No. 25-819

IN THE

Supreme Court of the United States

JEANNE HEDGEPETH,

Petitioner,

v.

JAMES A. BRITTON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE EQUAL PROTECTION PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE EQUAL PROTECTION PROJECT[1]

The Equal Protection Project (EPP), a project of the non-profit Legal Insurrection Foundation, is dedicated to the fair treatment of all persons without regard to race, ethnicity, or sex. EPP's guiding principle is that there is no "good" form of unlawful discrimination. The remedy for unlawful discrimination is never more unlawful discrimination.

Since its creation, EPP has filed civil rights complaints against more than two hundred seventy-five governmental and private entities and more than seven hundred fifty allegedly discriminatory programs. EPP has also previously filed briefs *amicus curiae* before this Court. *See, e.g.*, *First Choice Women's Res. Centers, Inc. v. Platkin*, No. 24-781, 2025 WL 1678987, at *1 (June 16, 2025); *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2025 WL 815221 (Mar. 10, 2025); *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 2022 WL 2919681 (May 9, 2022).

EPP supports the arguments of Petitioner as to the impropriety of applying the *Pickering* framework for speech-based retaliation against a public employee

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[1] This brief conforms to the Court's Rule 37, in that no counsel for a party authored t his brief in whole or in part, and no person or entity other than *Amicus Curiae* the Equal Protection Project of the Legal Insurrection Foundation funded its preparation or submission. All parties have been notified of EPP's intention to file this brief within the timeline set forth in Rule 37.2.

on the basis of speech made outside of and unrelated to the workplace. EPP submits this brief to share its expertise on the punishment of teachers and professors for expressing valid political viewpoints that are outside of the ideology of the institutions for whom they work, and encourage the Court to grant the Petition for Certiorari.

SUMMARY OF THE ARGUMENT

The school district applied a roadmap, available in several circuits, to allow hecklers to help it fire a popular and award winning public school teacher because that teacher expressed, outside of work, a viewpoint that the school district disagreed with politically. The petition should be granted so that this Court can clarify the *Pickering* standard to reign in this behavior that violates the First Amendment in several respects. *Pickering v. Board of Ed. Of Tp. High School Dist. 205, Will Cty*., 391 U.S. 563, 569 (1968).

Contrary to precedent, the school district picked and chose facts and fragments of speech out of context in its decision to terminate the plaintiff. Passing on clear case law guidance not to do so, the trial court granted summary judgment for the school district while engaging in the same picking and choosing. These errors, a basis for reversal on their own, feed into bigger problems that this case presents.

Several circuit courts, including the Seventh Circuit below, have strayed far from the commonsense balancing test announced in *Pickering*. Where *Pickering* evaluated a public school teacher's ability to

teach classes following the subject speech, here politically motivated hecklers tilted the balance by sending emails to the school district—a classic heckler's veto. The petition should be granted so that this Court can clarify the nature of the "disruption" applied in the *Pickering* balance to bring it back within First Amendment jurisprudence.

The law in several circuits now allows the same "playbook" to fire public employees because the employer disagrees with content of their speech. Unless this Court provides clear and corrective guidance, the firing of public employees who belong to minority political parties or groups will likely accelerate.

ARGUMENT

I. The Decisions Below Conflict with This Court's Precedent

The law demands a hard look at the facts for the purpose of placing the subject speech into context, but the courts below selectively devalued all facts tending to put the content of the subject memes into context. In the end, the District Court held on summary judgment and the First Circuit affirmed that only the content of the memes mattered to the *Pickering* balance and that Defendants could retaliate against MacRae based upon that content alone. The judgment in this case should be vacated and the courts below guided to consider all of the facts.

A. Despite This Court's Requirement To Place the Subject Speech in Context, The Decisions Below Improperly Pick and

Choose Facts on Which to Base and Affirm Summary Judgment

The *Pickering* court chose a broadly worded balancing test to determine its result precisely "[b]ecause of the enormous variety of fact situations in which critical statements by teachers and other public employees may be thought by their superiors … to furnish grounds for dismissal." *Pickering*, 391 U.S. at 569. There is no doubt that the *Pickering* balance is a "fact-intensive inquiry … demanding a hard look at the facts of the case, including the nature of the employment and the context in which the employee spoke." *MacRae v. Mattos et al.*, 106 F.4th 122, 136 (1st Cir. 2024).

In the first step of the *Pickering* analysis, the court must determine the facts needed to discern whether the "form and context of [plaintiff's] expression indicates a subjective intent to contribute to the public discourse." *Fabiano v. Hopkins*, 352 F.3d 447, 454-55 (1st Cir. 2003) (applying *Connick* analysis, *Connick v. Meyers*, 461 U.S. 138, 147-48 (1983)).

Similarly under the second *Pickering* step, courts must closely examine the government's predictions of disruption based on the entire record. *Texas v. Johnson*, 491 U.S. 397, 409 (1989) ("[W]e have not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression[.]"). Critically in this case where Defendants' motivation regarding concern for disruption was analyzed below (App.65): "More

fundamentally, there are genuine disputes on the question of whether 'concern for disruption, rather than some other, impermissible motive, was the actual reason for the adverse employment action.'" *Id.* at 395 (quoting *Locurto v. Giuliani*, 447 F.3d 159, 180 (2nd Cir. 2006)); *see also Rankin v. McPherson*, 483 U.S. 378, 390 (1987) (holding firing violated First Amendment because "it is undisputed that he fired McPherson based on the content of her speech."). The courts here first deferred to those allegations of disruption, and then carefully selected facts from the record that tended to support that allegation.

Here, the district court found no material fact in dispute and granted summary judgment. App.35. The appeals court agreed. App.2. Summary judgment is inappropriate here where facts tend to both support and contradict the reasonableness of the government's prediction. Summary judgment is especially inappropriate where the facts supporting reasonableness are political ones. Indeed, the law clearly disfavors summary judgment in First Amendment cases and more specifically in *Pickering* balance cases. The Courts below, however, carefully promoted some facts and dismissed others in granting and affirming summary judgment. In doing so, the courts relied upon criticisms from hecklers and deferred to government actors to justify their own predictions.

Summary judgment is rarely appropriate in First Amendment cases: "As a general rule a court should use Rule 56 summary judgment most sparingly in a First Amendment case such as this involving delicate constitutional rights, complex fact

situations, disputed testimony, and questionable credibilities." *Porter v. Califano*, 592 F.2d 770, 778 (5th Cir. 1979). This is especially true in most *Pickering* balancing cases: "[S]ummary judgment is inappropriate in cases 'in which the question of the degree to which the employee's speech could reasonably have been deemed to impede the employer's efficient operation would properly be regarded as a question of fact, to be answered by the jury[.]'" *Mumma v. Pathway Vet Alliance, LLC*, 648 F. Supp. 3d 373, 394 (D. Conn. 2023) (quoting *Gorman-Bakos v. Cornell Co-op. Ext. of Schenectady Cnty.*, 252 F.3d 545, 558 (2nd Cir. 2001)).

Per the facts below, EPP first places this speech back into context as required by this Court before continuing with the legal analysis. Given the countervailing facts, the context of the speech is complex and "demand[s] a hard look at the facts."

1. The Courts Below Ignored That Hedgepeth Is an Award Winning Teacher With a Record of Inclusiveness

Hedgepeth was a social studies teacher at Palatine High School in Illinois for 20 years prior to her dismissal. App.2. In both 2013 and 2018, Hedgepeth won the Illinois State Board of Education "Those Who Excel" award. App.130.

Hedgepeth was very involved in Palatine High School, including volunteering for a non-bullying program entitled "Palatine's Promise." App.129-130

She was asked by students throughout the years to be the sponsor of Gay, Straight Alliance at Palatine High School, which she did largely on a volunteer basis. *Id*.

When she recognized that the school was in need of a greater sense of community for its increasingly diverse student body, Hedgepeth proposed, and the school instituted, a daily "homeroom." She was very involved in homeroom, which included a monthly video she created called "Pirates in the Hall," in which students were asked their opinions on many topics. She was further instrumental in organizing and moderating a number of all-school forums for students and staff to discuss issues of concern, including sex and gender, also on a volunteer basis. She always received a great deal of positive feedback from students and staff for these efforts, both orally and in writing. *Id*.

The District Court intentionally ignored these facts. App.20, n.1. Defendants did not dispute these facts, but objected to them as "immaterial." App.129-130. The District Court then "disregard[ed] all immaterial facts," including expressly the paragraphs containing these undisputed facts. App.20, n.1.

Hedgepeth was an award winning teacher who donated her own time to improve relationships and inclusivity in the school. Despite seeming to be directly relevant to whether Hedgepeth's speech would disrupt or render ineffective Hedgepeth's teaching in the classroom—the actual business of the school—the courts below intentionally disregarded these facts in violation of this Court's clear instructions.

2. The Courts Below Elevated Hedgepeth's Disciplinary Record Despite Its Irrelevance to Her Speech

Hedgepeth was disciplined twice—once in 2016 and once in 2019—for using profanity. App.2-3; App.20-21. The first time, she was suspended without pay for a day and the second time, for four days. *Id*. These incidents, while they may be regrettable, have nothing to do with her speech at issue, which involved no profanity and was outside of school. They are also irrelevant to the first and second steps of the *Pickering* analysis which address the content of her subject speech and whether the that speech causes a disruption in the provision of public services. *Pickering* 391 U.S. at *568-570*.

Nevertheless, both the District Court and the Circuit Court justified the *Pickering* balance resulting in Hedgepeth's firing based upon these prior disciplinary incidents that had no relationship to either her subject speech or the any disruption caused by that speech. App.4-6; App.12-13; App.24-25; App.45.

3. The Courts Below Improperly Excluded the Context of Hedgepeth's Subject Speech

The district court below relied on specific social media posts to determine the content of Hedgepeth's speech and whether it qualified for First Amendment protection. App.21-22. The appeals court narrowed further, looking at specific sentences, phrases, and comments. App.4-5. But these posts were part of a

longer conversation that both courts chose to ignore. The district court made the exclusion of the larger conversation express, holding

> I accept her assertion that the comment was a part of a longer conversation, but I find it immaterial because the Board only acted on what was known to them.

App.22, n.5.

The District Court acknowledged the requirement that it place the subject speech in context, quoting *Connick* for the proposition that it must look to the "content, form, and context of a given statement, as revealed by the whole record." App.38; *Connick*, 461 U.S. at 147-48. Despite this requirement, the district court (and the appeals court by affirming), allowed the public employer to change the context by declining to investigate it and limiting its analysis to the facts it prefers.

* * *

The school district and the courts here violated this Court's guidance by carefully selecting facts from the record to support the firing of a public school teacher for the content of her speech outside of work. Unfortunately, as explained below, this has become the "playbook" for firing public employees who stray from the prevailing political orthodoxy. This Court could make clear that its law requires that such speech be placed into context for analysis. *Connick*, 461 U.S. at 147-48. However, as suggested in

following sections, the problem is bigger than just this case.

II. The Court Should Grant the Petition to Clarify That *Pickering* Requires Substantial Interference in the Discharge of Duties and Responsibilities Inherent in the Subject Employment

Pickering involved a school teacher who wrote a letter to the editor of a local newspaper opining that the school board misspent money on the wrong priorities. *Pickering*, 391 U.S. at 566-67. The school board fired him, arguing that letter would cause disruption and dissension. *Id.* The Court reasoned that the letter would not impact the teacher's daily work as a teacher—that instead it was a difference of opinion with the school board. *Id.* at 569-71. Accordingly, absent proof of knowing false statements, the teacher could not be fired for expressing his views on issues of the day. *Id.* at 574-75.

Courts of appeals have strayed far from the commonsense resolution in *Pickering*.

A. The Disruption Should Be Limited to the Actual Service Performed By the Public Employer

For a public school, the service performed should be educating children in the community. This result would be consistent with the holding in *Pickering* and with the guidance of this Court's law.

The courts below considered approximately 100 emails and spending on public relations to be disruptive. The law should not countenance this result, especially given the viewpoint-oriented nature of the facts relied upon. "In order for the government to constitutionally remove an employee from government service for exercising the right of free speech, it is incumbent upon it to clearly demonstrate that the employee's conduct *substantially and materially interferes with the discharge of duties and responsibilities inherent in such employment*." Smith v. U.S., 502 F.2d 512, 517 (5th Cir. 1974) (emphasis added). Further, "this court and others have made clear that, in carrying out the balancing required by *Pickering*, government efficiency interests should be closely examined, and summary judgment in such cases is often disapproved." *Foster v. Ripley*, 645 F.2d 1142, 1148 (D.C. Cir. 1981) (citing *Hanson v. Hoffman*, 628 F.2d 42 (D.C. Cir. 1980); *Tygrett v. Barry*, 627 F.2d 1279 (D.C. Cir. 1980)).

In this case, the courts went straight to hyperbole. All of the school district, the district court, and the appeals court heard that there were people who disagreed with the content of Hedgepeth's speech and breathlessly rushed to find that the school and district operations were thrown into "disarray." App.12. No one ever alleged that one child in the community lost a learning opportunity. In fact, the speech occurred over the summer and Hedgepeth was on vacation. The courts further declined to consider the substantial evidence of Hedgepeth's teaching skill and uncompensated efforts to build an inclusive environment at school and the impact of these characteristics on her teaching.

Under *Pickering*, courts must closely examine the government's predictions of disruption based on the entire record. *Texas v. Johnson*, 491 U.S. at 409 ("[W]e have not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression[.]"). The courts here first deferred to those predictions, and then carefully selected facts from the record that tended to support that prediction.

Pickering should be limited disruptions that actually happen or can reasonably be expected in the provision of services that the government employer performs—here, the teaching of children, not the receiving of emails from a few people who disagree.

B. The Disruption Should Be Limited to the Provision of Services and Should Not Include Hurt Feelings

It is a "bedrock principle" that speech may not be suppressed because some find it "offensive or disagreeable." *Texas v. Johnson*, 491 at 414. A "law disfavoring 'ideas that offend'" is the "essence of viewpoint discrimination." *Iancu v. Brunetti*, 588 U.S. 388, 393, 396 (2019). Indeed, "[f]eeling upset" is "an unavoidable part of living in our 'often disputatious' society." *L.M. v. Town of Middleborough*, 145 S.Ct. 1489, 1495 (2025) (Alito, J., dissenting from denial of certiorari).

The facts relied upon by the courts in this case in granting affirming summary judgment are viewpoint oriented and rely upon members of the

community disagreeing with the content. The school district received emails from people who disagreed. App.11. The school board held two public meetings to hear from members of the public who disagreed. App.5. Hedgepeth's speech also received media coverage. App.5-6.

There is no disruption in the provision of educational services, only people who disagree. If *Pickering* allows this result, it must change to be consistent with First Amendment law.

Further, circuit courts other than the First, Second, and Seventh reach different results on complaints from the public.

In *Melton*, the Eighth Circuit reversed a grant of summary judgement to a city that fired a firefighter for posing an image on Facebook. Melton v. City of Forrest City, 147 F.4th 896, 900 (8th Cir. 2025). The city claimed that it fired the plaintiff due to a "firestorm" of complaints from police officers, city council members, and concerned citizens. *Id.* at 903. The Eighth Circuit deemed that evidence insufficient, concluding that "[g]ranting summary judgment based on such 'vague and conclusory' concerns, without more, runs the risk of constitutionalizing a heckler's veto." *Id.* "Enough outsider complaints could prevent government employees from speaking on any controversial subject, even on their own personal time." *Id.*

The Tenth Circuit also rejected the notion that public employers may punish speech expressing controversial views based on the reaction of those outside the workplace. In *Flanagan v. Munger*, 890

F.2d 1557 (10th Cir. 1989), the court confronted an effort by a police department to fire police officers for opening a video rental store that offered adult films. *Id.* at 1560. The defendants claimed "that if members of the public knew that officers were renting them, negative public feelings" would "inhibit[] the efficiency and effectiveness" of the department. *Id.* at 1566. The Tenth Circuit disagreed. "The department," the court explained, "cannot justify disciplinary action against plaintiffs simply because some members of the public find plaintiffs' speech offensive and for that reason may not cooperate with law enforcement officers in the future." *Id.*

The Fourth Circuit's decision in *Berger v. Battaglia*, 779 F.2d 992 (4th Cir. 1985), is much the same. That case concerned a police department that forbade a police officer from engaging in blackface performances while off duty. The department tried to justify that prohibition on the ground that the performances would offend black citizens and cause "widespread outrage" among the local community. *Id.* at 995. The court held that those concerns were not enough to outweigh the plaintiff's speech rights. The "perceived threat of disruption," it explained, "was caused not by the speech itself but by [the] threatened reaction to it by offended segments of the public." *Id.* at 1001. "[T]his sort of threatened disruption by others reacting to public employee speech simply may not be allowed to serve as justification for public employer disciplinary action directed at that speech." *Id.*

Given the starkly opposite conclusions drawn by circuit courts on this issue—it is one that is ripe for clarification by this Court.

C. *Noble* Addresses a Distasteful Meme Relating to the Same Protests at the Same Time as Hedgepeth, But Applies *Pickering* to Reach the Opposite Conclusion

In a case with facts bearing some remarkable similarities to this one, the Sixth Circuit reversed a summary judgment in favor of defendants. *Noble v. Cincinnati & Hamilton Cnty Pub. Library*, 112 F.4th 373 (6th Cir. 2024). In *Noble*, the plaintiff shared a meme expressing his disagreement with protests led in part by Black Lives Matter." *Id.* at 377-79 ("ALL LIVES SPLATTER"). That meme was shared by people who disagreed with the plaintiff's view. *Id.* at 379. That the meme communicated its message in an insensitive manner had no effect on the court's analysis. *Id.* at 381 (citing *Rankin v. McPherson*, 483 U.S. 378, 387 (1987) (relating to a public employee making an "outrageous statement" about the assassination attempt on President Regan). Even though the meme expressed "distasteful" content, it "referenced a high profile public event" and the sentiment conveyed "was by no means an isolated segment of public opinion." *Id.* at 382.

Noble collected several cases of this Court that stand for the proposition that "the First Amendment protects abhorrent speech, and does so even if the speech makes others feel quite uncomfortable." *Id.* at 383. These cases include situations in which "the feelings of classmates" are offended. *Id.*

By departing from these principles, the courts below have allowed viewpoint-based evidence to trump Hedgepeth's First Amendment rights. By carefully selecting which evidence to rely on, the courts below have granted significant power to political hecklers to punish Hedgepeth for her political views. By assuming that the memes were derogatory, they have failed to properly interrogate the motives of Defendants for viewpoint-based biases in firing Hedgepeth.

III. Summary Judgment Below Provides a Roadmap for Public Employers, Aided by Hecklers, to Fire Employees for Speech the Employer Does Not Like

In the free-exercise context, school claims of disruption must be scrutinized to avoid "giv[ing] schools a playbook for evading the First Amendment"). *Mahmoud* v. *Taylor*, 606 U. S. 522, 590-91 (2025) (Thomas, J., concurring). In fact, Justice Thomas has noted "a trend of lower court decisions that have misapplied our First Amendment precedents in cases involving controversial political speech … [with] a concerning number of these cases [arising] in the context of the *Pickering-Garcetti* framework." *MacRae v. Mattos*, 106 U.S. ___, ___; 145 S.Ct. 2617, 2620-21 (2025) (statement of Thomas, J., respecting denial of certiorari); see, also, *Kennedy* v. *Bremerton School Dist.*, 586 U. S. 1130, 1132–1133 (2019) (statement of Alito, J., respecting denial of certiorari) ("the Ninth Circuit's understanding of the free speech rights of public school teachers is troubling").

Without intervention, summary judgment below will provide this roadmap—allowing the picking and choosing of facts to fire public employees based on disagreement with the viewpoint of their speech.

A. Hedgepeth Was Fired for Expressing Political Views Outside of Work

There is no doubt that "public employers [can]not use authority over employees to silence discourse … simply because superiors disagree with the content of employees' speech," *Rankin*, 483 U.S. at 384.

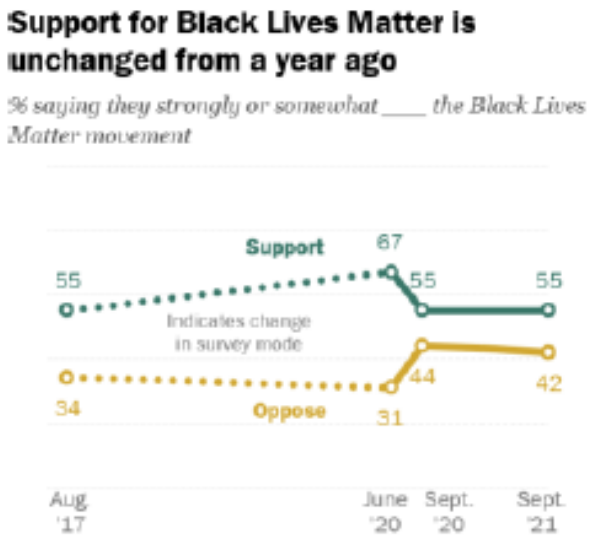
There is also no doubt that Hedgepeth was fired in this case because her employer disagreed with the contents of her speech. The Seventh Circuit tried to dismiss this problem in this way:

> Hedgepeth did not lose her job because she expressed her views on a matter of public concern on Facebook. Rather, she lost her job because she posted a series of vulgar, intemperate, and racially insensitive messages to a large audience of recent PHS alumni.

App.17. One reading of this dismissal is that Hedgepeth was fired, not because her employer disagreed with her speech, but because her employer *strongly* disagreed with her speech. An analysis of

that speech and its context shows that Hedgepeth was fired because of her viewpoint.

Hedgepeth's speech comments on the protests that followed the death of George Floyd in the summer of 2020. App.18, App.145. Pew Research surveyed the views of Americans on the Black Lives Matter organization through the course of those protests. Their view was that the protests caused Americans to withdraw support for Black Lives Matter during the protests, but that support remained stable after that. As the protests were happening, 55% of Americans supported Black Lives Matter while 44% opposed:



https://www.pewresearch.org/short-reads/2021/09/27/support-for-black-lives-matter-declined-after-george-floyd-protests-but-has-remained-unchanged-since/.

More pointedly, Pew Research found that 85% of Democrats supported Black Lives Matter during period while only 19% of Republicans did. *Id*. Hedgepeth's comments clearly align with the Republican side. Further, Hedgepeth explained her comments by specifically referring to noted conservatives, such as Thomas Sowell, for reasoning. App.22; App.116-117.

Hedgepeth's speech was political and contributed to a debate that was very much an issue of public concern. Under the First Amendment, political speech is afforded the highest level of protection. "Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010). "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Id*.

The district court agreed that Hedgepeth's private speech "was on a matter of public concern." App.39. But because her "chosen genre and medium of expression—hyperbolic or satirical social media posts and a back-and-forth discussion with a friend— are toward the less serious, less significant end of the spectrum of works of public commentary," the court deemed it "not the type of public-employee speech that demands 'particularly convincing reasons' by defendants to justify its restriction." App.39.

Like the district court, the Seventh Circuit insisted that Hedgepeth's speech interest was

"weak[]" because she used what the court described as "vulgar language" and "jokes." App.14.

Regardless of any satire, or even vulgarity, "the publication of truthful information of public concern" reflects "the core purpose[] of the First Amendment." *Bartnicki v. Vopper*, 532 U.S. 514, 533-34 (2001). Indeed, "humor, satire, and even personal invective can make a point about a matter of public concern." *De Ritis v. McGarrigle*, 861 F.3d 444, 455 (3d Cir. 2017).

Stripped of their own invective ("vulgar," "intemperate," "insensitive"), the school and the courts below have no basis to object to the content of Hedgepeth's speech other than that they disagree with it. See, *Rankin v. McPherson*, 483 U.S. at 390 (holding firing violated First Amendment because "it is undisputed that he fired McPherson based on the content of her speech.").

As explained above, the courts here discounted essentially all facts except for the content of the speech. Summary judgment could only be based upon the judgment of the court with respect to that content rather than a resolution of factual disputes as the law demands.

B. The Approach Below for the Disruption Prong of the *Pickering* Balance Allows Hecklers to Fire Public Employees

A great way to develop a playbook for controlling the content of public employees' speech is to write content-based employment policies. For example, in *MacRae*, the First Circuit found the

"insulting nature of some of [teacher MacRae's] TikTok posts (at least arguably) conflicted with the District's Belief of "[e]nsur[ing] a safe learning environment based on respectful relationships" and Core Value of "[r]espect[ing] ... human differences." MacRae, 106 F.4th at 139. A re-post or "like" of content that could be said to insult the wrong person or group can then be found to give rise to disruption under *Pickering*.

Similarly here, Hedgepeth's speech was found to violate four policies including one that "values and honors the strength and diversity of all individuals" and another that requires "just and courteous professional relationships with pupils, parents, staff members and others." App.25, n.5; App.5. Problematically, "[i]t undermines core First Amendment values to allow a government employer to adopt an institutional viewpoint on the issues of the day and then, when faced with a dissenting employee, portray this disagreement as evidence of disruption." *MacRae v. Mattos*, 145 S.Ct. at 2620.

Next come the hecklers. The school district received 113 emails. While some of these emails were from students and parents expressing concern—some of the emails were supportive and some came from others outside of the school community. App.11; App.16. This, plus media attention, was said to "[throw] school and district operations into disarray." App.12. The school district was said to be "forced" into a "costly" public relations response.

The appeals court held that whether the posts were or were not racist or racially inflammatory was irrelevant. App.16-17. Instead, the court found

"unrefuted, objective evidence of significant disruption of workplace operations." *Id*. Without more however, the evidence of disruption amounts to a showing of ruffled feelings. Emails were received, people spoke at meetings, and the school district chose to invest resources into public relations.

The closest that one gets to the actual business of the school, teaching children in the community, is a hearsay reporting that summer school had been "derailed" by discussions of the posts. App.12. There is no explanation as to how a classroom discussion is a disruption.

In essence, cancel culture claimed Hedgepeth's job. If a teacher comments on current affairs in a private Facebook post and enough people disagree with the content, the teacher can be fired.

This playbook will be used across the country to remove public employees who do not adhere to the local political orthodoxy.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

DATED: March 11, 2026

Respectfully submitted,

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