AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era —Democratic Rights/Free Speech/ Public Property, Subsidies, Employees, and Schools

**Pickering v. Board of Education, 391 U.S. 563** (1968)

*Marvin Pickering was a high school science teacher in Will County, Illinois. The board of education for his school district fired him for sending a letter to the editor to his local newspaper in 1964 criticizing the board and the school superintendent in relation to a proposed tax increase. Pickering thought the board was “trying to push tax-supported athletics down our throats” and urged, “as a citizen, taxpayer and voter” that his fellow citizens vote against the proposed tax increase. The board thought Pickering had misrepresented facts in his letter. The board found that Pickering’s letter was “detrimental to the efficient operation and administration of the schools of the district,” which was an available cause for dismissal for school teachers under state statute.*

*Pickering filed suit in state court challenging his termination as a violation of his constitutional right to free speech. The trial court upheld his termination, and the state supreme court concluded that so long as the school board’s actions were not capricious or arbitrary they were not abusing their discretion to terminate a public employee who was, in their judgment, “not promoting the best interest of his school.” On appeal, the U.S. Supreme Court reversed that judgment by an 8-1 decision, holding that public employees were entitled to some constitutional rights when acting as citizens speaking about matters of public concern. In 1969, Pickering was reinstated as a public school teacher in Illinois.*

JUSTICE MARSHALL delivered the opinion of the Court.

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To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. *Shelton v. Tucker* (1960); *Keyishian v. Board of Regents* (1967). . . . At the same time, it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, 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.

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. . . . Appellant's employment relationships with the Board and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning. Accordingly, to the extent that the Board's position here can be taken to suggest that even comments on matters of public concern that are substantially correct . . . may furnish grounds for dismissal if they are sufficiently critical in tone, we unequivocally reject it.

We next consider the statements in appellant's letter which we agree to be false. The Board's original charges included allegations that the publication of the letter damaged the professional reputations of the Board and the superintendent and would foment controversy and conflict among the Board, teachers, administrators, and the residents of the district. However, no evidence to support these allegations was introduced at the hearing. So far as the record reveals, Pickering's letter was greeted by everyone but its main target, the Board, with massive apathy and total disbelief. The Board must, therefore, have decided, perhaps by analogy with the law of libel, that the statements were per se harmful to the operation of the schools.

However, the only way in which the Board could conclude, absent any evidence of the actual effect of the letter, that the statements contained therein were per se detrimental to the interest of the schools was to equate the Board members' own interests with that of the schools. Certainly an accusation that too much money is being spent on athletics by the administrators of the school system cannot reasonably be regarded as per se detrimental to the district's schools. Such an accusation reflects rather a difference of opinion between Pickering and the Board as to the preferable manner of operating the school system, a difference of opinion that clearly concerns an issue of general public interest.

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More importantly, the question whether a school system requires additional funds is a matter of legitimate public concern on which the judgment of the school administration, including the School Board, cannot, in a society that leaves such questions to popular vote, be taken as conclusive. On such a question free and open debate is vital to informed decisionmaking by the electorate. Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.

. . . . The Board could easily have rebutted appellant's errors by publishing the accurate figures itself, either via a letter to the same newspaper or otherwise. We are thus not presented with a situation in which a teacher has carelessly made false statements about matters so closely related to the day-to-day operations of the schools that any harmful impact on the public would be difficult to counter because of the teacher's presumed greater access to the real facts. Accordingly, we have no occasion to consider at this time whether, under such circumstances, a school board could reasonably require that a teacher make substantial efforts to verify the accuracy of his charges before publishing them.

What we do have before us is a case in which a teacher has made erroneous public statements upon issues then currently the subject of public attention, which are critical of his ultimate employer but which are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally. In these circumstances, we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

The public interest in having free and unhindered debate on matters of public importance -- the core value of the Free Speech Clause of the First Amendment -- is so great that it has been held that a State cannot authorize the recovery of damages by a public official for defamatory statements directed at him except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity. . . .

This Court has also indicated, in more general terms, that statements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors. . . .

In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. . . .

*Reversed*.

JUSTICE DOUGLAS, with whom JUSTICE BLACK joins, concurring.

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JUSTICE WHITE, dissenting in part.

The Court holds that truthful statements by a school teacher critical of the school board are within the ambit of the First Amendment. So also are false statements innocently or negligently made. The State may not fire the teacher for making either unless, as I gather it, there are special circumstances, not present in this case, demonstrating an overriding state interest, such as the need for confidentiality or the special obligations which a teacher in a particular position may owe to his superiors.

. . . . Deliberate or reckless falsehoods serve no First Amendment ends and deserve no protection under that Amendment. The Court unequivocally recognized this in Garrison, where after reargument the Court said that "the knowingly false statement and th e false statement made with reckless disregard of the truth, do not enjoy constitutional protection." *Garrison v. Louisiana* (1964). The Court today neither explains nor justifies its withdrawal from the firm stand taken in *Garrison*. As I see it, a teacher may be fired without violation of the First Amendment for knowingly or recklessly making false statements regardless of their harmful impact on the schools. . . .

Nor can I join the Court in its findings with regard to whether Pickering knowingly or recklessly published false statements. . . .