amendment claim under the *Garcetti* employee-speech framework, concluding that, when providing a preferred personal title and pronouns to students while at school, Wood spoke as a private citizen on a matter of public concern and that Wood’s interests in that speech outweigh the

¹⁹⁹ See, e.g., Susan Etta Keller, *Doing Things with the Language of Law and Gender*, 24 NEV. L.J. 413, 458–60 (2024).

²⁰⁰ See Evan D. Bradley, *The Influence of Linguistic and Social Attitudes on Grammaticality Judgments of Singular ‘They’*, LANGUAGE SCIENCES 78, 101272, at 9 (2020).

²⁰¹ See Conrod, *supra* note 196, at 22 (“[M]isusing pronouns intentionally or accidentally can constitute a form of symbolic violence that systematically oppresses people whose gendered existence is already marginalized.”); see also Cameron D. Kirk-Giannini & Michael Glanzberg, “Pronouns and Gender” in THE OXFORD HANDBOOK OF APPLIED PHILOS. LANG. 265, 286 (Luvel Anderson & Ernie Lepore, eds., 2024).

²⁰² See generally DENNIS BARON, WHAT’S YOUR PRONOUN? BEYOND HE AND SHE (2020) (detailing use of the singular “they” as a gender-neutral third-person singular pronoun dating to the late fourteenth century).

²⁰³ Complaint, *Wood v. Fla. Dep’t of Educ.*, 729 F. Supp. 893 (N.D. Fla. 2024) (No. 4:23CV00526).

State's interests.²⁰⁴

In his extended discussion of the *Garcetti* official-duty test as applied to Ms. Wood, Chief Judge Walker stressed the practical inquiry modeled by the U.S. Supreme Court in *Kennedy*, which recognized that “speech made while on the job or ‘in the office’ as a public employee is not automatically outside of the First Amendment’s protection pursuant to *Garcetti*.”²⁰⁵ Instead, Chief Judge Walker wrote, *Kennedy* challenges courts to “analyze the speech at issue in context, taking into consideration the facts surrounding the substance of the speech and the nature of its utterance.”²⁰⁶ Chief Judge Walker therefore engaged in a “context-specific and fact-intensive review” of Ms. Wood’s speech based on the full context of the speech at issue, mirroring the consideration given by the *Kennedy* Court to “the personal nature of [the coach’s] prayers, and the timing and circumstances during which his prayers were uttered.”²⁰⁷

Applying this standard to Ms. Wood, Chief Judge Walker held that she spoke “as a private citizen” when using her self-identified pronouns and honorifics in class introductions, on her syllabus, and on a “she/her” pin,²⁰⁸ emphasizing that the speech reached by Florida’s “Don’t Say They” law “is essential to [her] identity ... and uniquely personal,” and thus cannot plausibly be framed as part of her job-defined communicative obligations.²⁰⁹ Indeed, “[t]his self-referential speech is unique to Ms. Wood, as it is for every individual, and owes its existence to her personal identity, not her official duties as a public school teacher.”²¹⁰ Chief Judge Walker further relied on the sheer breadth of Florida’s statute to underscore the court’s distinction insofar as it restricts self-referential pronoun usage for *all* public-school employees, including those with no curricular or instructional duties, revealing that its target is identity, not pedagogical content.²¹¹

Amici supporting Wood buttressed Chief Judge Walker’s conclusions about self-identifying pronouns, titles, and honorifics. The National Education Association and American Federation of Teachers explained that Subsection 3 “singles out transgender educators and bars them from expressing a core aspect of their identity: using the same personal pronouns and titles with their students that they use in every other aspect of their lives.”²¹² The Linguistic Society of America likewise observed that “[c]hosen pronouns and titles go to a person’s core identity and do not owe their existence to a teacher’s government position,” and are instead

²⁰⁴ *Wood v. Fla. Dept. of Educ.*, 729 F. Supp. 3d 1255, 1290 (N.D. Fla. 2024), *vacated and remanded*, 142 F.4th 1286 (11th Cir. 2025).

²⁰⁵ *Id.* at 1275 n.14.

²⁰⁶ *Id.* at 1275.

²⁰⁷ *Id.* at 1275–76.

²⁰⁸ *Id.* at 1277–79 (N.D. Fla. 2024).

²⁰⁹ *Id.* at 1276.

²¹⁰ *Wood*, 729 F. Supp. at 1276–77.

²¹¹ *Id.* at 1277–78.

²¹² Brief for National Education Association et al. as Amici Curiae in Support of Plaintiff-Appellee, *Wood v. Fla. Dep’t of Educ.*, 142 F.4th 1286, at *5 (11th Cir. 2025) (No. 24-11239), 2024 WL 3673090.

linguistic “tools to identify individuals *qua* individuals in their relevant social context; they are not part of academic curricula or a teacher's extracurricular.”²¹³

The district court opinion in *Wood* thus illustrates how a court, armed with *Kennedy*'s practical inquiry and informed by a basic understanding of pronoun usage, should approach governmental attempts to reclassify self-referential identity speech as official-duty expression. Treating self-identifying pronouns, titles, and honorifics as paradigmatic markers of personhood rather than as government-owned factual reports both aligns with linguistic reality and properly cabins *Garcetti*'s reach.

3. Applying *Kennedy*'s Practical Inquiry to Self-Misgendering Mandates

Emily Gold Waldman offers helpful framing for drawing out the distinction between addressee-oriented orders and self-misgendering mandates under *Kennedy*'s context- and fact-specific framework. Waldman proposes distinguishing official-duty and private citizen speech of K-12 educators based on whether the speech at issue involves the “delivery of the educational program (including academics and extracurriculars) to students.”²¹⁴ On this account, curricular choices, classroom instruction, and coaching techniques are core government-employee speech, whereas what educators wear, how they decorate their private offices, or how they identify themselves fall on the private-citizen side.²¹⁵ Applied to pronouns, Waldman treats teachers' use of students' pronouns as part of delivering instruction, but classifies bans on teachers' self-identifying pronouns like Florida's H.B. 1069 as implicating speech outside “delivery of the educational program,” which under *Kennedy* retains a strong private-citizen component.²¹⁶ Accordingly, Waldman treats educators' use of *students'* gender pronouns as core employee speech under *Garcetti*, reasoning such speech is inherently part of “addressing students in one's classroom,” while educators' choice of pronoun to refer to themselves is treated as private citizen speech rooted in personal identity and self-presentation.²¹⁷

Building on Waldman's synthesis of *Garcetti* and *Kennedy*, self-identifying pronoun use is analogous to the hypothetical raised and resolved by Justice Gorsuch in the *Kennedy* majority opinion—one he clearly rejects as perverse—in which a school could constitutionally “fire a Muslim teacher for wearing a headscarf in the classroom” under *Garcetti*.²¹⁸

This comparison is instructive. Like religious wear, self-identifying pronouns serve as personal identity markers and may be worn or spoken at work

²¹³ Brief of Amicus Curiae Linguistic Society of America in Support of Appellee, *Wood v. Fla. Dep't of Educ.*, 142 F.4th 1286, at *25 (11th Cir. 2025) (No. 24-11239), 2024 WL 3757314.

²¹⁴ Waldman, *supra* note 1, at 256.

²¹⁵ See Waldman, *supra* note 1, at 257–63.

²¹⁶ Waldman, *supra* note 1, at 262.

²¹⁷ Waldman, *supra* note 1, at 258–59, 262.

²¹⁸ *Kennedy*, 597 U.S. at 531.

and be noticed or heard by co-workers or third parties, but it is not inherently directed at them as part of delivering the program of employment. Waldman's framework treats the audience and intent of the speech as largely determinative, noting that self-identifying pronouns are citizen speech because educators use them "at all times, not just when they are at school" and "[t]he fact that students will become aware of their educators' pronouns does not transform those pronouns into employee speech any more than students' awareness of a teachers' prayers transforms the prayers into employee speech."²¹⁹

At first glance, the assertion that self-identifying pronouns, titles, and honorifics qualify as purely private expression appears at odds with *Kennedy's* rejection of formalism in place of a context-sensitive inquiry. Under *Kennedy's* practical inquiry, however, the apparent tension dissolves, as these personal identifiers are revealed to function as expressions of individual identity rather than instruments of institutional communication and are therefore presumptively private expression regardless of the setting in which they are used. Laying *Kennedy's* description of the coach's devotional speech alongside public employees' use of self-identifying gender pronouns makes the correspondence unmistakable. Introducing oneself as "Mr." or "Ms." is not speaking pursuant to government policy, conveying a government-created message, or engaging in any other speech the government pays an employee (arguably *any* employee in *any* role) to produce. The question is not whether the speech occurs at work but if it is the kind of speech the government engaged a particular employee to produce—and self-identification is decidedly not such speech.

The *Kennedy* Court explicitly warned against the overly expansive and formalistic approach taken by the Eleventh Circuit in *Wood*, cautioning against categorically treating *on-duty expression as state speech*, as it "commits the error of positing an 'excessively broad job descriptio[n]' by treating everything teachers and coaches say in the workplace as government speech subject to government control."²²⁰ The *Kennedy* Court similarly rejected the location-based reasoning relied upon by the Eleventh Circuit in *Wood*, finding that the prayers' delivery "'within the office' environment" of "the field of play" was not dispositive, emphasizing instead "the substance of Mr. Kennedy's speech and the circumstances surrounding it."²²¹

Recall as well that, in articulating the "substance" or content of Coach Kennedy's speech, the Court emphasized intention and audience as well as role: "He did not speak pursuant to government policy. He was not seeking to convey a government-created message. 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."²²² As a result, Coach Kennedy's prayers "did not 'ow[e their] existence' to [his] responsibilities as a public employee"

²¹⁹ Waldman, *supra* note 1, at 263.

²²⁰ *Kennedy*, 597 U.S. at 530–31 (quoting *Garcetti*, 547 U.S. at 424).

²²¹ *Id.* at 530.

²²² *Id.* at 529 (2022) (citation omitted).

within the meaning of *Garcetti*.²²³

Finally, the *Kennedy* Court stressed “[t]he timing and circumstances” of the prayers as occurring in the postgame period, a period during which the school district acknowledged its coaching staff “were free to attend briefly to personal matters—everything from checking sports scores on their phones to greeting friends and family in the stands,” and delivered while “students were engaged in other activities like singing the school fight song.”²²⁴

Taken together, *Kennedy*’s focus on both the nature of the speech and the timing and surrounding circumstances underscores that mere presence in a work-related setting does not convert a public employee’s expression into government speech or speech made pursuant to official duties. By the same logic and given the essentially personal and expressive nature of self-designating pronouns, titles, and honorifics demonstrated *supra* Part III.B.1, a public employee’s use of self-identifying gender pronouns is presumptively private speech regardless of the timing.

Just as a coach’s postgame prayer was treated as private citizen expression because it occurred during a period when staff were free to attend to personal matters and carried no indicia of being part of his coaching responsibilities, a public employee’s pronoun usage, without more, remains private expression even if uttered in the workplace. The analysis would shift only in the exceptionally rare cases where the pronoun disclosure is integrated into the performance of official functions, explicitly framed as advancing workplace goals, or delivered in a context where the employee is acting with the authority of their position. In such cases, the speech would proceed to the public-concern and *Pickering* analysis on the State’s side of the ledger, requiring courts to weigh the government’s asserted operational interest against the employee’s First Amendment claim for self-identification.

Because self-identifying speech is presumptively citizen speech, it falls outside *Garcetti*’s official-duty inquiry, and because pronoun self-reference is presumptively citizen speech, any First Amendment challenges to self-misgendering mandates should proceed to public-concern and *Pickering* balancing. Rather than conjuring *Garcetti* to shield government identity-expression directives from meaningful judicial scrutiny, public-concern and *Pickering* balancing requires the government to prove the legitimacy of its claimed interests and justify employee discipline in constitutional terms, as recent school-employee litigation illustrates. For instance, in *Manchester v. Town of Ludlow* (2025), the federal district court of Massachusetts treated a teacher’s off-script discussion with a parent as private rather than “official duty” speech but emphasized this threshold conclusion “does not end the inquiry,” as the employee must still show the speech involved a matter of public concern and then survive *Pickering* balancing.²²⁵ Notably, the court recognized that disputes over gender identity and sexual orientation involve “sensitive political topic[s]” and thus qualify as matters of public concern, yet it

²²³ *Id.* at 529 (quoting *Garcetti*, 547 U.S. at 421).

²²⁴ *Id.* at 530.

²²⁵ *Manchester v. Town of Ludlow*, 780 F. Supp. 3d 296, 304, 309–11 (D. Mass. 2025).

still concluded the school's interests (in protecting students and maintaining a safe educational environment) outweighed the teacher's interests in disclosing the child's gender non-conformity to the child's parent's on the facts pleaded.²²⁶

a. Statutory and Judicial Attempts to Manufacture Official-Duty Speech

Self-misgendering mandates do not merely misapply *Garcetti* in litigation but are drafted and defended to ensure that identity speech can be reclassified as official-duty speech at the threshold. Legislatures and courts collaborate in this project in two ways. Statutorily, they declare gender-affirming pronouns false, misleading, or incompatible with state policy and then embed that declaration into job duties, transforming compliance with a contested ontology of sex into a professional obligation. Judicially, opinions like the Eleventh Circuit's in *Wood v. Florida Department of Education* treat all on-duty expression as presumptively official, collapsing *Kennedy*'s practical inquiry into a blunt rule that anything said at work belongs to the state. This subpart examines those maneuvers and shows how they amount to a form of First Amendment "capture" of identity speech.

1) Legislating Identity Speech into "Official Duties" by Fiat

Self-misgendering mandates share a common statutory strategy in attempting to convert employees' identity expression into government speech simply by declaring gender-affirming usage to be "false," "misleading," or inconsistent with state policy. Florida's statute provides the template. It begins by pronouncing 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," and then defines adherence to that viewpoint as part of educators' professional obligations.²²⁷ Identity-denying pronoun usage is recast as a neutral requirement of professionalism, while gender-affirming self-reference is redefined as prohibited conduct within the scope of employment.

Tennessee reproduces the same basic structure. Tennessee's statute first declares that "the use of names and pronouns ... is a matter of free speech or expression" and that no individual "should ever be compelled to affirm a belief with which [they] disagree."²²⁸ It then operationalizes that principle only in one direction, as state employees and contractors may not be required to use gender-affirming names or pronouns for others and may not be held civilly liable or disciplined for refusing to do so, while agencies are forbidden to require disclosure of employees' own preferred pronouns.²²⁹ None of that solicitude extends to transgender or nonbinary employees' self-identifying pronouns.

²²⁶ *Manchester*, 780 F. Supp. 3d at 304.

²²⁷ FLA STAT. § 1000.071(1) (2025); *see also* FLA STAT. § 1001.21(9) (2025).

²²⁸ TENN. CODE ANN. § 49-6-5102(a)(3)–(4) (2025).

²²⁹ *Id.* §§ 3(b)(1)(A)–(B) (barring required use of gender-affirming pronouns); 3(b)(2)(A)–(B) (barring civil liability) & 3(b)(3)(A)–(B) (barring adverse employment consequences).

These statutory moves collide with the Supreme Court's insistence that the official-duty inquiry is functional, not formalistic. *Kennedy* rejected the Ninth Circuit's reasoning that everything a coach does "in the presence of students" falls within his official duties, warning that such "excessively broad job descriptions" would allow a school to fire a Muslim teacher for wearing a headscarf in the classroom.²³⁰ On *Kennedy*'s own terms, introducing oneself as "Ms. Wood" or "they/them" is not speech the government "commissioned or created,"²³¹ nor speech the employee is expected to deliver in carrying out her assigned tasks. Statutes that declare otherwise are not neutral job descriptions but attempts to redraw the line between citizen and employee speech by legislative fiat. The *Wood* district court recognized this point explicitly, explaining that "Florida may not, by legislative declaration, reclassify private speech as government speech in order to prohibit it."²³²

Caroline Mala Corbin has warned that this maneuver risks a form of First Amendment "capture," in which the government reclassifies contested viewpoints as government speech and then uses that classification to suppress dissent, such that "speech becomes controlled by the government when the Free Speech Clause should be regulating the government," allowing the state to dictate contested ideological or personal truths.²³³ Susan Etta Keller likewise shows how binary-sex definitional laws and pronoun mandates effectively "use speech acts to instate a sexual binary" that privileges adherents of that binary over those whose identities destabilize it.²³⁴ Similar capture dynamics appear in recent state-level "divisive concepts" and "anti-critical race theory" laws, which, like binary-only pronoun mandates, reclassify contested ideas deemed officially disfavored viewpoints as government speech immune from First Amendment scrutiny.²³⁵

Self-misgendering mandates thus belong to a broader statutory project. They do not merely seek to regulate how public employees speak but attempt to dictate who public employees are permitted to be by legislatively declaring that only one description of sex counts as "truthful" for purposes of self-reference and then writing that description into the definition of official duties.

²³⁰ *Kennedy*, 597 U.S. at 529 (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 422 (2006)).

²³¹ *Garcetti*, 547 U.S. at 422.

²³² *Wood*, 729 F. Supp. 3d at 1277.

²³³ Corbin, *supra* note 89, at 1478; see also Caroline Mala Corbin, *Government Speech and First Amendment Capture*, 107 VA. L. REV. ONLINE 224, 226 (2021).

²³⁴ Keller, *supra* note 199, at 471.

²³⁵ See Vanessa Miller, Frank Fernandez & Neal H. Hutchens, *The Race to Ban Race: Legal and Critical Arguments Against State Legislation to Ban Critical Race Theory in Higher Education*, 88 MO. L. REV. 61, 81–84 (2023); Corbin, *supra* note 89, at 1479–85; see generally Lindsay McCarthy, Note, *Wake Up: How Application of Garcetti to Public Educator Speech Harms Educators and Students Through the Lens of Florida's Individual Freedom Act*, 98 ST. JOHN'S L. REV. 1365 (2025).

2) *The Eleventh Circuit's Decision in Wood and the Distortion of the Garcetti Threshold*

The Eleventh Circuit's decision in *Wood v. Florida Department of Education* exemplifies how courts may distort *Garcetti's* threshold inquiry to buttress governmental identity-speech mandates. Purporting to apply *Garcetti*, the court vacated Chief Judge Mark Walker's preliminary injunction protecting Katie Wood's right to use her own pronouns, holding that all in-class speech by K–12 teachers addressed to students is pursuant to their official duties and therefore unprotected.²³⁶ In the panel's view, “[w]hen a public-school teacher addresses her students within the four walls of a classroom—whether orally or in writing—she is unquestionably acting ‘pursuant to [her] official duties,’”²³⁷ and Wood's verbal and written disclosure of her pronouns “fits that description precisely.”²³⁸

The majority's analysis rests on two premises. First, it treats location and audience as dispositive: because Wood's pronoun usage occurred in the classroom and was directed to students during instructional time, it “necessarily” fell within her official duties.²³⁹ Second, it endorses an expansive understanding of official-duty speech under which nearly all public-facing expression “owes its existence” to a public employee's job and thus belongs to the state.²⁴⁰

Both premises sit uneasily with *Lane* and *Kennedy*. *Lane* rejected the notion that speech “related to” one's job functions is automatically official-duty speech, emphasizing that “the critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.”²⁴¹ *Kennedy* likewise refused to treat speech occurring “within the office environment” of the football field as government speech simply by virtue of its setting, instead focusing on “the substance of Kennedy's speech and the circumstances surrounding it,” including the fact that he was not speaking pursuant to policy, conveying a government-created message, or engaged in any speech the District paid him to produce as a coach.²⁴²

Judge Jordan's dissent in the Eleventh Circuit's decision in *Wood* captures the stakes. If the majority is correct, he warned, Florida could require married female teachers to use their husbands' surnames in the classroom, demand that unmarried female teachers use “Mrs.” instead of “Ms.,” or require every teacher to call themselves “Teacher Smith” instead of using their actual last names, all by

²³⁶ *Wood v. Fla. Dep't of Educ.*, 142 F.4th 1286, 1293 (11th Cir. July 2, 2025).

²³⁷ *Wood*, 142 F.4th at 1290.

²³⁸ *Id.* at 1292.

²³⁹ *See id.* at 1291–92 (“When a public-school teacher speaks ‘in the course of performing [her] job’—i.e., ‘speaking to [her] class in [her] classroom during class hours’—she does so pursuant to her official duties and therefore speaks as a government employee, not a citizen.”) (internal citations omitted).

²⁴⁰ *Id.* at 1291–92.

²⁴¹ *Lane v. Franks*, 573 U.S. 228, 240 (2014).

²⁴² *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507,

legislative declaration that such usage advances state policy.²⁴³ “If these possibilities sound ‘First Amendment crazy,’” Jordan concluded, “it is because they are.”²⁴⁴ In other words, once self-identification is deemed official-duty speech, nothing prevents the State from dictating any number of identity markers so long as it announces them as pedagogical preferences.

The contrast with the district court’s fact-sensitive approach is striking. Applying *Kennedy*’s “context-specific and fact-intensive” inquiry, Chief Judge Walker examined “the personal, self-identifying nature of the speech and the circumstances during which she engages in such speech in and out of the classroom” and concluded that Wood’s self-designation “owes its existence not to her professional responsibilities as a math teacher, but instead to her identity as a woman.”²⁴⁵ A teacher’s title and pronouns, he reasoned, “are directly tied—indeed, ‘essential’—to her identity,” and “no one would mistake Ms. Wood’s reference to herself ... to be conveying the government’s message regarding her identity.”²⁴⁶ On this view, *Garcetti*’s threshold is not a blunt instrument but a filter to be applied in light of the particular content, form, and context of the speech.

Nor is *Wood* an isolated example. Lower courts confronting pronoun and gender-identity disputes have fractured over *Garcetti*’s reach. In *Willey v. Sweetwater County School District* (2023), the U.S. District Court for the District of Wyoming denied a teacher’s request for a preliminary injunction against a Wyoming school district policy that required district personnel to refer to students using their preferred names and gender pronouns and barring teachers from disclosing a child’s requested name or pronoun change to their parents absent a child protection investigation.²⁴⁷ While the teacher alleged violations of both her First Amendment rights to free speech and free religious exercise, the court explicitly applied *Garcetti* to the plaintiff’s free exercise challenge as well, relying on “the Supreme Court’s admonition that one clause of the First Amendment should not ‘trump the other two’” and reasoning that “there is no sound reason to prefer one constitutional guarantee over another,” to conclude “it is hard to imagine why a public employee’s free exercise rights would warrant more protection than their

²⁴³ *Wood*, 142 F.4th at 1304 (Jordan, J., dissenting).

²⁴⁴ *Id.* at 1304 (Jordan, J., dissenting).

²⁴⁵ *Id.* at 1276–79.

²⁴⁶ *Id.*

²⁴⁷ *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1288 (D. Wyo. 2023). Separately, the court granted a preliminary injunction against the district’s parental communication policy to the extent that it would require a teacher or school district employee to refuse disclosure or provide materially misleading or false information. *Id.* at 1278. Together with her husband, given their children were enrolled as students in the school district, with 16-year-old child having previously expressed their desire to change gender pronouns, the teacher and her husband also alleged the violation of her First Amendment right to free exercise of religion and Fourteenth Amendment substantive due process rights to family privacy and to direct the upbringing of her children insofar as the district caused one of their children to be referred to by another name or pronouns inconsistent with the child’s biological sex or engage in “mental health discussions” without the parent’s written consent. *Id.* at 1264.

Free Speech rights.”²⁴⁸ Further, applying *Garcetti*, the court concluded the speech subject to the policy fell within the plaintiff’s “official duties as a teacher, and not as a citizen on a matter of public concern,” such that it “only implicates [her] interactions with students inside her classroom, and the communications she has pursuant to those duties with parents.”²⁴⁹

Others bypass *Garcetti* altogether and resolve disputes under the Free Exercise Clause, applying strict scrutiny where policies are not generally applicable. For example, in *Ricard v. USD 475 Geary County* (2022), the U.S. District Court for the District of Kansas granted a preliminary injunction to a Kansas middle school teacher on Free Exercise Clause grounds with respect to a school district policy prohibiting teachers from communicating a student’s preferred names and pronouns to their parents.²⁵⁰ Despite acknowledging that “as part of her job, [the plaintiff] ‘regularly communicates with parents, whether by email or in person,’” the court did not apply *Garcetti*.²⁵¹ With respect to the parental communication policy, the court found plaintiff was likely to succeed on the merits of her Free Exercise Clause claim.²⁵² After concluding the district’s policy was not generally applicable, in that the district had created multiple exceptions allowing disclosure for secular purposes such as administrator’s disclosure in compliance with the terms of the Federal Educational Rights and Privacy Act, the court applied strict scrutiny.²⁵³ Further, the court found the district’s parental communications policy was not narrowly tailored to achieving a compelling government interest, in that even had the district properly articulated the concededly compelling interest in non-disclosure based on a particularized and substantiated concern such disclosure could lead to child abuse, neglect, or other illegal conduct, that the policy was overinclusive in that it prohibited disclosure without any individual assessment would actually posed a risk and underinclusive insofar as it permitted administrators to disclose simply if parents ask without first determining whether such disclosure would pose a risk.²⁵⁴

Similarly bypassing *Garcetti*, in *Vlaming v. West Point School Board* (2023), the Virginia Supreme Court held that a high school French teacher stated a viable compelled speech claim that was not precluded by *Garcetti* and held the Virginia Constitution’s rights to free exercise of religion, free speech, and due process protected the teacher where he was subject to discipline for refusing to use

²⁴⁸ *Willey*, at 1285 (quoting *Kennedy*, 142 S.Ct. at 2432).

²⁴⁹ *Id.* at 1287.

²⁵⁰ *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22CV04015, 2022 WL 1471372, at *25–26 (D. Kan. May 9, 2022).

²⁵¹ *Ricard*, 2022 WL 1471372, at *12–13. The court separately denied the teacher’s requested preliminary injunction on free speech, free exercise, and due process grounds with respect to the school district’s policy for addressing students in class using their preferred names and pronouns, relying on the parties’ agreement that the plaintiff teacher’s present practice of referring to students by their preferred first names did not violate the policy. *Id.* at *7–9.

²⁵² *Id.* at *25–26.

²⁵³ *Id.* at *14–16.

²⁵⁴ *Id.* at *21–23.

the preferred pronouns of a transgender student on religious grounds but agreed to use student's preferred name as a substitute.²⁵⁵ Interestingly, the Virginia Supreme Court distinguished *Garcetti* in two ways. First, the court distinguished the official-duty analysis in *Garcetti* as “apply[ing] the official-duties doctrine to ‘expressions employees *make* pursuant to their professional duties,’ not expressions employees *refuse to make*.”²⁵⁶ The Court relied in part on the Supreme Court’s language in *Janus* that it is “not easy to imagine a situation in which a public employer has a legitimate need to demand that its employees recite words with which they disagree[s].”²⁵⁷ Second, and independently, the court reasoned that, even if *Garcetti* applied to a public employee’s refusal to speak, the official-duty test is inapplicable where the speech compelled “involves an ideological topic that has engendered fierce public debate” such as pronoun usage and gender identity.²⁵⁸

Student-speech cases feature the same instability from another angle. In *Defending Education v. Olentangy Local School District Board of Education* (2025), the Sixth Circuit sitting *en banc* recently held that a parent group was likely to succeed on its Free Speech claim challenging school policies that prohibited students from referring to transgender and nonbinary classmates using biological pronouns.²⁵⁹ The court treated the policies as viewpoint-based restrictions on student speech about contested questions of sex and gender, rejected the district’s asserted justifications, and applied strict scrutiny.²⁶⁰

On this background, the Eleventh Circuit’s conclusion in *Wood* that self-identifying pronoun usage is categorically official-duty speech amounts to a constitutional inversion. By treating the mere fact of speaking to students in class as dispositive, the Eleventh Circuit collapses *Garcetti*’s threshold into a presumption that anything said in the workplace belongs to the state. The result is to convert a gatekeeping inquiry designed to shield government management of job tasks into a license to manage identity itself.

These crosscurrents reveal two key points. First, even in cases involving teacher–student interactions, courts disagree sharply about whether pronoun usage falls within “official duties,” whether it addresses matters of public concern, and whether Free Exercise or compelled-speech doctrine provides a better fit than *Garcetti*. Second, none of these decisions, whether ultimately supportive or hostile to gender-affirming usage, provides doctrinal support for *Wood*’s further step of treating public employees’ self-identifying pronouns as categorically official-duty speech. At most, they suggest that some forms of student-address pronoun usage may qualify as job-related speech or be regulated under *Pickering* or hostile-environment frameworks. They do not endorse a rule under which the State may

²⁵⁵ *Vlaming v. W. Point Sch. Bd.*, 895 S.E.2d 705, 712–13 (Va. 2023).

²⁵⁶ *Vlaming*, 895 S.E.2d at 741 (quoting *Garcetti*, 547 U.S. at 426).

²⁵⁷ *Vlaming*, 895 S.E.2d at 741 (quoting *Janus v. AFSCME*, 585 U.S. 878 (2018)).

²⁵⁸ *Vlaming*, 895 S.E.2d at 741.

²⁵⁹ *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, No. 23-3630, 2025 WL 3102072, at *19 (6th Cir. Nov. 6, 2025).

²⁶⁰ *Defending Educ.*, 2025 WL 3102072 at *17.

conscript employees' own identity speech as part of their job description. Further, debates over compelled student-address pronoun policies present a distinct set of questions that existing scholarship continues to interrogate through the lenses of *Pickering* balancing, hostile-environment doctrines, students' own speech and equality interests, and myriad other constitutional and statutory frameworks.²⁶¹ What has been largely missing from this literature, however, is sustained attention to self-misgendering mandates that target public employees' own identity speech.

For present purposes, the lesson of these cases is less that courts must select a single doctrinal box for every pronoun dispute, and more that *Garcetti*'s threshold must be kept narrow. If *Garcetti* is allowed to swallow self-identifying pronoun usage at the outset, through statutes that declare gender-affirming pronouns "false" and through opinions like *Wood* that treat all in-class expression as official speech, then identity speech becomes uniquely vulnerable to capture.

C. *Extending the Official-Duty Threshold Beyond K–12*

The K–12 setting has supplied much of the early pronoun caselaw and commentary, but the same practical inquiry the Court applies in *Lane* and *Kennedy* readily extends to other categories of public employment—clerical staff, corrections officers, public-university employees, and federal civil servants—increasingly covered by executive-branch pronoun bans. In each of these settings, the threshold question remains whether the employee's use of self-identifying pronouns is the sort of expression the government actually hired them to produce, or personal identity speech that "owes its existence" to the employee rather than to their employment.

Higher education offers one such test case. In *Garcetti* itself, the Supreme Court explicitly declined to reach the question of whether the official-duty threshold is applicable to speech by public college and university faculty related to

²⁶¹ See, e.g., Veronica Cihlar, Note, *A Name of One's Own: Critiquing Public School Teachers' Free Speech Claims to Intentionally Misgender*, 31 VA. J. SOC. POL'Y & L. 1, 23–27 (2024) (arguing that intentional misgendering is discriminatory language that, like racial slurs, should not be entitled to First Amendment protection, and that infringes students' Civil Rights Act and Title IX protections); Olivia Vladyka, Note, *Preserving Equality in the Classroom: How Public Schools Can Defend Transinclusive Policies Against Teacher-Led Constitutional and Statutory Claims*, 52 FORDHAM URB. L.J. 785, 824–26 (arguing K-12 teachers' use or non-use of lived names and preferred pronouns is curricular in nature and therefore does not constitute speech on an issue of public concern); Jacob D. Fleming, Note, *A "Compelling" Exception to Garcetti: Compelled Speech and Conscience in Public Education*, 86 U. PITT. L. REV. 1037 (2025) (suggesting a "compelled speech" carve-out to *Garcetti* in teacher pronoun and related ideological-speech cases).

teaching and scholarship.²⁶² Since *Garcetti* was decided, the Second,²⁶³ Fourth,²⁶⁴ Fifth,²⁶⁵ Sixth,²⁶⁶ and Ninth²⁶⁷ Circuits have to varying degrees endorsed an “academic freedom” exception to *Garcetti*, with the Sixth Circuit going so far as to extend the carve-out to “all classroom speech related to matters of public concern, whether that speech is germane to the contents of the lecture or not,” enumerating a number of “critical interests” unique to the university setting that require more “robust speech protections” than in other public employment contexts.²⁶⁸ Only the Seventh Circuit has ruled otherwise,²⁶⁹ while other circuits have yet to be confronted with the question.²⁷⁰

Whether or not the official-duty screen applies to scholarship and teaching in public higher education, cases involving the academic-freedom exception to *Garcetti* illustrate the shortcomings of official-duty analysis in evaluating the speech of professional employees hired to exercise their independent expertise and judgment. Recent appellate authority underscores this point. For instance, in *Reges v. Cauce* (2025), the Ninth Circuit held that *Garcetti*’s categorical bar cannot be extended to academic teaching materials merely because the employer requires their use.²⁷¹ Applying this principle to the First Amendment retaliation claim of a University of Washington computer science professor subjected to a lengthy disciplinary investigation for including a mocking parody of the university’s recommended “indigenous land acknowledgment” statement in his syllabus, the court squarely rejected the university’s argument that a syllabus statement was unprotected official-duty speech under *Garcetti* precisely because syllabi are required by the university, explaining that “[t]o say that UW required Reges to distribute a syllabus merely restates the legally inert proposition that the statement relates to his official duties.”²⁷² Applying the circuit’s *Demers* framework, the Ninth Circuit reiterated that *Garcetti* is “expressly inapplicable to speech related to scholarship or teaching” and held such speech instead proceeds to *Pickering* balancing.²⁷³

²⁶² *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006) (“We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching” and acknowledging “that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.”).

²⁶³ *Heim v. Daniel*, 81 F.4th 212, 226–28 (2d Cir. 2023).

²⁶⁴ *Adams v. Tr. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562–64 (4th Cir. 2011).

²⁶⁵ *Buchanan v. Alexander*, 919 F.3d 847, 852–53 (5th Cir. 2019).

²⁶⁶ *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021).

²⁶⁷ *Demers v. Austin*, 746 F.3d 402, 411–12 (9th Cir. 2014).

²⁶⁸ *Meriwether*, 992 F.3d at 507.

²⁶⁹ *Renken v. Gregory*, 541 F.3d 769, 773 (7th Cir. 2008).

²⁷⁰ *See, e.g., Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1243 (N.D. Fla. 2022) (applying the Eleventh Circuit’s pre-*Garcetti* balancing test to a university professors’ in-class speech).

²⁷¹ *Reges v. Cauce*, No. 24-3518, 2025 WL 3685613, at *9 (9th Cir. Dec. 19, 2025).

²⁷² *Reges*, 2025 WL 3685613 at *10.

²⁷³ *Reges*, 2025 WL 3685613 at *9.

Lower-court decisions adjacent to the K–12 setting hint at the context-dependent inquiry required of official-duty analysis for non-educational employees after *Kennedy*. In *Beathard v. Lyons* (2022), the U.S. District Court for the Central District of Illinois held that *Garcetti* was inapplicable to a university football coach fired for removing a Black Lives Matter poster placed there by the university athletic department and replacing it with a hand drawn sign reading “All Lives Matter to Our Lord & Savior Jesus Christ.”²⁷⁴ Applying *Kennedy*’s context-sensitive inquiry mere weeks after the Supreme Court handed down its decision, the court found that, “[i]n putting up the replacement poster, Plaintiff was expressing his personal views, which in no way ‘owed their existence’ to his responsibilities as a public employee,” and that the coach “was not paid by the University to decorate his door or to use it to promote a particular viewpoint, he was employed to coach football.”²⁷⁵

The analogy to pronoun self-designation is straightforward. Whatever else public employers hire their workers to do, whether to coach football, process benefits, supervise people in custodial settings, or run public-health outreach programs, they do *not* hire them to possess a particular gender identity or to declare one on command. According to *Beathard*’s logic, as with *Kennedy*’s, self-identifying pronoun usage falls on the citizen-speech side of the line precisely because it is not among the tasks the government “commissioned or created” for the employee to perform.²⁷⁶

Insulating self-misgendering mandates from *Pickering* balancing, as *Wood* does, compounds the First Amendment harms of compelled identity expression because official-duty speech is not subject to attack on grounds of overbreadth, compelled speech, or viewpoint-based discrimination. Contests over pronoun policies in federal and state programs underscore the point: Executive-branch directives have attempted to hard-wire binary-only pronoun usage into the information architecture of the federal workforce by scrubbing pronoun fields from email systems, disabling pronoun prompts in collaboration platforms, and prohibiting employees from including pronouns in their signatures.²⁷⁷ Meanwhile, similar measures have gained traction through gubernatorial orders and agency directives in binary-sex jurisdictions.²⁷⁸ But the fact speech occurs “in” the workplace, or is disseminated by means of an employer’s communications platform, does not itself make it official-duty. If anything, far from being shielded by the *Garcetti* official-duty screen, overbroad speech-suppression policies like those represented by federal and state mandates barring gender pronouns from

²⁷⁴ *Beathard v. Lyons*, 620 F. Supp. 3d 775, 782 (C.D. Ill. 2022), *aff’d on other grounds*, 129 F.4th 1027 (7th Cir. 2025).

²⁷⁵ *Id.* (citing *Kennedy*, 597 U.S. at 530).

²⁷⁶ *Garcetti v. Ceballos*, 547 U.S. 410, 422 (2006).

²⁷⁷ See *supra* Part I.A.

²⁷⁸ See *supra* Part II.C.

government communication platforms should be subjected to greater scrutiny in proportion to the protected speech they reach.²⁷⁹

Similarly, litigation over military and program-specific pronoun rules has, in the lower courts at least, tended to treat these policies as viewpoint-based regulations of contested ideological questions rather than as neutral specifications of job duties, thereby triggering heightened scrutiny rather than deferential application of *Garcetti*.²⁸⁰ That framing implicitly recognizes that pronoun self-identification is far from the equivalent of filling out a timesheet or submitting a required report. Instead, it is expressive conduct about identity, and when the government attempts to control it, the dispute is not about managerial discretion but about constitutional limits on government-compelled orthodoxy.

In a similar fashion, statewide “Don’t Say Gay” and “divisive concepts” laws that attempt to reclassify entire swaths of racial and gender discourse as government speech in order to suppress it pose many of the same constitutional infirmities as self-misgendering mandates.²⁸¹ However, in contrast to *Wood*, courts confronting such measures have been reluctant to accept the premise that the state may convert any discussion of race, gender identity, or social transition into unreviewable official speech despite the traditional deference owed to school districts in setting the curriculum. For instance, in *Loc. 8027 v. Edelblut* (2023), a New Hampshire federal district court interpreted that state’s “divisive concepts” law to require a concrete showing that classroom discussion of race or gender qualifies as impermissible “teaching” of banned concepts, rather than allowing the state to treat any mention as unprotected government speech.²⁸²

Concerns with the overbreadth, compelled speech, and viewpoint-based discrimination implicated by “banned concepts” laws apply with equal force to self-identifying pronoun usage across the public sector. Whether the employee is a public-university professor, a corrections officer, or a federal civil servant whose

²⁷⁹ See, e.g., *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 103–04 (3d Cir. 2022) (holding that public transit employees disciplined for wearing “Black Lives Matter” masks were speaking as citizens and not pursuant to their official duties because the employer did not hire them to express political or social views).

²⁸⁰ See, e.g., *Shilling v. U.S.*, 773 F. Supp. 3d 1069, 1099–1100 (W.D. Wash. 2025) (finding Department of Defense policy requiring “transgender service members ‘adhere to all . . . standards’ associated with their birth sex, including the use of pronouns consistent with their birth sex” to be viewpoint-based restriction on transgender service members’ speech and expression, “go[ing] so far as to restrict transgender expression ‘even in one’s personal life.’”). But see *Shilling v. U.S.*, 145 S.Ct. 2695 (May 6, 2025) (mem.) (granting emergency stay).

²⁸¹ See generally Vanessa Miller, Frank Fernandez & Neal H. Hutchens, *The Race to Ban Race: Legal and Critical Arguments Against State Legislation to Ban Critical Race Theory in Higher Education*, 88 MO. L. REV. 61 (2023); Corbin, *supra* note 89; Lindsay McCarthy, Note, *Wake Up: How Application of Garcetti to Public Educator Speech Harms Educators and Students Through the Lens of Florida’s Individual Freedom Act*, 98 ST. JOHN’S L. REV. 1365 (2025).

²⁸² *Loc. 8027 v. Edelblut*, 651 F. Supp. 3d 444, 459–64 (D.N.H. 2023) (denying dismissal of teachers’ challenge to New Hampshire’s ban on teaching “divisive topics” and finding teachers plausibly alleged ban was unconstitutionally vague where it “do[es] not give teachers fair notice of what they can and cannot teach”).

email signature has been stripped of pronouns by executive directive, the real constitutional question is not whether pronouns appear in a work setting. It is whether the government can plausibly claim that gendered self-identification is part of what it hired the employee to say. Under *Lane* and *Kennedy*'s practical inquiry and considering the non-K-12 cases and academic-freedom scholarship just canvassed, the answer is no. Self-identifying pronoun usage remains citizen speech wherever public employees work, a conclusion that carries beyond K-12 classrooms into every corner of public employment.

To hold otherwise sets a dangerous precedent. If a public employee's manner of self-identification is deemed speech "pursuant to official duties" merely because it occurs in a workplace setting, nothing in the Eleventh Circuit's reasoning would prevent a State from requiring teachers to identify themselves only by surnames listed in personnel records, thereby conscripting marital status, naming conventions, and gendered norms into conditions of public employment. Under the same logic, a State could prohibit public employees from referencing racial or ethnic identity in self-descriptions on the ground that such identifiers are extraneous to job performance. And facially "neutral" regimes, such as a requirement that all public employees use only gender-neutral titles and pronouns, would become constitutionally permissible under *Wood*'s approach.

CONCLUSION

Self-misgendering mandates are a category error in public-employee speech law. By reclassifying employees' own gender-identifying pronouns as "official" government speech, these measures seek to convert core identity expression into an instrument of state service. As this Article has shown, that move is incompatible with the Court's post-*Garcetti* insistence on a practical official-duty inquiry and with basic linguistic understandings of what pronoun self-designation does in ordinary language. Pronoun self-identification does not "owe its existence" to public employment but arises from who the speaker *is*, nor is self-identification what the government hires employees—*any* employees—to do.

The emerging federal and state binary-sex pronoun architecture threatens to invert that principle. By embedding binary-only rules in the information systems and policies that structure everyday workplace communication, these regimes condition public employment on ideological conformity at the level of self-description. When courts accept legislative declarations that gender-affirming pronouns are "false" or "misleading" and fold self-identifying pronoun usage into "official duties," *Garcetti*'s threshold becomes a tool for capturing identity speech rather than a shield to ensure efficient government operations, inviting compelled self-definition not only regarding gender, but potentially other axes of identity as well. Applied with the discipline reflected in *Lane*, *Kennedy*, and *Lindke*, the modern public-employee speech framework points in the opposite direction. Official-duty analysis must attend to substance, context, and actual authority, not broad job descriptions or the mere fact that speech occurs at work. Under that

standard, self-identifying pronoun usage across K–12, higher education, and the broader public workforce cannot be collapsed into “official” speech at *Garcetti*’s threshold. It must be treated as citizen speech on matters of public concern and evaluated under *Pickering*, compelled-speech doctrine, and, where relevant, equality and academic-freedom principles. Whatever room remains for regulating pronoun usage when employees address others, the government may not prescribe how public employees name themselves as a condition of public service.

* * *