

No. 26-3060

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

ANTHONY ALVAREZ,
Plaintiff-Appellee,

v.

EMILY CHELLGREN,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of Kansas, Case No. 2:25-cv-02281-KHV-JBW
Honorable Kathryn H. Vratil Presiding

**BRIEF OF *AMICUS CURIAE*
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION
IN SUPPORT OF APPELLEE AND AFFIRMANCE**

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INTEREST OF *AMICUS CURIAE*¹

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended First Amendment rights nationwide on college campuses without regard to the speakers’ views through public advocacy, strategic litigation, and *amicus curiae* filings in cases implicating expressive rights. *See, e.g., Stanford Daily Publ’g Corp. v. Rubio*, 820 F. Supp. 3d 974 (N.D. Cal. 2026); *Beverly v. Watson*, No. 1:14-CV-04970, 2017 WL 4339795 (N.D. Ill. Sept. 29, 2017) (unpublished); *Volokh v. James*, 148 F.4th 71 (2d Cir. 2025), *certified question answered*, --- N.E.3d ----, 2026 N.Y. Slip. Op. 03913, 2026 WL 1790976 (June 23, 2026); *Phillips v. Collin Cmty. Coll. Dist.*, 701 F. Supp. 3d 525 (E.D. Tex. 2023); Br. *Amicus Curiae* FIRE, *Anthropic PBC v. U.S. Dep’t of War*, No. 26-1049 (D.C. Cir. Filed Mar. 9, 2026); Br. *Amicus Curiae* FIRE, *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114 (2026). And

¹ No counsel for a party authored this brief in whole or in part. Further, no person, other than *amicus*, their members, or their counsel contributed money intended to fund this brief’s preparation or submission. All parties consent to the filing of this brief.

FIRE regularly participates as *amicus* in this Circuit in its nonpartisan defense of freedom of expression. *See, e.g., Br. Amicus Curiae FIRE, C1.G v. Siegfried*, 38 F.4th 1270 (10th Cir. 2022).

FIRE has a direct interest in this case because the question presented—whether a public university student housing employee speaks pursuant to employment duties when speaking to the media on his own time—implicates the First Amendment rights of the students and faculty nationwide for whom FIRE advocates.

FIRE knows well from its quarter-century of defending free speech on campus that students and faculty members too often face punishment for speaking about matters of public concern related to their institutions. FIRE files this brief in support of Anthony Alvarez to urge the Court to hold that the First Amendment protects his speech to the media as he spoke in his capacity as a student and citizen, not an employee.

INTRODUCTION AND SUMMARY OF ARGUMENT

Student employees, like other public employees, do not “relinquish [their] First Amendment rights to comment on matters of public interest” because of their public employment. *Connick v. Myers*, 461 U.S. 138, 140 (1983). Yet, the University of Kansas tried to avoid this rule by labeling a student housing employee’s off-the-clock comments to the media as statements made “pursuant to [his] official duties.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). That runs counter to controlling law: Public employees—including student employees at a public university—have the right as private citizens to comment on matters of public concern unless their interest in doing so is outweighed by the state’s interests “in promoting the efficiency of the public services it performs.” *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968); *see also Timmins v. Plotkin*, 157 F.4th 1275, 1277 (10th Cir. 2025).

Yet *amicus* FIRE has too often seen public colleges and universities regulate student employees’ comments to the media on their own time as speech “pursuant to their official duties,” *Garcetti*, 547 U.S. at 421, simply because such comments relate to their employment. This runs counter to settled precedent holding a public employee’s off-the-clock

speech does not lose First Amendment protection because it “merely concerns” their duties. *Lane v. Franks*, 573 U.S. 228, 240 (2014).

But that’s exactly what happened here. While attending a protest, KU student Anthony Alvarez, who lived in the dorm where he worked as a housing proctor, spoke to the media about potential housing policy changes for the upcoming academic year. Those comments were entitled to First Amendment protection. But Assistant Director of KU Housing and Residence Life Emily Chellgren used them as grounds for terminating Alvarez from his position.

The district court correctly concluded Alvarez did not speak to the media pursuant to his official duties, and thus properly denied Chellgren’s Motion to Dismiss on grounds Alvarez plausibly alleged violation of his clearly established First Amendment rights. App. Vol. 1 at 147–53. FIRE’s 25 years of defending the First Amendment rights of college and university students demonstrates the need for courts to explicitly remind public institutions that student employees do not surrender their right to speak to the press on matters of public importance merely because such statements concern their positions. This Court accordingly should affirm the district court’s decision.

ARGUMENT

I. Student Employees at Public Universities Do Not Relinquish Their First Amendment Rights.

The district court correctly concluded Alvarez’s off-duty speech was not made pursuant to his official duties as a student housing employee. App. Vol. 1 at 147–48. Contrary to Chellgren’s contention, speech made “pursuant to [an employee’s] official duties” does not capture all speech that relates to a student employee’s role. *Garcetti*, 547 U.S. at 421. KU’s attempt to transform citizen speech into employee speech simply because it “owes its existence” to a student’s employment would be to the detriment of both students and the public. *Lane*, 573 U.S. at 235 (citation omitted). Fortunately, Supreme Court and Tenth Circuit precedent establish the First Amendment’s speech protections do not disappear merely because a public employee’s comments relate to their employment.

A. Alvarez retains the right to speak off the clock on matters of public concern.

As a public university student, Alvarez did not “shed [his] constitutional rights to freedom of speech” upon enrolling at KU. *Healy v. James*, 408 U.S. 169, 180 (1972) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). And as a student attending a

public university, Alvarez fully retained his First Amendment rights, *id.*, including the right to speak out on matters of public concern, *Snyder v. Phelps*, 562 U.S. 443, 452 (2011).

In addition to being a student, Alvarez worked as a housing proctor, a role similar to resident assistant. App. Vol. 1 at 145. Taking that role did not mean he “relinquish[ed his] First Amendment rights to comment on matters of public interest by virtue” of his public employment. *Connick*, 461 U.S. at 140. Rather, like all public employees, Alvarez had the right to comment on matters of public concern as a private citizen absent interference with his public employer’s ability to efficiently and effectively operate. *Pickering*, 391 U.S. at 570–71.

A student employee’s employment status cannot hinge on forfeiting the right to speak out on matters of public concern away from the job and on their own time. But were this Court to accept Chellgren’s position, that would be the result, and students like Alvarez would be simply unable to speak as private citizens about the issues of the day. The First Amendment doesn’t permit public employers to require their employees to waive their expressive rights. Further, it runs counter to established case law delineating speech pursuant to one’s official duties and speech

that merely concerns those duties. *Lane*, 573 U.S. at 239; *see also Timmins*, 157 F.4th at 1279.

To be sure, when a public employee’s speech is made “pursuant to their official duties,” they do not speak as a citizen for First Amendment purposes. *Garcetti*, 547 U.S. at 421. Still, the First Amendment limits public employers from restricting “the liberties employees enjoy in their capacities as private citizens.” *Id.* at 419. The foundations of the employee speech analysis illustrate this distinction. *Garcetti* concerned a deputy district attorney who wrote a memo involving a matter he was prosecuting which “demanded the attention of his supervisors and led to a heated meeting with employees from the sheriff’s department.” *Id.* at 422–23. Critical to the Court’s holding was the fact that writing such a memo was “part of what he [...] was employed to do,” in contrast to the speaker’s expression in *Pickering*. *Id.* at 421.

In *Pickering*, a school board fired a public high school teacher after he wrote a letter to a local newspaper criticizing the board’s use of taxpayer funds. 391 U.S. at 566. Balancing *Pickering*’s free speech interests to comment as a citizen on a matter of public concern related to his employment and the state’s interest as an employer, the Court held

Pickering’s dismissal violated his First Amendment right to free speech. *Id.* at 568, 574–75. Indeed, the Court made clear the First Amendment’s protection of employees like Pickering is particularly important because public employees are “the members of a community most likely to have informed and definite opinions” on matters of public concern related to their employment. *Id.* at 572; *Garcetti*, 547 U.S. at 421 (noting “[t]he same is true of many other categories of public employees”—not only teachers).

In *Lane*, the Supreme Court reaffirmed the principle that a citizen’s speech is not transformed into employee speech and thus subject to discipline simply because it mentions or relates to their employment. 573 U.S. at 240–41. In reversing the Eleventh Circuit’s holding that a public employee spoke pursuant to his official duties when he testified in a public corruption trial about information he learned during work, the Court made clear that just because an employee’s speech “owes its existence to” or “relates to” his employment does not render it speech made pursuant to his official duties. *Id.* at 238–39 (citation omitted). Rather, the “critical question” in the employee speech analysis is “whether the speech at issue is itself ordinarily within the scope of an

employee's duties, not whether it merely concerns those duties." *Id.* at 240. And that critical question controls here.

Alvarez's speech is far beyond the scope of his duties as a housing proctor. Alvarez spoke on his own time to the media about why he, alongside other students, was attending an outdoor protest.² App. Vol. 1 at 142 n.1. The article identified Alvarez as a transgender student and protest participant who had lived in Grace Pearson for three years. *Id.* at 141. The piece only later mentioned he worked as a housing proctor at Grace Pearson, and noted he had declined an offer to work in a different residence hall the next year. *Id.* at 142 & n.1. Alvarez did not purport to speak as a representative of KU Housing and Residence Life, nor did the article present him as such. Nevertheless, Chellgren fired Alvarez, requiring him to move out of the residence hall and find new housing within one week. *Id.* at 86, 143.

Transforming Alvarez's speech about a matter of public concern into employee speech simply because it owes its existence to his

² That Alvarez did so alongside several other students who did not hold employment roles, App. Vol. 1 at 40, is supportive of his speech not being in his capacity as a housing proctor, but is neither determinative nor necessary to that conclusion.

employment, as Chellgren is attempting here, would force students like Alvarez to trade their expressive rights for public employment. The First Amendment prohibits that result, both because it imposes employer control over a student-employee's speech as a private citizen on matters of public concern, and because it denies the broader community the ability to hear the valuable perspectives of students who both attend and work for the university. *See Pickering*, 391 U.S. at 572.

B. Alvarez's speech holds special value to the community because of his housing proctor position.

A public college or university cannot be a black box of information hidden from the public's eyes. Punishing a student housing proctor for his statements to the media on a matter of public concern chills student speech on other topics of public interest that student employees may seek to speak about in their personal capacities. That's why this Court has recognized "there is particular reason to protect speech by public employees on matters peculiarly within their knowledge." *Timmins*, 157 F4th at 1281. Indeed, "speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment." *Lane*, 573 U.S. at 239–40. Student employees speaking as

citizens on issues of public interest cast a light on what a university may want to keep in the dark. It's precisely because of Alvarez's experience as a proctor—coupled with his experience as a transgender student in the Grace Pearson dorm—that his statements about the contested question of transgender-inclusive housing at a public university were valuable to the press, and in turn, the public.

Although courts have settled the First Amendment question cases like Alvarez's present, *amicus* FIRE must regularly address similar threats to student speech on campuses across the country. For example, Texas State University resident assistants Regina Macias, Yordanos Kinfé, and Ava Melvin were quoted in an opinion article discussing overcrowding in student dorms, how the issue impacted them as students who live on campus, and their unique perspectives as RAs who now had to share rooms with students.³ The university issued written disciplinary warnings to each of the three RAs under a policy requiring university personnel to notify specific supervisors when responding to media

³ Letter from James Jordan, Litigation Fellow, FIRE, to Kelly Damphouse, President, Texas State University (Dec. 28, 2022), *available at* <https://www.fire.org/research-learn/fire-letter-texas-state-university-december-28-2022> [https://perma.cc/B8RP-KQU9].

requests, chilling the speech of those best positioned on campus to shine a light on the impact of over-admission and on-campus housing requirements for freshmen.⁴ Only following FIRE's intervention did the university remove the written warnings from the RAs' personnel files.⁵

At the University of Missouri, RAs sought anonymity to speak about students moving back into campus housing during the COVID-19 pandemic for fear they would lose their jobs.⁶ The COVID-19 pandemic was of critical public concern, especially for arriving students and the housing staff who were concerned not only about the safety of campus as the workplace, but also as their home. In response to the RAs' concerns, FIRE sought and received clarification from the university that RAs would not be punished for speaking as private citizens on matters of

⁴ *Id.*

⁵ Letter from Charmaine C. Mazzantini, Associate General Counsel, Texas State University, to James Jordan, Litigation Fellow, FIRE (Jan. 13, 2023), *available at* <https://www.fire.org/research-learn/texas-state-response-fire-letter-january-13-2023> [https://perma.cc/ES5W-V5P6].

⁶ Letter from Adam Steinbaugh, Director, FIRE, to Tyler Page, Director, University of Missouri (Aug. 14, 2020), *available at* <https://www.fire.org/research-learn/fire-letter-university-missouri-august-14-2020> [https://perma.cc/Z4EW-Y2TL].

public concern,⁷ along with confirmation that the university would inform student employees of their rights.⁸

Similarly, RAs feared they would be fired for speaking to the media at the University of Virginia due to its blanket policy prohibiting staffers from speaking to the media.⁹ When FIRE inquired, the university's response clarified RAs were to refer media requests for comment *on behalf* of the program to official representatives, but were free to speak with the media where it was clear they were doing so in their personal capacities.¹⁰

⁷ *Id.*

⁸ Letter from Tyler Page, Director, University of Missouri, to Adam Steinbaugh, Director, FIRE (Aug. 19, 2020), *available at* <https://www.fire.org/research-learn/university-missouri-letter-fire-august-19-2020> [https://perma.cc/CMM8-3ZGE].

⁹ Letter from Lindsie Rank, Program Officer, FIRE, to James Ryan, President, University of Virginia (Sep. 11, 2020), *available at* <https://www.fire.org/research-learn/fire-letter-university-virginia-september-11-2020> [https://perma.cc/Z7MT-W6H2].

¹⁰ Letter from Allen Groves, University Dean of Students, University of Virginia, to Lindsie Rank, Program Officer (Sep. 18, 2020), *available at* <https://www.fire.org/research-learn/university-virginia-letter-fire-september-18-2020> [https://perma.cc/B73L-27MU].

These and other examples from *amicus* FIRE’s work demonstrate the chill on student speech that results when public colleges and universities seek to limit student housing staff from commenting on matters of public concern in their personal capacities. Though KU’s peer institutions in those cases made significant changes to safeguard student employees’ expressive freedoms to obviate the need for litigation, KU has not. To remind KU and public institutions nationwide of their obligation to respect their student-employee’s First Amendment rights, FIRE urges this Court to affirm the district court’s denial of Chellgren’s motion to dismiss.

II. Alvarez’s Right Was Clearly Established at the Time of the Retaliation.

The district court correctly concluded Alvarez’s right to speak to the media about the proposed housing policy was clearly established when Chellgren terminated him. The case law leaves no doubt that speech “pursuant to [an employee’s] official duties,” *Garcetti*, 547 U.S. at 421, cannot be stretched to that which neither “stemmed from” nor was “the type of activit[y]” that he was employed to do. *Timmins*, 157 F.4th at 1280 (citation modified). Supreme Court and Tenth Circuit precedents as of March 2025, when Chellgren fired Alvarez, were sufficient to put

Chellgren on notice that Alvarez’s comments to the media about potential changes to housing policies were made as a citizen—and thus protected from workplace retaliation—given that his official responsibilities as a proctor did not include talking to the press about housing policies.

To defeat a defendant’s qualified immunity defense, a plaintiff must show the constitutional right in question was clearly established in the law such that “a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 486 U.S. 635, 640 (1987). The decisive question is whether an official has “fair warning” that her actions were unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Fair warning may be established with factually similar “controlling authority or a robust consensus of cases of persuasive authority,” but a plaintiff does not need a precedent “directly on point.” *Heard v. Dulayev*, 29 F.4th 1195, 1203 (10th Cir. 2022) (citation modified). The constitutional right may be clearly established, even in the absence of precedent directly on point, where “a general constitutional rule already identified in the decisional law . . . appl[ies] with obvious clarity to the specific conduct in question.” *Truman v. Orem City*, 1 F.4th 1227, 1240 (10th Cir. 2021) (citation modified).

That is the case here. Alvarez need not identify a factually similar precedent to precisely define the bounds of speech “pursuant to” his duties as a proctor because, wherever those bounds lay in March 2025, they fell far short of reaching off-the-clock speech to the media concerning “*future* duties that KU *might* require him to perform *if* he were to accept a different proctor job the following year.” App. Vol. 1 at 155 (second and third emphases added). Even under the “broad view of the meaning of speech that is pursuant to an employee’s official duties” purportedly taken by this Court prior to March 2025, *Knopf v. Williams*, 884 F.3d 939, 945 (10th Cir. 2018) (citation modified), the Court repeatedly held that speech merely concerning or arising from an employee’s work was not pursuant to his official duties. *See, e.g., Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1251 (10th Cir. 2024); *Thomas v. City of Blanchard*, 548 F.3d 1317, 1324–26 (10th Cir. 2008); *Casey v. W. Las Vegas Ind. Sch. Dist.*, 473 F.3d 1323, 1332–33 (10th Cir. 2007); *cf. Lane*, 573 U.S. at 240 (“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.”). The Court’s inquiry focused on whether the *act of*

speaking—not the subject of the speech—was within the employee’s duties.

Casey v. West Las Vegas Independent School District illustrates the distinction. There, this Court held a school superintendent was not acting within her official duties when she reported the city school board’s violation of the Open Meetings Act to the attorney general’s office, while her earlier warning to the school board about the violation was within her official duties, which included advising the school board, but not the attorney general. 473 F.3d at 1332–33. On the other hand, the Court held the superintendent’s reports to both the school board and federal Head Start officials about administration of the district’s Head Start program were pursuant to her official duties because, as superintendent, the program was entrusted to her care, and she had independent obligations to report mismanagement to federal authorities. *Id.* at 1329–32. Turning to Alvarez and his duties as proctor, because he had no obligation to speak to the press in his role, nor was expected to, his comments were not pursuant to his official duties.

In *Tufaro v. Oklahoma ex rel. Board of Regents of University of Oklahoma*, a chief of plastic surgery and professor of medicine spoke as

an employee when he complained to university hospital officials about billing and scheduling issues, unsupervised residents, improper drug storage, and breaches of patient confidentiality. 107 F.4th 1121, 1138–39 (10th Cir. 2024). This Court held the complaints fell within the broad range of the doctor’s administrative, supervisory, and clinical responsibilities because he addressed only hospital officials. *Id.* at 1139 (“[A]n employee’s statements are made pursuant to official duties when they stemmed from and were the type of activities they were paid to do.” (citation modified)).

The Court noted the doctor could have used alternate channels outside the bounds of his official duties to report the hospital’s issues, such as writing “a letter to the editor of a newspaper or a complaint under the Oklahoma Whistleblower Act.” *Id.* at 1140. Alvarez, as a student resident of Grace Pearson, commented to the press while at a protest alongside other students, App. Vol. 1 at 142 n.1., an activity that did not stem from his role as a proctor. Nor was speaking to the press the “type of activit[y] that [he was] paid to do.” *Id.* at 1139.

This Court applied similar reasoning in *Pryor v. School District No. 1*, to hold a volunteer football coach and school founder spoke as a citizen,

not pursuant to his official responsibilities, in criticizing district employees' operational decisions via his Facebook page, local news outlets, and public comment sessions. 99 F.4th at 1251. The Court explained that the coach and founder's duties did not include authority or responsibility over the district's operational issues, and he spoke in forums often used by citizens for civic discourse. *Id.* Like Pryor, Alvarez spoke to a public audience in a forum commonly used by citizens for civic discourse about an institutional issue over which he held no authority. *See id.*

In sum, a reasonable official in Chellgren's position would have been well aware by March 2025 that an employee speaks as a citizen when he addresses audiences off the clock and outside the chain of command or his official reporting duties, even when his speech concerns his current employment or information learned on the job. This Court's precedents clearly establish that Alvarez's comments to the media were protected speech not pursuant to his official duties, even if the proposed policy concerned his work as a proctor, because his official duties did not include speaking to the media or assessing proposed housing policies.

CONCLUSION

The importance of ensuring public colleges and universities do not strip student employees of their rights to speak as citizens on matters of public concern by categorizing all commentary to the press that may relate to their employment as employee speech cannot be overstated. Here, at the time Chellgren terminated Alvarez, his right to speak to the press was clearly established. This Court should accordingly affirm the district court's denial of Defendant's Motion to Dismiss.

Dated: July 24, 2026

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the word limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by the Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), this document contains 3,853 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 10th Cir. R. 32(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

3. All required privacy redactions have been made per 10th Cir. R. 25.5.

4. Any hard copies of the foregoing brief submitted to the Clerk of this Court are exact copies of the brief as filed via ECF.

5. A virus check of the digital submission of this brief was performed using SentinelOne Singularity, and no virus was detected.

Dated: July 24, 2026

/s/ Ronald G. London

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, I electronically filed a copy of the foregoing brief with the Clerk of the United States Court of Appeals for the Tenth Circuit using the Court's appellate CM/ECF system. I further certify that to the best of my knowledge, counsel for all participants are registered CM/ECF users, and service will be accomplished via the CM/ECF system.

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