Anderson v. Liberty Lobby, 477 U.S. 242 (1986)

Facts: Liberty Lobby, Inc. (Liberty), a nonprofit "citizen's lobby" corporation, filed a libel action against a magazine published by Jack Anderson et al. Liberty claimed that one of Anderson's articles contained false and derogatory statements about its operations. In its defense, Anderson claimed that as a public entity Liberty must show with "convincing clarity" that Anderson acted with actual malice - something they could not do since the article's author stated in an affidavit that he thoroughly researched and cross-checked all his information. Liberty claimed that Anderson did act with actual malice since its author depended on patently unreliable sources. Following a district court's summary judgment ruling favoring Anderson, an appellate court reversed as it held that the lower court erroneously applied actual malice standards of proof at the summary judgement phase. Anderson appealed and the Supreme Court granted certiorari.

Issues: Can a court, in the context of a summary judgment request, award summary judgment in a libel action if the moving party had no evidence that a reasonable jury might disbelieve its opponent's claim?

Analysis: No. In a 6-to-3 opinion, the Court held that the purpose of summary judgments is to determine if the evidence is so one-sided that a party should prevail as a matter of law. Summary judgments will not lie if there is a sufficient likelihood that a reasonable jury would return a verdict favorable to the nonmoving party. In libel cases involving public entities, trial courts faced with summary judgment motions must decide whether a reasonable jury could conclude with convincing clarity that actual malice existed. The mere assertion by a plaintiff that a defendant's summary judgment motion is deficient because a reasonable jury might disbelieve the defendant's denial of actual malice is insufficient to warrant a grant of summary judgment without any offer of evidentiary proof to that effect. The Court reversed the appellate court's decision and remanded for reconsideration of its summary judgment ruling.

Ashcroft v. Free Speech Coal., 535 U.S. 234 (2002)

Facts: The Child Pornography Prevention Act of 1996 (CPPA) prohibits "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture" that "is, or appears to be, of a minor engaging in sexually explicit conduct," and any sexually explicit image that is "advertised, promoted, presented, described, or distributed in such a manner that conveys the impression" it depicts "a minor engaging in sexually explicit conduct." The Free Speech Coalition, an adult-entertainment trade association, and others filed suit, alleging that the "appears to be" and "conveys the impression" provisions are overbroad and vague and, thus, restrain works otherwise protected by the First Amendment. Reversing the District Court, the Court of Appeals held the CPPA invalid on its face, finding it to be substantially overbroad because it bans materials that are neither obscene under Miller v. California, 413 U.S. 15, nor produced by the exploitation of real children as in New York v. Ferber, 458 U.S. 747.

Issues: Does the Child Pornography Prevention Act of 1996 abridge freedom of speech when it proscribes a significant universe of speech that is neither obscene under Miller v. California nor child pornography under New York v. Ferber?

Analysis: Yes. In a 6-3 opinion delivered by Justice Anthony M. Kennedy, the Court held that the two prohibitions described above are overbroad and unconstitutional. The Court found the CPPA to be inconsistent with Miller insofar as the CPPA cannot be read to prohibit obscenity, because it lacks the

required link between its prohibitions and the affront to community standards prohibited by the obscenity definition. Moreover, the Court found the CPPA to have no support in Ferber since the CPPA prohibits speech that records no crime and creates no victims by its production. Provisions of the CPPA cover "materials beyond the categories recognized in Ferber and Miller, and the reasons the Government offers in support of limiting the freedom of speech have no justification in our precedents or in the law of the First Amendment" and abridge "the freedom to engage in a substantial amount of lawful speech," wrote Justice Kennedy.

Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000)

Facts: The Boy Scouts of America revoked former Eagle Scout and assistant scoutmaster James Dale's adult membership when the organization discovered that Dale was a homosexual and a gay rights activist. In 1992, Dale filed suit against the Boy Scouts, alleging that the Boy Scouts had violated the New Jersey statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The Boy Scouts, a private, not-for-profit organization, asserted that homosexual conduct was inconsistent with the values it was attempting to instill in young people. The New Jersey Superior Court held that New Jersey's public accommodations law was inapplicable because the Boy Scouts was not a place of public accommodation. The court also concluded that the Boy Scouts' First Amendment freedom of expressive association prevented the government from forcing the Boy Scouts to accept Dale as an adult leader. The court's Appellate Division held that New Jersey's public accommodations law applied to the Boy Scouts because of its broad-based membership solicitation and its connections with various public entities, and that the Boy Scouts violated it by revoking Dale's membership based on his homosexuality. The court rejected the Boy Scouts' federal constitutional claims. The New Jersey Supreme Court affirmed. The court held that application of New Jersey's public accommodations law did not violate the Boy Scouts' First Amendment right of expressive association because Dale's inclusion would not significantly affect members' abilities to carry out their purpose. Furthermore, the court concluded that reinstating Dale did not compel the Boy Scouts to express any message.

Issues: Does the application of New Jersey's public accommodations law violate the Boy Scouts' First Amendment right of expressive association to bar homosexuals from serving as troop leaders?

Analysis: Yes. In a 5-4 opinion delivered by Chief Justice William H. Rehnquist, the Court held that "applying New Jersey's public accommodations law to require the Boy Scouts to admit Dale violates the Boy Scouts' First Amendment right of expressive association." In effect, the ruling gives the Boy Scouts of America a constitutional right to bar homosexuals from serving as troop leaders. Chief Justice Rehnquist wrote for the Court that, "[t]he Boy Scouts asserts that homosexual conduct is inconsistent with the values it seeks to instill," and that a gay troop leader's presence "would, at the very least, force the organization to send a message, both to the young members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."

Brandenburg v. Ohio, 395 U.S. 444 (1969)

Facts: Brandenburg, a leader in the Ku Klux Klan, made a speech at a Klan rally and was later convicted under an Ohio criminal syndicalism law. The law made illegal advocating "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform," as well as assembling "with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."

Issues: Did Ohio's criminal syndicalism law, prohibiting public speech that advocates various illegal activities, violate Brandenburg's right to free speech as protected by the First and Fourteenth Amendments?

Analysis: The Court's Per Curiam opinion held that the Ohio law violated Brandenburg's right to free speech. The Court used a two-pronged test to evaluate speech acts: (1) speech can be prohibited if it is "directed at inciting or producing imminent lawless action" and (2) it is "likely to incite or produce such action." The criminal syndicalism act made illegal the advocacy and teaching of doctrines while ignoring whether or not that advocacy and teaching would actually incite imminent lawless action. The failure to make this distinction rendered the law overly broad and in violation of the Constitution.

Branti v. Finkel, 445 U.S. 507 (1980)

Facts: Finkel (plaintiff) was one of nine assistant public defenders appointed under a Democratic majority in the state legislature. Finkel was terminated after the legislative majority shifted to the Republican Party. Finkel filed suit against the office of the County Public Defender (defendant) in federal court. The district court found that Finkel had been terminated exclusively due to his political affiliation and issued an injunction prohibiting his termination on those grounds. The public defender's office appealed and the court of appeals affirmed the district court's injunction. The public defender's office petitioned the Supreme Court for review.

Issues: Whether the First and Fourteenth Amendments protected government employees from discharge solely because of their political beliefs.

Analysis: The U.S. Supreme Court held that the First and Fourteenth Amendments protected the respondents from being discharged solely because of their political beliefs. The U.S. Supreme Court reasoned that the dismissal of employees based solely on political affiliation violated their First Amendment rights unless party affiliation was an appropriate requirement for the effective performance of the public office involved. Because Branti was unable to convince the Court of Rockland County's "overriding interest of vital importance" in having assistant public defenders' beliefs in line with the appointed public defender, the Court ruled that conditioning the job on political beliefs was not constitutional. The Court determined that an assistant public defender's role primarily involved representing individual citizens against the State and did not require allegiance to the political party in control of the county government. The Court emphasized that the effective performance of an assistant public defender's duties was not dependent on their political beliefs and that such dismissals would undermine the office's function rather than enhance it.

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

Facts:
Sheila Meyers worked as an Assistant District Attorney for just over five years when her boss transferred her to a different section of the criminal court. Meyers strongly opposed this transfer, and made her feelings known to several supervisors, including District Attorney Harry Connick. Before the official transfer took place, Meyers prepared a questionnaire asking for her co-workers views on the transfer policy, office morale, and the level of confidence in supervisors. When Connick learned of the questionnaire, he immediately terminated Meyers. He said he fired her because she refused to accept her transfer. He also said that distributing the questionnaire was insubordination. Meyers sued, alleging

that her termination violated her First Amendment right to free speech. The district court ruled in favor of Meyers and ordered her reinstatement, payment of back pay, damages, and attorney fees. The U.S. Court of Appeals for the Fifth Circuit affirmed.

Issues:
Is the questionnaire that Meyers distributed constitutionally-protected speech?

Analysis:
No. In a 5-4 decision, Justice Byron R. White wrote the majority opinion reversing the lower court. The Supreme Court held that speech of public employees is generally only protected when they speak on matters of public concern. Meyers' speech only dealt with personal and internal office issues. The district court also erred in placing too high of a burden on Connick to show that Meyers' speech substantially interfered with the operation of the office. It is sufficient to show that the employer reasonably believed Meyers' speech would interfere with office operations.

Justice William J. Brennan wrote a dissent, expressing his view that speech concerning the way government is run is protected under the First Amendment. Meyers' questionnaire addressed that subject and interfered with the operation of the office, so her termination violated the First Amendment. Justices Thurgood Marshall, Harry A. Blackmun, and John Paul Stevens joined in the dissent.

Edwards v. Aguillard, 482 U.S. 578 (1987)

Facts: A Louisiana law entitled the "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act" prohibited the teaching of the theory of evolution in the public schools unless that instruction was accompanied by the teaching of creation science, a Biblical belief that advanced forms of life appeared abruptly on Earth. Schools were not forced to teach creation science. However, if either topic was to be addressed, evolution or creation, teachers were obligated to discuss the other as well.

Issues: Did the Louisiana law, which mandated the teaching of "creation science" along with the theory of evolution, violate the Establishment Clause of the First Amendment as applied to the states through the Fourteenth Amendment?

Analysis: Yes. The Court held that the law violated the Constitution. Using the three-pronged test that the Court had developed in Lemon v. Kurtzman (1971) to evaluate potential violations of the Establishment Clause, Justice Brennan argued that Louisiana's law failed on all three prongs of the test. First, it was not enacted to further a clear secular purpose. Second, the primary effect of the law was to advance the viewpoint that a "supernatural being created humankind," a doctrine central to the dogmas of certain religious denominations. Third, the law significantly entangled the interests of church and state by seeking "the symbolic and financial support of government to achieve a religious purpose."

Elder v. Holloway, 510 U.S. 510 (1994)

Facts: Elder alleged that his Fourth Amendment rights were violated during a warrantless arrest. The arrest occurred after Idaho police officers, acting on information that Elder was wanted by Florida authorities, surrounded his home and ordered him to come out. Elder suffered an epileptic seizure and sustained serious brain trauma during the incident. The District Court granted summary judgement in favor of the officers, finding that the doctrine of qualified immunity shielded them from liability because

there was no clearly established law governing the specific scenario of officers surrounding a house and requesting an individual to surrender outside.

Issues: Whether an appellate court, reviewing a judgment according public officials qualified immunity from a damages suit charging violation of a federal right, must disregard relevant legal authority not presented to, or considered by, the court of first instance.

Analysis: The Supreme Court held that appellate review of qualified immunity must be conducted in light of all relevant precedents, not just those presented at the district court. The Court emphasized that whether a federal right was clearly established at that time of the official action is a question of law, and appellate courts must use their full knowledge of relevant precedents to make this determination. This decision clarified that courts are not constrained by the legal authorities initially cited in the lower court proceedings when evaluating qualified immunity defenses.

The analysis of this case also highlighted the application of the qualified immunity doctrine, which protects public officials from liability unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. The Court underscored that the determination of whether a right was clearly established must consider all relevant legal precedents available at the time of the incident, ensuring a comprehensive and fair evaluation of the qualified immunity defense.

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

Facts: Richard Ceballos, an employee of the Los Angeles District Attorney's office, found that a sheriff misrepresented facts in a search warrant affidavit. Ceballos notified the attorneys prosecuting the case stemming from that arrest and all agreed that the affidavit was questionable, but the D.A.'s office refused to dismiss the case. Ceballos then told the defense he believed the affidavit contained false statements, and defense counsel subpoenaed him to testify. Seeking damages in federal district court, Ceballos alleged that D.A.s in the office retaliated against him for his cooperation with the defense, which he argued was protected by the First Amendment. The district court ruled that the district attorneys were protected by qualified immunity, but the Ninth Circuit reversed and ruled for Ceballos, holding that qualified immunity was not available to the defendants because Ceballos had been engaged in speech that addressed matters of public concern and was thus protected by the First Amendment.

Issues: Should a public employee's purely job-related speech, expressed strictly pursuant to the duties of employment, be protected by the First Amendment simply because it touched on a matter of public concern, or must the speech also be engaged in "as a citizen?"

Analysis: In a 5-to-4 decision authored by Justice Anthony Kennedy, the Supreme Court held that speech by a public official is only protected if it is engaged in as a private citizen, not if it is expressed as part of the official's public duties. Ceballos's employers were justified in taking action against him based on his testimony and cooperation with the defense, therefore, because it happened as part of his official duties. "The fact that his duties sometimes required him to speak or write," Justice Kennedy wrote, "does not mean his supervisors were prohibited from evaluating his performance." Justices Stevens, Souter, Ginsburg and Breyer dissented.

Givhan v. W. Line Consol. Sch. Dist., 439 U.S. 410 (1979)

Facts: Bessie Givhan (plaintiff) was a junior-high-school English teacher in the Western Line Consolidated School District (the district) (defendant). At the end of the 1971 school year, the district declined to renew Givhan's contract based on interactions between Givhan and her school's principal. During the interactions, Givhan complained about what she believed to be racially discriminatory employment policies and practices at her school. The principal characterized Givhan's demands as petty and unreasonable and described Givhan as insulting, loud, hostile, and arrogant. The district was involved in a desegregation action in a Mississippi federal district court at the time, and Givhan intervened in the action, alleging, among other things, that her termination had violated her right of free speech under the First Amendment to the United States Constitution. Following a bench trial on Givhan's allegations, the district court found that the primary reason for the district's decision not to renew Givhan's contract was her criticism of the district's policies and practices. The court thus held that Givhan's termination violated Givhan's First Amendment rights and ordered that Givhan be reinstated. The United States Court of Appeals for the Fifth Circuit reversed, holding that Givhan's expression was not protected under the First Amendment because she had only expressed her complaints privately to the principal. The United States Supreme Court granted certiorari.

Issues: Whether the First Amendment protects a public employee's speech made privately to her employer, rather than publicly, when that speech addresses matters of public concern.

Analysis: The Supreme Court rejected the Court of Appeals' conclusion that private expression is unprotected, finding nothing in the First Amendment or prior decisions indicating that freedom of speech is lost when a public employee communicates privately rather than publicly. A junior high school English teacher who privately expressed concerns about racidally discriminatory practices to her principal is protected by the First Amendment, and the Court of Appeals erred in concluding that only public expression by government employees receives constitutional protection. While the Pickering balancing test applies differently to private expression (considering manner, time, and place of delivery in addition to content), the fundamental protection remains. The Court also determined that the Mt. Healthy defense required factual determination that could not be resolved by the Court of Appeals on the existing record. The case was remanded for further proceedings under the balancing test from Pickering to determine whether the school district would have terminated Givhan regardless of her protected speech.

Grutter v. Bollinger, 539 U.S. 306 (2003)

Facts: In 1997, Barbara Grutter, a white resident of Michigan, applied for admission to the University of Michigan Law School. Grutter applied with a 3.8 undergraduate GPA and an LSAT score of 161. She was denied admission. The Law School admits that it uses race as a factor in making admissions decisions because it serves a "compelling interest in achieving diversity among its student body." The District Court concluded that the Law School's stated interest in achieving diversity in the student body was not a compelling one and enjoined its use of race in the admissions process. In reversing, the Court of Appeals held that Justice Powell's opinion in Regents of the University of California v. Bakke, 438 U.S. 265 (1978), constituted a binding precedent establishing diversity as a compelling governmental interest sufficient under strict scrutiny review to justify the use of racial preferences in admissions. The appellate court also rejected the district court's finding that the Law School's "critical mass" was the functional equivalent of a quota.

Issues: Does the University of Michigan Law School's use of racial preferences in student admissions violate the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of

1964?

Analysis: No. In a 5-4 opinion delivered by Justice Sandra Day O'Connor, the Court held that the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. The Court reasoned that, because the Law School conducts highly individualized review of each applicant, no acceptance or rejection is based automatically on a variable such as race and that this process ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Justice O'Connor wrote, "in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants."

Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539 (1985)

Facts: In 1977, former President Gerald Ford contracted with Harper & Row, Publishers, Inc. to publish his memoirs. Harper & Row negotiated a prepublication agreement with Time Magazine for the right to excerpt 7,500 words from Ford's account of his pardon of former President Richard Nixon. Before Time released its article, an unauthorized source provided The Nation Magazine with the unpublished Ford manuscript. Subsequently, The Nation, using approximately 300 words from the manuscript, scooped Time. Harper & Row sued The Nation, alleging violations of the Copyright Revision Act of 1976. The District Court held that The Nation's use of the copyrighted material constituted infringement. In reversing, the Court of Appeals held that Nation's use of the copyrighted material was sanctioned as a fair use.

Issues: Did the Copyright Revision Act of 1976's fair use doctrine sanction The Nation's unauthorized use of quotations from former President Gerald Ford's unpublished manuscript?

Analysis: No. In a 6-3 opinion delivered by Justice Sandra Day O'Connor, the Court held that The Nation's use of verbatim excerpts from the unpublished manuscript was not a fair use. The Court reasoned that the unpublished nature of a work is a key, though not necessarily determinative, factor tending to negate a defense of fair use. "Under ordinary circumstances, the author's right to control the first public appearance of his undisseminated expression will outweigh a claim of fair use," wrote Justice O'Connor. Accordingly, the Court concluded that the four statutory factors relevant to determining whether the use was fair were not satisfied. In his dissent, Justice William J. Brennan, Jr., argued that the Court was advancing the protection of the copyright owner's economic interest "through an exceedingly narrow definition of the scope of fair use."

Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., 515 U.S. 557 (1995)

Facts: In 1993, the South Boston Allied War Veterans Council was authorized by the city of Boston to organize the St. Patrick's Day Parade. The Council refused a place in the event for the Irish American Gay, Lesbian, and Bisexual Group of Boston (GLIB). The group attempted to join to express its members' pride in their Irish heritage as openly gay, lesbian, and bisexual individuals. The Massachusetts State Court ordered the Veterans' Council to include GLIB under a state law prohibiting discrimination on account of sexual orientation in public accommodations. The Veterans' Council claimed that forced inclusion of GLIB members in their privately-organized parade violated their free speech.

Issues: Did a Massachusetts State Court's mandate to Boston's Veterans' Council, requiring it to include

GLIB members in its parade, violate the Council's free speech rights as protected by the First and Fourteenth Amendments?

Analysis: Yes. A unanimous court held that the State Court's ruling to require private citizens who organize a parade to include a group expressing a message that the organizers do not wish to convey violates the First Amendment by making private speech subordinate to the public accommodation requirement. Such an action "violate[s] the fundamental First Amendment rule that a speaker has the autonomy to choose the content of his own message and, conversely, to decide what not to say."

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)

Facts: A lead story in the November 1983 issue of Hustler Magazine featured a "parody" of an advertisement, modeled after an actual ad campaign, claiming that Falwell, a Fundamentalist minister and political leader, had a drunken incestuous relationship with his mother in an outhouse. Falwell sued to recover damages for libel, invasion of privacy, and intentional infliction of emotional distress. Falwell won a jury verdict on the emotional distress claim and was awarded a total of $150,000 in damages. Hustler Magazine appealed.

Issues: Does the First Amendment's freedom of speech protection extend to the making of patently offensive statements about public figures, resulting perhaps in their suffering emotional distress?

Analysis: Yes. In a unanimous opinion the Court held that public figures, such as Jerry Falwell, may not recover for the intentional infliction of emotional distress without showing that the offending publication contained a false statement of fact which was made with "actual malice." The Court added that the interest of protecting free speech, under the First Amendment, surpassed the state's interest in protecting public figures from patently offensive speech, so long as such speech could not reasonably be construed to state actual facts about its subject.

Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council, 138 S. Ct. 2448 (2018)

Facts:
In 1977, the Supreme Court, in Abood v. Detroit Board of Education, upheld against a First Amendment challenge a Michigan law that allowed a public employer whose employees were represented by a union to require those of its employees who did not join the union nevertheless to pay fees to it because they benefited from the union's collective bargaining agreement with the employer.

Illinois has a law similar to that upheld in Michigan. The governor of Illinois brought a lawsuit challenging the law on the ground that the statute violates the First Amendment by compelling employees who disapprove of the union to contribute money to it. The district court dismissed the complaint on the grounds that the governor lacked standing to sue because he did not stand to suffer injury from the law, but two public employees intervened in the action to seek that Abood be overturned. Given that Abood is binding on lower courts, the district court dismissed the claim, and the Seventh Circuit affirmed dismissal for the same reason.

Issues:
Should the Court's decision in *Abood v. Detroit Board of Education* be overturned so that public employees who do not belong to a union cannot be required to pay a fee to cover the union's costs to negotiate a contract that applies to all public employees, including those who are not union members?

Analysis:
In a 5-4 vote, the Court reversed and remanded, holding that the State of Illinois' extraction of agency fees from nonconsenting public-sector employees violated the First Amendment, meaning that Abood v. Detroit Bd. of Education, which held otherwise, was overruled.

In an opinion authored by Justice Alito, the Court began by stating that the district court had jurisdiction over Janus' suit, as he was undisputedly injured in fact by the state's agency fee system, and the harm he suffered could be redressed if he prevailed in court.

Moving on to the merits, the Court concluded that the state's collection of agency fees from nonconsenting public employees was a violation of the First Amendment, and that Abood was incorrect in deciding otherwise. The Court stated that requiring individuals to endorse ideas they disagreed with runs counter to First Amendment principles, and that even under a more permissive standard than the "exacting" strict scrutiny that the Court had applied in evaluating the constitutionality of agency fees in the past, the Illinois scheme could not pass muster.

The Court explained that neither of Abood's two justifications for agency fees, which were maintaining "labor peace" and eliminating the risk of "free riders," could survive under this standard, finding that both problems could be mitigated through less restrictive means than agency fees. The Court also rejected newer state interests that had been asserted, which were to support bargaining with a sufficiently funded agent and increasing workforce efficiency, stating that unions could be effective without agency fees.

The Court further reasoned that stare decisis principles did not require deference to Abood, finding that Abood was poorly reasoned, lacked workability, and that over time it had become an "outlier" in the Court's First Amendment jurisprudence. It also stated that Abood's uncertain status, along with the short-term nature of collective bargaining agreements and unions' ability to protect themselves when agency-fee provisions were critical to their bargains all militated against giving Abood decisive weight.

In light of these reasons, the Court concluded that the practice of states and public-sector unions collecting agency fees from nonconsenting employees was a violation of the First Amendment, and that no further agency fees or other forms of payment to a public-sector union could be collected, nor could attempts be made to collect such payments from employees without their consent.

Justice Kagan filed a dissenting opinion, which was joined by Justices Sotomayor, Ginsburg, and Breyer. The dissent faulted the Majority for upsetting the balance that Abood brought to public-sector labor relations, and for disregarding stare decisis principles for no special reason. It also criticized the Majority for issuing its decision without considering the consequences it could have in light of the fact that over 20 states had elaborate statutory schemes built on the Abood decision, thousands of contracts involving millions of employees relied upon those laws, and the government services that these public-sector employees performed impacted the lives of tens of millions of Americans.

Justice Sotomayor filed an additional dissenting opinion.

Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550 (2005)

Facts: Under the Beef Promotion and Research Act of 1985, Congress authorized the collection of a

mandatory assessment (a "checkoff" fee of $1-per-head) from beef producers to fund promotional campaigns such as "Beef. It's What's for Dinner." The purpose was to promote beef sales in general, not any specific producer. The Secretary of Agriculture appoints a Beef Board that convenes an Operating Committee to design the promotional campaign. Some beef producers objected, arguing that being forced to fund these advertisements violated their First Amendment right not to be compelled to speak, especially since they disagreed with the promotional message. The District Court and Eighth Circuit held that the program violated the First Amendment because it compelled producers to subsidize private speech with which they disagreed.

Issues: (1) Whether speech funded by noncontractual transfers of checkoff funds from state beef councils to organizations that engage in activities to promote the message prescribed and governed by the Beef Checkoff Program is likewise government speech.

(2) Whether the Court should overrule Johanns.

Analysis: The Supreme Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings consistent with its opinion. The Court determined the beef promotional campaigns constitute government speech because Congress directed implementation of the program, the Secretary of Agriculture exercises final approval authority over all content, and the government sets the overall message. The Court rejected arguments that the funding mechanism (targeted assessment rather than general revenues) affected the analysis, holding that citizens have no First Amendment right not to fund government speech regardless of how the funding is collected.

Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407 (2022)

Facts: Joseph Kennedy, a high school football coach, engaged in prayer with a number of students during and after school games. His employer, the Bremerton School District, asked that he discontinue the practice in order to protect the school from a lawsuit based on violation of the Establishment Clause. Kennedy refused and instead rallied local and national television, print media, and social media to support him.

Kennedy sued the school district for violating his rights under the First Amendment and Title VII of the Civil Rights Act of 1964. The district court held that because the school district suspended him solely because of the risk of constitutional liability associated with his religious conduct, its actions were justified. Kennedy appealed, and the U.S. Court of Appeals for the Ninth Circuit affirmed.

Issues: Is a public school employee's prayer during school sports activities protected speech, and if so, can the public school employer prohibit it to avoid violating the Establishment Clause?

Analysis: The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression. Justice Neil Gorsuch authored the majority opinion of the Court.

The District disciplined Coach Kennedy after three games in October 2015, in which he "pray[ed] quietly without his students." In forbidding Mr. Kennedy's prayers, the District sought to restrict his actions because of their religious character, thereby burdening his right to free exercise. As to his free speech claim, the timing and circumstances of Kennedy's prayers—during the postgame period when coaches

were free to attend briefly to personal matters and students were engaged in other activities—confirm that Kennedy did not offer his prayers while acting within the scope of his duties as a coach. The District cannot show that its prohibition of Kennedy's prayer serves a compelling purpose and is narrowly tailored to achieving that purpose.

The Court's Lemon test, and the related endorsement test, are "abandoned," replaced by a consideration of "historical practices and understandings." Applying that test, there is no conflict between the constitutional commands of the First Amendment in this case.

Justices Clarence Thomas and Samuel Alito filed concurring opinions.

Justice Sonia Sotomayor filed a dissenting opinion, in which Justices Stephen Breyer and Elena Kagan joined.

Keyishian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589 (1967)

Facts:
Harry Keyishian and other faculty of the University of Buffalo became state employees in 1962, when the University of Buffalo was merged into the State University of New York system. As state employees, Keyishian and the other faculty members were subject to statutes and administrative regulations meant to prevent the appointment and continued employment of "subversive persons." Because the appellants refused to sign a statement declaring that they were not Communists and had never been Communists, they were subject to dismissal and/or non-renewal of contract. The appellants sued for declaratory and injunctive relief and argued that the program of statutes and regulations violate the Constitution. A three-judge federal court upheld the constitutionality of the program.

Issues:
Are the provisions requiring public servants to formally renounce Communism so overly broad and vague that they are unconstitutional?

Analysis:
Yes. Justice William J. Brennan, Jr. delivered the opinion of the 5-4 majority. The Court held that the provisions of the New York plan were defined in such uncertain terms that they infringed upon the constitutional rights of public servants. Because the country had an interest in protecting the First Amendment rights of teachers in order for the educational system to be as free and open as possible, such overly broad and vague requirements both violated the teachers' rights and were detrimental to the profession. The Court held that the government could only regulate First Amendment rights with "narrow specificity." The Court also held that specific provisions of the Civil Service Law and Educational Service Law were too overly broad because they prohibit membership in the Communist Party without determining whether or not there was any specific intent to overthrow the United States government.

Justice Tom C. Clark dissented and argued that the duties of a public servant allow the government to inquire into the employee's fitness to serve in a particular position. He also argued that the provisions in question are specific to actions that "advocate, advise, or teach" the overthrow of the United States government and are not unconstitutionally vague. Justice John M. Harlan, Justice Potter Stewart, and Justice Byron R. White joined in the dissent.

Knox v. SEIU, Local 1000, 567 U.S. 298 (2012)

Facts: All California state employees are required to pay a fee to the Service Employees International Union for its representation of them, and the union is required to tell employees how the money is spent and how to object. The union wanted to collect a special assessment for a "Political Fight Back Fund" in 2005. But some nonmembers wanted the union to give them a new notice and a new chance to object. They filed a class-action lawsuit seeking declaratory and injunctive relief and equitable restitution for violations of the nonmembers' rights under the First and Fourteenth Amendments. The district court agreed, siding with the nonmembers. However, the U.S. Court of Appeals for the Ninth Circuit reversed.

Issues: (1) May a State, consistent with the First and Fourteenth Amendments, condition employment on the payment of a special union assessment intended solely for political and ideological expenditures without first providing a notice that includes information about that assessment and provides an opportunity to object to its exaction?

(2) May a State, consistent with the First and Fourteenth Amendments, condition continued public employment on the payment of union agency fees for purposes of financing political expenditures for ballot measures?

Analysis: No, No. In his opinion for the 7-2 majority, Justice Samuel A. Alito, Jr., wrote that the structure by which nonmembers of a union have to pay chargeable expenses and must opt out of any others already strains the limits of the First Amendment. The actions of the Service Employees International Union (SEIU) went beyond this allowable extension and infringed upon nonmembers' First Amendment rights. By failing to provide a new notice and a new chance to opt out, the union did not abide by the established procedure for handling nonmember payment. In order to respect the First Amendment rights of nonmembers, the special assessment should have come with a notice that allowed nonmembers to opt in. The Court held that, while it can be difficult to determine the yearly dues ahead of time, the union should err on the side of having nonmembers pay too little rather than too much and infringe on their constitutional rights.

Justice Sonia Sotomayor concurred in the judgment. She agreed that the union had not satisfied its constitutional obligation to provide nonmembers with notice of the purpose of the special assessment and a chance to opt out. However, she argued that the Court went beyond its authority by specifying that an opt-in system better fits the requirements of the First Amendment when there is no precedent to support such a statement. Justice Ruth Bader Ginsburg joined the concurring opinion.

Justice Stephen G. Breyer dissented and argued that the basic system that the unions uses to charge dues is both constitutional and fair to members and nonmembers. The union uses each year's ratio of chargeable vs. nonchargeable to determine the next year's fees, so an objecting nonmember might overpay one year, but will underpay the next and ultimately come out even. In the year in question, even with the special assessment, the objecting nonmembers paid less than what the constitution considers their fair share. The First Amendment does not require the union to provide more than one opportunity for a nonmember to object to the yearly fee. Justice Elena Kagan joined in the dissent.

Legal Servs. Corp. v. Velazquez, 531 U.S. 533 (2001)

Facts:
The Legal Services Corporation Act authorizes the Legal Services Corporation (LSC) to distribute funds, appropriated by Congress, to local grantee organizations, which provide free legal assistance to indigent

clients in welfare benefits claims. The Omnibus Consolidated Rescissions and Appropriations Act of 1996 prohibited the LSC from funding any organization that represented clients in an effort to amend or challenge existing welfare law, among other things. The prohibition was such that grantees could not continue representation in a welfare matter even where a constitutional or statutory validity challenge became apparent after representation was well under way. LSC grantee lawyers and others filed suit to have the restriction declared unconstitutional. The District Court denied a preliminary injunction. However, the Court of Appeals invalidated the restriction, concluding that it was impermissible viewpoint discrimination that violated the First Amendment.

Issues:
Does the funding restriction on the Legal Services Corporation, which prevents attorneys from representing clients in an attempt to amend or challenge existing welfare law, violate the First Amendment?

Analysis:
Yes. In a 5-4 opinion delivered by Justice Anthony M. Kennedy, the Court held that the funding provision that limited arguments legal services attorneys were allowed to make on behalf of indigent welfare claimants violated the First Amendment by regulating private speech and insulating federal law from legitimate judicial challenge. Justice Kennedy wrote for that Court that, "the LSC program was designed to facilitate private speech, not to promote a governmental message." Justice Antonin Scalia wrote a dissent, which was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor and Clarence Thomas, arguing that the Appropriations Act "does not directly regulate speech, and it neither establishes a public forum nor discriminates on the basis of viewpoint."

Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241 (1974)

Facts: Pat Tornillo was Executive Director of the Classroom Teachers Association and a candidate for the Florida House of Representatives in Dade County, Florida. The Miami Herald published two editorials criticizing Tornillo and his candidacy. He demanded that the Herald publish his responses to the editorials. When the Herald refused, Tornillo sued in Dade County Circuit Court under Florida Statute Section 104.38, which granted political candidates criticized by any newspaper the right to have their responses to the criticisms published. The Herald challenged the statute as a violation of the free press clause of the First Amendment. The Circuit Court ruled that the statute was unconstitutional. The Supreme Court of Florida reversed this decision.

Issues: Did Florida Statute Section 104.38, the "right to reply" statute, violate the free press clause of the First Amendment applied to the states through the Fourteenth Amendment?

Analysis: Yes. In a unanimous decision, the Court reversed the Supreme Court of Florida and held that Florida's "right to reply" statute violated the freedom of press found in the First Amendment. In an opinion written by Chief Justice Warren E. Burger, the Court recognized the risks posed to the "true marketplace of ideas" by media consolidation and barriers to entry in the newspaper industry. However, even in that context, "press responsibility is not mandated by the Constitution and…cannot be legislated." The statute was an "intrusion into the function of editors," and imposed "a penalty on the basis of the content." Chief Justice Burger relied on New York Times v. Sullivan in that the "right to reply" statute "limits the variety of public debate," and was therefore unconstitutional. Justice William J. Brennan, Jr. authored a concurring statement. Justice Byron R. White authored a concurring opinion.

Mills v. Alabama, 384 U.S. 214 (1966)

Facts: The Alabama Corrupt Practices Act (the statute) made it illegal to solicit votes for or against a ballot initiative on election day. The statute was meant to maintain peace and order on election day by preventing any last-minute distribution of propaganda. The Birmingham Post-Herald, a newspaper edited by James E. Mills (defendant), published an editorial on election day asking readers to vote for a ballot initiative to replace the Birmingham city commission with a mayor-council system. Mills was arrested for violating the statute. Mills argued that the statute violated the freedom of the press. The trial court granted a demurrer on the criminal complaint before trial, which would have dismissed the case. Alabama (plaintiff) appealed. The Alabama Supreme Court reversed the trial court, holding instead that the statute was a reasonable restriction and limited the press to an acceptably small extent. Mills appealed.

Issues: Whether a state law that prohibits election-day editorials or commentary designed to influence voters violates the First Amendment's protections of freedom of speech and of the press.

Analysis: The Supreme Court reversed the judgement of the Alabama Supreme Court and remanded the case for further proceedings consistent with its opinion. The Supreme Court reasoned that the FIrst Amendment was designed to protect free discussion of governmental affairs, including discussions of forms of government and political processes. The press, specifically selected by the Constitution, serves as an antidote to governmental abuses of power. The Alabama law silenced the press at a time when it could be most effective and prevented newspapers from responding to last minute charges made the day before an election. The Court rejected Alabama's argument that the restriction was reasonable because it only applied on election days, finding no test reasonableness could save a law that criminalized a newspaper editor for merely urging people how to vote.

Nat'l Inst. of Fam. & Life Advocs. v. Becerra, 138 S. Ct. 2361 (2018)

Facts: The National Institute of Family and Life Advocates and two other religiously-affiliated pro-life entities engaged in providing pregnancy-related services in the state of California (collectively "NIFLA") sought to enjoin the enforcement of the California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (the "Act"). The law's stated purpose is to ensure access to reproductive health services for all California women, regardless of income. NIFLA argued that the Act's requirements that (1) licensed clinics provide information to patients about free and low-cost publicly funded family planning services, including contraception and abortion, and that (2) unlicensed clinics inform patients of their unlicensed status violated their free speech and free exercise rights under the First Amendment.

The U.S. District Court for the Southern District of California denied NIFLA's motion for preliminary injunction, concluding that they had not demonstrated a likelihood of success on the merits, as required under Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008), as to either their free speech or free exercise claims.

The Ninth Circuit affirmed, ruling that the district court had not abused its discretion by denying the injunction. The Court rejected NIFLA's argument that strict scrutiny should apply to the Act, because while the law compelled content-based speech by requiring NIFLA to disseminate information about low-cost family planning services, it did not discriminate based on viewpoint. Relying on its own precedent in the face of a circuit split regarding the level of scrutiny to apply in the abortion-related

disclosure context, the Court reasoned that the type of speech at issue in this case was professional speech. It was therefore subject to intermediate scrutiny, which the family planning information disclosure requirement survived.

The Court also affirmed that the requirement that unlicensed facilities disclose their unlicensed status survived any level of scrutiny.

Finally, the Court agreed with the decision below that NIFLA was not entitled to a preliminary injunction on free exercise grounds, finding that the Act to be a facially neutral law of general applicability that survived rational basis review. The Supreme Court's grant of certiorari did not include this issue.

Issues: Do disclosures required by a California reproductive rights law violate protections arising from the free speech clause of the First Amendment, applicable to the states through the 14th Amendment?

Analysis: In a 5-4 vote, the Court reversed and remanded, holding that the pro-life pregnancy center petitioners were likely to succeed on their claim that the California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (the "FACT Act" or the "Act") violated the First Amendment.

In an opinion authored by Justice Thomas, the Court began its discussion by explaining that the licensed notice was a content-based regulation that likely violated the First Amendment. The court rejected the Ninth Circuit's characterization of the licensed notice as regulating professional speech, stating that the Court had never recognized "professional speech" as a separate category of speech that was subject to different free speech rules. The Court explained that it had only granted lesser protection to professional speech in two situations--where professionals were required to disclose "factual, noncontroversial information in their 'commercial speech,'" and where states regulated professional conduct that incidentally implicated speech--and that neither of those lines of authority were applicable in the instant case. The Court further stated that it had a long history of protecting the First Amendment rights of professionals outside of those two contexts, emphasizing that imposing content-based regulations on professional speech created a risk of the government seeking to suppress unpopular ideas rather than advance legitimate regulatory objectives. The Court also concluded that the licensed notice did not survive even intermediate scrutiny, as it was "wildly underinclusive" in light of the Act's stated purpose of providing low income women with information about the state-sponsored health services at issue.

The Court also held that the unlicensed notice unduly burdened protected speech. Assuming without deciding that rules requiring professionals to disclose "factual, noncontroversial information in their 'commercial speech'" applied here, the Court stated that California was required to show that such disclosures were only justified if they addressed a potentially real and not simply hypothetical harm, and that here, the state had only presented hypothetical risks. And even if the state had overcome this requirement, the Court ruled that the unlicensed notice was still unduly burdensome because it "impose[d] a government-scripted, speaker-based disclosure requirement that [wa]s wholly disconnected from the State's informational interest," possibly leaving unburdened speakers whose messages aligned with the state's views.

Justice Kennedy filed a concurring opinion, in which Chief Justice Roberts, and Justices Alito and Gorsuch joined.

Justice Breyer filed a dissenting opinion, in which Justices Ginsburg, Sotomayor, and Kagan joined. The

dissent argued that both notice requirements were likely to pass constitutional scrutiny. Regarding the licensed notice, Breyer highlighted the Court's precedent permitting state notice requirements as to abortion alternatives, such as adoption, and asked why a state law couldn't require healthcare provider to provide information about abortion and childbirth services in this case. Breyer also rejected the majority's assertion that the unlicensed notice was supported by only a "hypothetical" interest, as well as the conclusion that this particular requirement should be deemed facially unconstitutional due to the fact that it could create an undue burden in some situations.

New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196 (2008)

Facts: New York trial court judges are appointed by way of a "district convention system." Under this system, political party members elect delegates, who in turn vote for judicial candidates nominated at party conventions. Margarita Lopez Torres sought appointment to a New York Supreme Court but did not have a political party's endorsement. Lopez Torres claimed that the system unconstitutionally obstructed judicial appointments by making candidates reliant upon political parties. The New York Board of Elections defended the system, arguing that it did not bar voters from participating because they had the opportunity to elect delegates.

A District Court found that the system unnecessarily and excessively restricted elections. It cited the absence of a "single successful challenge to candidates backed by the party leaders." The U.S. Court of Appeals for the Second Circuit affirmed that the system gave political party officials too much power and violated voters' and candidates' First Amendment rights to freedom of association.

Issues: Does a state judicial appointment system in which appointments are made by political party delegates elected by party members violate the First Amendment association rights of voters and candidates?

Analysis: In a unanimous opinion authored by Justice Antonin Scalia, the Court reversed the Second Circuit, finding that the election scheme did not implicate Lopez Torres' rights under the First Amendment. What constituted a "fair shot" at obtaining the nomination, according to the Court, was a reasonable enough question for legislative judgment, which the Court would accept so long as it did not too much infringe upon a party's associational rights. The Court maintained that the First Amendment did not compel any substantive change in New York's practice of electing judicial officials.

New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022)

Facts: New York state requires individuals to obtain a license to carry a concealed handgun in public. To obtain an unrestricted license, applicants must demonstrate "proper cause" exists for issuance. New York courts have interpreted this to require showing "a special need for self-protection distinguishable from that of the general community." Petitioners Brandon Koch and Robert Nash are adult, law-abiding New York residents who applied for unrestricted licenses to carry handguns in public for self-defense. Both were denied unrestricted licenses because they failed to demonstrate "proper cause," though they received restricted licenses for hunting and target shooting. They sued state officials, claiming the denial violated their Second and Fourteenth Amendment rights. The District Court dismissed their complaints, and the Court of Appeals affirmed, relying on the Second Circuit precedents in Kachalsky v. County of Westchester, which had upheld New York's proper cause standard.

Issues: Whether New York's requirement that individuals demonstrate "proper cause" to obtain a license

to carry a handgun in public violates the Second and Fourteenth Amendments.

Analysis: The Supreme Court held that New York's proper cause requirement for obtaining an unrestricted license to carry a concealed handgun in public violates the Fourteenth Amendment because it denied most citizens their right to bear arms. The Court rejected the Court of Appeals two-step approach that combined history with means-end scrutiny, and instead found that when the Second Amendment's text covers conduct, courts must assess whether modern regulations are consistent with the historical understanding of the right. The Court found that the Second Amendment's text, by protecting the right to "bear arms," naturally encompasses public carry, and confrontation can occur outside the home. The Court conducted an extensive historical analysis spanning from medieval England through colonial period, founding era, antebellum period, Reconstruction, and late 19th century. It concluded that while history showed some regulations on public carry were permissible, there was no historical tradition justifying a broad prohibition on public carry by law-abiding citizens or requiring them to demonstrate a special need for self defense. The Court found that New York's proper cause requirement effectively denied ordinary citizens their right to carry handguns for self defense in public, making it an outlier compared to the 43 "shall-issue" states that grant licenses to all applicants who satisfy objective criteria. As a result, the historical analogues to New York's law - such as medieval English regulations, colonial-era restrictions, surety laws, and post-Civil War regulations - were either too dissimilar or did not establish a tradition of restricting public carry to those with special self defense needs.

O'Hare Truck Services, Inc. v. City of Northlake, 518 U.S. 712 (1996)

Facts: O'Hare Truck Service was one among several towing companies employed by the city of Northlake. Northlake kept a list of available towing companies and would only remove a company from its list after a showing of cause. In the present case, however, Northlake removed O'Hare Truck Service from its list because O'Hare's owner did not support Northlake's mayoral candidate in his reelection campaign. Instead, O'Hare's owner supported the opposition candidate. Upon removal from Northlake's employment list, O'Hare Truck Service filed suit alleging that its dismissal was a retaliation for its lack of support for Northlake's mayoral candidate. The dismissal was the cause of substantial loss in income. On appeal from the District Court's dismissal for failure to state a First Amendment violation, the Seventh Circuit affirmed. The Supreme Court granted certiorari.

Issues: Did O'Hare Truck Service's removal from Northlake's employment list, as a result of its support for an opposition mayoral candidate, violate O'Hare Truck Services freedom of speech?

Analysis: Yes. The Court held, in an opinion by Justice Anthony Kennedy, that independent contractors, such as O'Hare Truck Service, are entitled to the same First Amendment protections as those afforded to government employees. Accordingly, Northlake could not condition the towing company's employment on its political affiliations or beliefs unless Northlake could demonstrate that O'Hare's political affiliations had a reasonable and appreciable effect on its job performance. The Court held that Northlake neither attempted nor would it have been able to make such a demonstration. Therefore, Northlake's removal of O'Hare Truck Service from its employment list was unconstitutional.

Pac. Gas & Elec. Co. v. Public Util. Comm'n of Cal., 475 U.S. 1 (1986)

Facts: The Pacific Gas & Electric Company (Pacific Gas) (plaintiff) included a periodical newsletter with its monthly bills to customers. In addition to general information about billing and utility services, the

newsletter included political editorials, public interest stories, and energy conservation tips. The Public Utilities Commission of California (the Commission) (defendant) mandated that Pacific Gas allow an advocacy group called Toward Utility Rate Normalization (TURN) to include TURN's content instead of the Pacific Gas newsletter at least four times a year. The Commission reasoned that the customers paid for the postage of the envelope, and thus, the additional space in the envelopes should be allocated between Pacific Gas and its consumers. The Commission did not place any restrictions on what content TURN could include and only required that TURN state views that were not those of Pacific Gas. The Commission did, however, reserve the right to decide which advocacy groups could include content in the future and deny groups based on the content of their speech. Pacific Gas sued, challenging the Commission's regulation as an unconstitutional abridgement of Pacific Gas's First Amendment rights.

Issues: (1) Whether a state public utilities commission may require a private company to include in its mailings messages from a third party whose views the company opposes.

(2) Whether such a requirement violates the company's First Amendment rights against compelled speech.

Analysis: The Court reasoned that forcing PG&E to include TURN's messages in its billing envelopes violated PG&E's First Amendment rights by: (1) compelling it to disseminate views with which it disagreed; (2) risking that PG&E would be forced to respond or alter its own speech; (3) discriminating based on viewpoint by granting access only to groups opposing PG&E; and (4) failing to serve compelling state interests through narrowly tailored means.

Perry v. Sindermann, 408 U.S. 593 (1972)

Facts: Robert Sindermann had been a professor at Odessa Junior College for four years, working under one-year contracts. After his election as president of the Texas Junior College Teachers Association, he had several public disagreements with the Odessa Junior College Board of Regents. In May 1969, after the expiration of his teaching contract, Sindermann was not offered a new contract and terminated by the college's Board of Regents. While the Board of Regents did issue a press release accusing him of insubordination, they did not provide official reasons for his termination or the option of a hearing for him to challenge his termination. Sindermann filed suit in the United States District Court for the Western District of Texas. He alleged that his termination was due to his disagreements with the Board of Regents, a violation of his First Amendment right to free speech, and that the lack of a hearing violated his Fourteenth Amendment right to due process. The District Court ruled for the Board of Regents without a full trial. He appealed to the United States Court of Appeals for the Fifth Circuit, which held that his termination would have been unconstitutional if it was based on his exercise of free speech or if he had a reasonable expectation of continued employment. The Fifth Circuit remanded the case to the District Court.

Issues: (1) Was Sindermann entitled to a full trial in District Court?

(2) Was Sindermann entitled to a hearing before the Board of Regents?

Analysis: Yes and yes. In a 5-3 decision, the Court affirmed the Fifth Circuit and held that Sindermann was entitled to a full trial in federal District Court and a hearing before the Board of Regents. The Court acknowledged that Sindermann did not have a contractual or tenure-based right to continued employment by Odessa Junior College. However, this lack was "immaterial to [Sindermann's] free speech

claim." Writing for the majority, Justice Potter Stewart relied on Shelton v. Tucker and Keyishian v. Board of Regents in emphasizing that nonrenewal of a one-year teaching contract "may not be predicated on [a teacher's] exercise of First and Fourteenth Amendment rights." However, the Court stopped short of invalidating Sindermann's termination, as the Board of Regents' reasoning had not been established. While Sindermann had yet to "show that he has been deprived of an interest that could invoke procedural due process," the Court stated that his claim did "raise a genuine issue." While Odessa College did not have a formal tenure system, the Court recognized the possibility of a college having an "unwritten 'common law'" "in practice" that would grant "the equivalent of tenure." Given the policies of Odessa College, Sindermann was entitled to a hearing before the Board of Regents as well.

Pickering v. Bd. of Educ., 391 U.S. 563 (1968)

Facts:
Marvin Pickering, a school teacher, wrote a letter to the editor at the Lockport Herald complaining about a recently defeated school board proposal to increase school taxes. The letter complained about the board's handling of past proposals and allocation of funds favoring athletics over academics. The school board felt the letter was "detrimental to the efficient operation and administration of the schools" and opted to terminate Pickering's employment. Pickering sued in the Circuit Court of Will County alleging his letter was speech protected under the First Amendment. The court ruled in favor of the school board and the Supreme Court of Illinois affirmed.

Issues:
Was Pickering's letter constitutionally-protected free speech?

Analysis:
Yes. Justice Thurgood Marshall wrote the 8-1 majority opinion holding that Pickering's dismissal violated his First Amendment right to free speech. The Supreme Court noted that similar speech is not protected if it contains false statements knowingly or recklessly made. There was no evidence that Pickering's statements were knowingly false or reckless.

Justice William O. Douglas concurred, but took an even broader view of protected free speech. Justice Hugo L. Black joined in the concurrence. Justice Byron R. White wrote a dissent, agreeing that the letter may be protected speech, but preferring to remand the case for further proceedings to decide whether the statements in the letter were knowingly or recklessly false.

Pleasant Grove City, Utah v. Summum, 555 U.S. 460 (2009) SKIP

Facts:
Summum, a religious organization, sent a letter to the mayor of Pleasant Grove, Utah asking to place a monument in one of the city's parks. Although the park already housed a monument to the Ten Commandments, the mayor denied Summum's request because the monument did not "directly relate to the history of Pleasant Grove." Summum filed suit against the city in federal court citing, among other things, a violation of its First Amendment free speech rights. The U.S. District Court for the District of Utah denied Summum's request for a preliminary injunction.

The U.S. Court of Appeals for the Tenth Circuit reversed the district court and granted Summum's injunction request. The Tenth Circuit held that the park was in fact a "public" forum, not a non-public forum as the district court had held. Furthermore, Summum demonstrated that it would suffer

irreparable harm if the injunction were to be denied, and the interests of the city did not outweigh this potential harm. The injunction, according to the court, was also not against the public interest.

Issues:
Does a city's refusal to place a religious organization's monument in a public park violate that organization's First Amendment free speech rights when the park already contains a monument from a different religious group?

Analysis:
No. The Supreme Court reversed the Tenth Circuit holding that the placement of a monument in a public park is a form of government speech and therefore not subject to scrutiny under the Free Speech Clause of the First Amendment. With Justice Samuel A. Alito writing for the majority and joined by Chief Justice John G. Roberts and Justices John Paul Stevens, Antonin G. Scalia, Anthony M. Kennedy, Clarence Thomas, Ruth Bader Ginsburg, and Stephen G. Breyer, the Court reasoned that since Pleasant Grove City had retained final authority over which monuments were displayed, the monuments represented an expression of the city's viewpoints and thus government speech.

Justice Stevens, joined by Justice Ginsburg, wrote a separate concurring opinion that largely embraced the majority's reasoning. Justice Scalia, joined by Justice Thomas, also wrote a separate concurring opinion. Agreeing with the Court's reasoning, he also noted that there were likely no violations of the Establishment Clause of the First Amendment on the part of Pleasant Grove City. He argued that displays of the Ten Commandments had been construed by the Court as "having an undeniable historical meaning" and thus did not attempt to establish a religion. Justice Breyer also wrote a separate concurring opinion in which he noted that "government speech" should be considered a rule of thumb and not a rigid category. He stated that sometimes the Court should ask "whether a government's actions burdens speech disproportionately in light of the action's tendency to further a legitimate government objective." Justice Souter also wrote separately, concurring in the judgment, but warning that public monuments should not be considered government speech categorically.

R. A. V. v. St. Paul, 505 U.S. 377 (1992)

Facts: Several teenagers allegedly burned a crudely fashioned cross on a black family's lawn. The police charged one of the teens under a local bias-motivated criminal ordinance which prohibits the display of a symbol which "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The trial court dismissed this charge. The state supreme court reversed. R.A.V. appealed to the U.S. Supreme Court.

Issues: Is the ordinance overly broad and impermissibly content-based in violation of the First Amendment free speech clause?

Analysis: Yes. In a 9-to-0 vote, the justices held the ordinance invalid on its face because "it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." The First Amendment prevents government from punishing speech and expressive conduct because it disapproves of the ideas expressed. Under the ordinance, for example, one could hold up a sign declaring all anti-semites are bastards but not that all Jews are bastards. Government has no authority "to license one side of a debate to fight freestyle, while requiring the other to follow the Marquis of Queensbury Rules."

Rankin v. McPherson, 483 U.S. 378 (1987)

Facts: Ardith McPherson was a clerical employee in the Harris County, Texas constable's office. After hearing on the office radio that there had been an attempt to assassinate President Ronald Reagan, McPherson, who thought she was alone with one other office worker, stated "if they go for him again, I hope they get him." Another co-worker overheard the comment and reported it to the Constable, Walter H. Rankin. Rankin subsequently fired McPherson.

Issues: Did the Constable's action infringe upon McPherson's freedom of speech guaranteed by the First Amendment?

Analysis: In a 5-to-4 decision, the Court held that Rankin's interest in discharging McPherson was outweighed by her rights under the First Amendment. The Court held that McPherson's statement, when considered in context, "plainly dealt with a matter of public concern." The Court found that there was no evidence that McPherson's speech interfered with "the efficient functioning of the office" and that her private comment had not discredited the office. The Court also noted that McPherson did not serve a "confidential, policymaking, or public contact" role, diminishing the impact of her speech on the agency's proper functioning.

Riley v. Nat'l Fed'n of the Blind of N. C., Inc., 487 U.S. 781 (1988)

Facts: A North Carolina statute required professional fund-raisers to disclose certain information to prospective donors, including the percentage of contributions collected by fund-raisers over the previous 12 months that was donated to charity. A group of professional fund-raisers, charitable organizations, and potential charitable donors (plaintiffs) challenged the statute as an unconstitutional restriction of free speech. The district court held in favor of the plaintiffs, and the court of appeals affirmed. The state appealed to the United States Supreme Court.

Issues: Whether North Carolina's regulations on professional fundraising fees, mandatory disclosure requirements, and licensing provisions unconstitutionally infringed upon freedom of speech.

Analysis: The Supreme Court held that North Carolina's three-tiered definition of "reasonable fees," its requirement for professional fundraisers to disclose past donation percentages, and its licensing requirement for professional fundraisers were unconstitutional as they infringed upon freedom of speech. The Court reasoned that the solicitation of charitable contributions is protected speech under the First Amendment, and the use of percentage-based thresholds to determine the legality of fundraising fees was not narrowly tailored to prevent fraud. The Court found that North Carolina's interest in regulating the fees did not justify the speech burden imposed by the Act. Additionally, the mandated disclosure of past fundraising percentages was seen as a content-based regulation that altered the speech's content, and thus, was subject to strict scrutiny. The Court concluded that the State's interest in informing donors was not sufficiently compelling to justify the speech burden. Lastly, the licensing requirement was deemed unconstitutional because it allowed for indefinite delays in granting licenses to professional fundraisers, which could unjustly suppress speech.

Rust v. Sullivan, 500 U.S. 173 (1991)

Facts: The national government provides funds for family planning services (Title X). The Department of Health and Human Services issued regulations limiting the ability of Title X fund recipients to engage in

abortion-related activities. Title X funds were to be used only to support preventive family planning services.

Issues: Do the regulations violate the First and Fifth Amendment rights of clients and health providers?

Analysis: No. The intent of Congress in the enactment of Title X is ambiguous with regard to abortion counseling. Consequently, the Court will defer to the expertise of the administrative agency. The Court held that the "regulations promulgated by the Secretary [of HHS] do not raise the sort of 'grave and doubtful constitutional questions' that would lead us to assume Congress did not intend to authorize their issuance." Should government subsidize one protected right (family planning), as it does in this case, it does not follow that government must subsidize analogous counterpart rights (abortion services).

School Dist. of Abington Twp., Pa v. Schempp, 374 U.S. 203 (1963)

Facts: Under Pennsylvania law, public schools were required to read from the bible at the opening of each school day. The school district sought to enjoin enforcement of the statute. The district court ruled that the statute violated the First Amendment, even after the statute had been amended to permit a student to excuse himself.

The Court consolidated this case with one involving Maryland atheists who challenged a city rule that provided for opening exercises in the public schools that consisted primarily of reading a chapter from the bible and the Lord's Prayer. The state's highest court held the exercise did not violate the First Amendment. The religious character of the exercise was admitted by the state.

Issues: Did the Pennsylvania law requiring public school students to participate in classroom religious exercises violate the religious freedom of students as protected by the First and Fourteenth Amendments?

Analysis: Public schools cannot sponsor Bible readings and recitations of the Lord's Prayer under the First Amendment's Establishment Clause.

In an opinion authored by Justice Clark, the majority concluded that, in both cases, the laws required religious exercises and such exercises directly violated the First Amendment. The Court affirmed the Pennsylvania decision, and reversed and remanded the Maryland decision because the mandatory reading from the bible before school each day was found to be unconstitutional.

Justice Stewart dissented, expressing the view that on the records it could not be said that the Establishment Clause had necessarily been violated. He would remand both cases for further hearings.

Shelton v. Tucker, 364 U.S. 479 (1960)

Facts:

Arkansas passed Act 10, a statute which required every teacher, as a condition of employment in a public school or university, to file annually an affidavit listing every organization to which he or she belonged in the past five years. Shelton (plaintiff), a long-term teacher in the Little Rock school system, refused to file an affidavit because he did not want his membership in the NAACP to be disclosed. His contract was not

renewed. Shelton filed suit against Tucker (defendant) on the ground that Act 10 violated his First Amendment right to freedom of association. The trial court upheld the constitutionality of Act 10, and Shelton appealed to the United States Supreme Court.

Issues:

Whether Act 10 deprives teachers in Arkansas their rights to person, associational and academic liberty?

Analysis:

Yes. Judgment of the trial court reversed. There can be no doubt that Arkansas has the right to investigate the competence and fitness of those whom it hires to teach in its schools. However, to compel a teacher to disclose his every associational tie is to impair that teacher's right of association. The statute does not require the information be kept confidential nor is the statute limited in any way. Thus, the unlimited and indiscriminate sweep of the statute brings it within the ban of prior cases. The statute's comprehensive interference with associational freedom goes far beyond what might be justified in the exercise of the states legitimate inquiry into the fitness and competency of its teachers.

Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957)

Facts:
In 1951, the New Hampshire legislature passed a statute regulating subversive activities, organizations, and individuals. The statute deemed "subversive persons" as ineligible for employment with the state or public educational institutions. The state's Attorney General was given the authority to investigate potential subversive persons, and in doing so, had the authority to subpoena witnesses and documents. If an individual refused to comply with a subpoena, the Attorney General could petition a trial court to hold the individual in contempt. Sweezy (defendant) had given lectures to students at the University of New Hampshire. The Attorney General subpoenaed Sweezy for questioning, but Sweezy declined to answer several questions on constitutional grounds, including those about his knowledge of the Progressive Party and the subject of his lectures at the University of New Hampshire. The Attorney General petitioned the trial court to intervene, which found the questions to be relevant to the Attorney General's investigation. When Sweezy refused to answer questions before the trial court, the trial court held Sweezy in contempt, and Sweezy appealed. The New Hampshire Supreme Court found that Sweezy's constitutional rights to lecture and associate with others had been infringed upon, but that this infringement was justified by the state's interest in preventing a forcible overthrow of the government. Sweezy then filed a petition for a writ of certiorari with the U.S. Supreme Court.

Issues:
Whether the state's interrogation of a university lecturer about the content of his lecture and his political associations violated his First and Fourteenth Amendment rights to free expression and academic freedom.

Analysis:
The Supreme Court reversed Sweezy's contempt conviction, holding that the state's actions violated due process and infringed upon the constitutional principle of academic freedom, which is essential to the First Amendment's protection of intellectual inquiry. The majority recognized that academic freedom is protected by the First Amendment's guarantees of free speech and thought, applied to the states through the Fourteenth Amendment. The Court first found that the Attorney General acted without clear

legislative authorization in questioning Sweezy. Because the state had not provided specific standards for such investigations, the proceedings violated due process under the Fourteenth Amendment.

Chief Justice Earl Warren's plurality opinion (joined by Justices Black, Douglas, and Brennan) stressed that the free exchange of ideas in the academic setting is a fundamental constitutional value. The Court recognized that excessive government intrusion into the content of classroom teaching or political beliefs threatens intellectual freedom and inquiry.

Warren wrote that "there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression," emphasizing that a free society depends on the "four essential freedoms of a university to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."

Terminiello v. Chicago, 337 U.S. 1 (1949)

Facts:
Father Arthur Terminiello, in an auditorium in Chicago, delivered a vitriolic speech in which he criticized various political and racial groups and viciously condemned the protesting crowd that had gathered outside the auditorium. Policemen assigned to the event were unable to prevent several disturbances by the "angry and turbulent" crowd. The police arrested Terminiello for "breach of the peace." He was then tried and convicted for his central role in inciting a riot.

Issues:
Did the Chicago ordinance violate Terminiello's right of free expression guaranteed by the First Amendment?

Analysis:
In a 5-to-4 decision, the Court held that the "breach of the peace" ordinance unconstitutionally infringed upon the freedom of speech. Noting that "[t]he vitality of civil and political institutions in our society depends on free discussion," the Court held that speech could be restricted only in the event that it was "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Justice Douglas wrote that "a function of free speech under our system is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

Tinker v. Des Moines Indep. Cmty. School Dist., 393 U.S. 503 (1969)

Facts:
In December 1965, a group of students in Des Moines held a meeting in the home of 16-year-old Christopher Eckhardt to plan a public showing of their support for a truce in the Vietnam war. They decided to wear black armbands throughout the holiday season and to fast on December 16 and New Year's Eve. The principals of the Des Moines school learned of the plan and met on December 14 to create a policy that stated that any student wearing an armband would be asked to remove it, with refusal to do so resulting in suspension. On December 16, Mary Beth Tinker and Christopher Eckhardt wore their armbands to school and were sent home. The following day, John Tinker did the same with the same result. The students did not return to school until after New Year's Day, the planned end of the protest.

Through their parents, the students sued the school district for violating the students' right of expression and sought an injunction to prevent the school district from disciplining the students. The district court dismissed the case and held that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit affirmed the decision without opinion.

Issues:
Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the students' freedom of speech protections guaranteed by the First Amendment?

Analysis:
Yes. Justice Abe Fortas delivered the opinion of the 7-2 majority. The Supreme Court held that the armbands represented pure speech that is entirely separate from the actions or conduct of those participating in it. The Court also held that the students did not lose their First Amendment rights to freedom of speech when they stepped onto school property. In order to justify the suppression of speech, the school officials must be able to prove that the conduct in question would "materially and substantially interfere" with the operation of the school. In this case, the school district's actions evidently stemmed from a fear of possible disruption rather than any actual interference.

In his concurring opinion, Justice Potter Stewart wrote that children are not necessarily guaranteed the full extent of First Amendment rights. Justice Byron R. White wrote a separate concurring opinion in which he noted that the majority's opinion relies on a distinction between communication through words and communication through action.

Justice Hugo L. Black wrote a dissenting opinion in which he argued that the First Amendment does not provide the right to express any opinion at any time. Because the appearance of the armbands distracted students from their work, they detracted from the ability of the school officials to perform their duties, so the school district was well within its rights to discipline the students. In his separate dissent, Justice John M. Harlan argued that school officials should be afforded wide authority to maintain order unless their actions can be proven to stem from a motivation other than a legitimate school interest.

United States v. Fordice, 505 U.S. 717 (1992)

Facts:
After 17 years of litigation, Mississippi's public university system remained racially divided. The state had operated legally segregated universities, but had since adopted race-neutral policies to dismantle its de jure segregated system. All students could choose which school to attend, though the choices produced nearly all white and all black institutions of higher learning. This case was decided together with that of Ayers v. Fordice.

Issues:
Has Mississippi met its affirmative duty under the Fourteenth Amendment's Equal Protection Clause to dismantle its prior dual university system?

Analysis:
No. A state's duty is not discharged "until it eradicates policies and practices traceable to its prior de jure dual system that continues to foster segregation." Race-neutral admissions are not a sufficient corrective to constitutional violations of a dual system. Different admissions criteria, and different missions for university system components, may have racially discriminatory effects perpetuating the old system. The

Court did not declare the present system unconstitutional, only that Mississippi had not done enough to eliminate segregation. The Justices turned the matter back to state officials -- and to the courts -- to determine what must be done to fulfill its duty under the Constitution.

Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200 (2015)

Facts:
In August 2009, the Texas division of the Sons of Confederate Veterans (Texas SCV), a non-profit organization that works to preserve the memory and reputation of soldiers who fought for the confederacy in the Civil War, applied to have a new specialty license plate issued by the Texas Department of Motor Vehicles (TDMV). The proposed license plate had two confederate flags on it: one in the organization's logo, and one faintly making up the background of the plate. The TDMV had a policy stating that it "may refuse to create a new specialty license plate if the design might be offensive to any member of the public." The board in charge of approving new specialty plates received multiple negative comments from the public regarding this plate and ultimately voted to deny Texas SCV's application.

Texas SCV sued in federal district court claiming their First and Fourteenth Amendment rights were violated. The TDMV argued that the Free Speech Clause did not apply in this case because license plates are a form of government speech; therefore, they were within their rights to choose which messages and views they wanted to express on the plates. The district court disagreed and held that the plates were private, non-governmental speech, and that the TDMV's denial was a reasonable, content-based restriction of speech in a non-public forum. The United States Court of Appeals for the Fifth Circuit reversed and held that TDMV's denial was a form of viewpoint discrimination that "discriminated against Texas SCV's view that the Confederate flag is a symbol of sacrifice, independence, and Southern heritage."

Issues:
1. Do specialty license plates constitute government speech that is immune from any requirement of viewpoint neutrality?

2. Does preventing the confederate flag from appearing on license plates constitute viewpoint discrimination?

Analysis:
Yes, no. Justice Stephen G. Breyer delivered the opinion of the 5-4 majority. The Court held that the government choosing the content of its speech is not unconstitutional viewpoint discrimination because that expression is the product of the democratic electoral process. Based on the analysis from Pleasant Grove City v. Summum, Texas's specialty license plate is an example of such government speech (as opposed to a forum open for private expression) because Texas and other states have long used license plates to convey messages. Moreover, the public associates license plates with the State. Finally, Texas maintains direct control over the messages on its specialty plates from design to final approval.

Justice Samuel A. Alito, Jr., wrote a dissent in which he argued that, with over 350 varieties of specialty plates, an observer would think that the plates were the expression of the individual drivers, not Texas. Because the specialty license plates are a limited public forum for private expression, Texas rejecting the confederate flag design because it might be offensive is unconstitutional viewpoint discrimination. Chief Justice John G. Roberts, Jr., Justice Antonin Scalia, and Justice Anthony M. Kennedy joined in the dissent.

West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)

Facts:
In 1942, the West Virginia Board of Education required public schools to include salutes to the flag by teachers and students as a mandatory part of school activities. The children in a family of Jehovah's Witnesses refused to perform the salute and were sent home from school for non-compliance. They were also threatened with reform schools used for criminally active children, and their parents faced prosecutions for causing juvenile delinquency.

Issues:
Did the compulsory flag-salute for public schoolchildren violate the First Amendment?

Analysis:
In a 6-to-3 decision, the Court overruled its decision in Minersville School District v. Gobitis and held that compelling public schoolchildren to salute the flag was unconstitutional. In an opinion written by Robert Houghwout Jackson, the Court found that the First Amendment cannot enforce a unanimity of opinion on any topic, and national symbols like the flag should not receive a level of deference that trumps constitutional protections. He argued that curtailing or eliminating dissent was an improper and ineffective way of generating unity.

Justices Black and Douglas concurred to repudiate their earlier opinions in First Amendment decisions.

Justice Frankfurter dissented. He believed the Court was exceeding the scope of the judicial role and was taking on a legislative function in striking down the law.

Whitney v. California, 274 U.S. 357 (1927)

Facts:
Charlotte Anita Whitney, a founding member of the Communist Labor Party of California, was prosecuted under California's Criminal Syndicalism Act for helping to organize a group that sought to effect economic and political change through the unlawful use of violence. Whitney argued that she had not intended the organization to act this way and did not plan to aid it in those objectives. She claimed the California law violated the First Amendment.

Issues:
Did the Criminal Syndicalism Act violate the First or Fourteenth Amendments?

Analysis:
In a unanimous decision, the Court sustained Whitney's conviction and held that the Act did not violate the Constitution. The Court found that the Act violated neither the Due Process nor the Equal Protection Clauses, and that freedom of speech guaranteed by the First Amendment was not an absolute right. The Court held that the state, in exercise of its police power, can punish those who abuse their rights to freedom of speech "by utterances inimical to the public welfare, tending to incite crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow." In other words, words with a "bad tendency" can be punished.

Writing a separate concurrence, Justice Louis Brandeis, joined by Justice Oliver Wendell Holmes, argued that restrictions on government action under the First and Fourteenth Amendments do not extend to

situations in which speech creates a clear and present danger of an evil outcome. The actions that the defendant took posed only a remote potential harm to the public, and she was involved only in contributing to the preparation of the actions. To satisfy the clear and present danger standard, the risk of harm must be severe, probable, and imminent. Broad statements advocating for revolution at some indefinite date in the future are protected by the First Amendment.

Justices Brandeis and Holmes concurred rather than dissented because the record showed evidence of a criminal conspiracy, which meant review was inappropriate without proof that constitutional rights were infringed during the criminal trial.

Wooley v. Maynard, 430 U.S. 705 (1977)

Facts:
A New Hampshire law required all noncommercial vehicles to bear license plates containing the state motto "Live Free or Die." George Maynard, a Jehovah's Witness, found the motto to be contrary to his religious and political beliefs and cut the words "or Die" off his plate. Maynard was convicted of violating the state law and was subsequently fined and given a jail sentence.

Issues:
Did the New Hampshire law unconstitutionally interfere with the freedom of speech guaranteed by the First Amendment?

Analysis:
In a 6-to-3 decision, the Court held that New Hampshire could not constitutionally require citizens to display the state motto upon their vehicle license plates. The Court found that the statute in question effectively required individuals to "use their private property as a 'mobile billboard' for the State's ideological message." The Court held that the State's interests in requiring the motto did not outweigh free speech principles under the First Amendment, including "the right of individuals to hold a point of view different from the majority and to refuse to foster. . .an idea they find morally objectionable."

Adams v. Trs. Of Univ. of N.C.-Wilmington, 640 F.3d 550 (4th Cir. 2011)

Facts:
In 1993, Adams (plaintiff) became employed as an assistant professor of criminology at the University of North Carolina-Wilmington (UNCW) (defendant). Over the next five years, Adams published several articles, won faculty awards, and received strong teaching evaluations. In 1998, Adams was promoted to associate professor, a tenured position. In 2000, Adams became a Christian and began vocalizing his views on political and social issues. Adams wrote regular columns, appeared as a commentator on television and radio, and published a book. Adams's columns and appearances involved multiple topics, including civil rights, sex, abortion, homosexuality, and morality, to name a few. In 2004, Adams applied for a promotion to full professor. In his application, Adams included not only his academic awards and peer-reviewed publications but also his columns and other writings and appearances he had made since becoming a Christian, including his book. The senior faculty in Adams's department reviewed his application and discussed his most recent writings, focusing on how to evaluate those writings because they were not peer-reviewed or traditional academic writings related to his discipline. The senior faculty and department head did not recommend Adams for promotion, citing his lack of scholarly research and publication since his last promotion in 1998. Adams filed a lawsuit against UNCW, alleging retaliation and viewpoint discrimination in violation of the First Amendment. The district court granted summary

judgment to UNCW, and Adams appealed.

Issues:
Whether Adams's writings and public statements were protected First Amendment speech and, if so, whether the defendants were entitled to summary judgment (including qualified immunity) on his retaliation/viewpoint-discrimination claims.

Analysis:
The Fourth Circuit criticized the district court's approach of converting speech that was protected when made into unprotected speech simply because Adams later listed those writings in a promotion file. Relying on Garcetti's admonition to focus on the role occupied when the speech was made, and on precedents addressing academic speech, the court held the district court misapplied Garcetti. The panel reasoned that treating prior public commentary as categorically unprotected because it was later considered in a personnel process would improperly chill academic freedom. Because the district court had decided only the first McVey prong (and erred), the Fourth Circuit reversed the summary judgment as to the First Amendment claims and remanded for consideration of the remaining McVey (Pickering-type) balancing and causation/qualified-immunity questions.

Alberti v. Carlo-Izquierdo, 548 F. App'x 625 (1st Cir. 2013)

Facts:
Alberti held three positions at the University: FNP program director, grant director, and tenure-track associate professor. Alberti wrote to Chancellor Carlo on December 4, 2007, bypassing the chain of command, to complain about a student's alleged HIPAA violations and faculty interference. On February 13, 2008, Carlo removed Alberti from her director positions without a pre-termination hearing. On June 12, 2008, Carlo terminated Alberti's professor position based on negative evaluations. Alberti repeatedly failed to comply with court deadlines and local rules in opposing Defendants' summary judgment motion.

Issues:
1. Whether Alberti's speech and actions as a public employee were protected under the First Amendment
2. Whether she had a protected property interest in her director positions at the University of Puerto Rico.

Analysis:
The First Circuit affirmed. The district court did not abuse its discretion in handling Alberti's numerous extension requests and deeming Defendants' summary judgment motion effectively unopposed given her repeated violations of court orders and local rules. Alberti's director positions were positions of trust under University Rules that could be removed at will. Even if Alberti had a property interest in her professor position, the Individual University Defendants were entitled to qualified immunity because any such right was not clearly established. Alberti's letter to Carlo was made pursuant to her official duties, not as a private citizen, and thus not protected by the First Amendment. Alberti failed to show Defendants' legitimate non-discriminatory reasons for termination were pretextual.

Bonnell v. Lorenzo, 241 F.3d 800 (6th Cir. 2001)

Facts:
Professor John Bonnell, an English instructor at Macomb Community College in Michigan, used sexually explicit language and materials in his classroom as part of his teaching style. Some students complained that his behavior and comments were offensive and constituted sexual harassment.

In response to a student complaint, the college suspended Bonnell for three days without pay and placed a disciplinary warning in his file. The college found that his classroom conduct and language violated its sexual harassment policy.

Bonnell sued the college's president, Dr. Lorenzo, and other officials under 42 U.S.C. § 1983, alleging violations of his First Amendment right to free speech and Fourteenth Amendment due process rights. The district court granted summary judgment in favor of the college officials, and Bonnell appealed.

Issues:
Whether the college violated Bonnell's First Amendment rights by disciplining him for using sexually explicit language in the classroom that he claimed was part of his teaching method.

Analysis:
The Sixth Circuit affirmed the district court's decision, holding that the college's discipline did not violate Bonnell's First Amendment rights because his conduct was not protected academic speech under the circumstances. The court recognized that teachers have some First Amendment protection in the classroom but emphasized that this right is not unlimited, especially when the conduct interferes with the college's legitimate educational and administrative interests. Under *Pickering*, the court weighed Bonnell's right to free speech against the college's interest in maintaining an environment free of sexual harassment and ensuring students' rights to learn in a non-hostile setting. Bonnell's explicit language and sexually charged remarks were not necessary to convey the educational content. His conduct created a disruptive and hostile learning environment for some students. The college's disciplinary action was narrowly focused on professional misconduct and did not target legitimate academic discussion. The court also held that the college did not retaliate against Bonnell for protected speech nor deny him due process—he was given notice and an opportunity to respond to the charges.

Brammer-Hoelter v. Twin Peaks Charter Acad., 492 F.3d 1192 (10th Cir. 2007)

Facts:
Six teachers at Twin Peaks Charter Academy, a publicly funded K–8 school in Longmont, Colorado, grew concerned about the school's administration under Principal Dorothy Marlatt. The teachers held off-campus meetings to discuss grievances over school management, communication, leadership, curriculum decisions, and overall governance. They also invited parents and community members to some of these meetings.

When Marlatt learned of the meetings, she ordered that teachers not discuss school matters outside work and even suggested they avoid associating with one another in public. After the teachers continued meeting, Marlatt gave them negative evaluations and acted hostile toward them.

Feeling pressured, the teachers submitted resignation letters, then later attempted to rescind them after Marlatt herself resigned. The school board refused to accept their rescissions and treated the

resignations as final. The teachers filed a grievance that was rejected and later sued under 42 U.S.C. § 1983, claiming violations of their First Amendment rights (speech and association), Fourteenth Amendment due process, and state law (breach of contract and promissory estoppel).

The district court granted summary judgment for the defendants on all claims. The teachers appealed.

Issues:
Did the defendants violate the plaintiffs' First, Fifth, and Fourteenth Amendment rights by allegedly retaliating against them for exercising their freedom of speech and association, imposing an illegal restraint on their freedom of speech and association, and depriving them of procedural due process?

Analysis:
The Tenth Circuit affirmed in part, reversed in part, and remanded. The court found that the speech about curriculum, classroom materials, or student behavior was made as apart of teachers' job was unprotected. Further, speech about administrative transparency, board elections, governance, restrictions on speech, and charter renewal was outside their official duties was potentially protected. Speech about restrictions on speech, board elections, and the schools' charter renewal addressed issues of public importance was protected. Balancing the interests, the court found that the school provided no evidence that the teachers' speech disrupted operations, so their interest in speaking outweighed the employers'. Additionally, the court held that the teachers' meetings to discuss protected speech topics were also protected associational activities. The court found that the teachers' contract made them at-will employees, creating no property interest in continued employment so their due process claim failed.

Brown v. Chicago Board of Education, 824 F.3d 713 (7th Cir. 2016)

Facts:
Lincoln Brown, a sixth grade teacher who, after catching his students passing a note in class containing music lyrics with a racial slur, engaged the class in "a well-intentioned but poorly executed discussion of why such words are hurtful and must not be used." The school board suspended the teacher under its "written policy that forbids teachers from using racial epithets in front of students, no matter what the purpose." Two of his theories of relief proceeded to summary judgment: that his suspension violated his First Amendment rights, and that the school's policy was so vague that his suspension violated the substantive due process component of the Fourteenth Amendment. The district court granted summary judgment to the Board on both. Brown appealed.

Issues:
Whether a teacher's use of racial epithets in the classroom, even with the intent to teach about their meaning, was protected by the First Amendment or whether it violated the Chicago Board of Education's policy against such language.

Analysis:
The Seventh Circuit Court of Appeals upheld the teacher's termination. The court applied the Supreme Court's ruling in *Garcetti v. Ceballos*, which held that speech made pursuant to an employee's official duties is not protected by the First Amendment. The court determined that the teacher's speech was part of his job responsibilities, and the Board had a legitimate interest in enforcing its no-racial-epithets policy. In denying the public employee's claim, the Supreme Court held 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."

Buchanan v. Alexander, 919 F.3d 847 (5th Cir. 2019)

Facts:
Teresa Buchanan, a tenured professor of early childhood education at Louisiana State University (LSU), was fired after complaints from students and a supervisor that she made sexually explicit and inappropriate comments in class and during professional interactions.

Examples included occasional profanity and remarks of a sexual nature that Buchanan claimed were intended to illustrate issues of gender, relationships, and classroom management. LSU's administration investigated and concluded that Buchanan had violated university policies on sexual harassment and professional conduct, recommending her termination.

Buchanan sued LSU officials under 42 U.S.C. § 1983, alleging her firing violated her First Amendment rights to free speech and Fourteenth Amendment due process rights, asserting her classroom speech was protected academic expression. The district court granted summary judgment to LSU. Buchanan appealed.

Issues:
Whether a public university violated a professor's First Amendment rights by terminating her for using sexually explicit and profane language in the classroom that she claimed was pedagogical and part of her teaching style.

Analysis:
The Fifth Circuit ruled that Professor Teresa Buchanan's use of profanity and sexually explicit language in her classroom was not protected by the First Amendment because it was not a matter of public concern and did not serve an academic purpose. The court upheld the termination of her tenured position at Louisiana State University (LSU), finding her speech was a personal matter unrelated to the training of teachers and not a part of her pedagogical strategy. Buchanan's speech occurred in the classroom, in front of students, and was part of her teaching. The court reasoned that such speech was "pursuant to her official duties" as a professor, not as a private citizen. Therefore, it was unprotected under *Garcetti*.

Demers v. Austin, 746 F.3d 402 (9th Cir. 2014)

Facts:
In Demers v. Austin, David Demers, a tenured associate professor at Washington State University, alleged that university administrators retaliated against him for distributing a pamphlet titled "The 7-Step Plan" and drafts of a book in progress called "The Ivory Tower of Babel." Demers claimed the retaliation violated his First Amendment rights and included negative annual performance reviews, internal audits, and a formal notice of discipline. The pamphlet proposed changes to the university's communications program and was distributed to university officials and the public. Demers argued that his work was not part of his official duties and should be protected under the First Amendment. The district court granted summary judgment for the defendants, holding that the pamphlet and the book drafts were distributed as part of Demers's employment duties and did not address matters of public concern. Demers appealed the decision.

Issues:
The main issues were whether the speech of a public university professor regarding academic matters is protected under the First Amendment and whether the *Garcetti v. Ceballos* decision applies to such academic speech.

Analysis:
The Ninth Circuit held that *Garcetti v. Ceballos* does not apply to teaching and writing on academic matters by publicly employed teachers. Instead, such speech is governed by the analysis established in *Pickering v. Board of Education*. The court concluded that Demers's pamphlet addressed a matter of public concern, and the case was remanded for further proceedings. The court also ruled that defendants were entitled to qualified immunity due to the uncertain state of the law following *Garcetti*.

The Ninth Circuit reasoned that *Garcetti's* decision, which limits First Amendment protections for public employees speaking pursuant to their official duties, did not extend to academic speech such as teaching and writing by professors. The court emphasized the importance of academic freedom and the special concern of the First Amendment in protecting this freedom. It noted that academic speech might cover matters of public concern, as demonstrated in Demers's pamphlet, which proposed significant changes to the university's communications program. The court highlighted that academic writing is not confined to scholarship but can include documents related to university governance and structure, which may involve matters of public concern. The court also found that the law was not clearly established regarding the application of *Garcetti* to academic speech, which justified granting the defendants qualified immunity.

Duvall v. Putnam City Sch. Dist., Indep. Sch. Dist. No. 1 of Oklahoma Cnty., 530 F. App'x 804 (10th Cir. 2013)

Facts:
Duvall worked as a special education teacher at Tulakes Elementary School. The District began transitioning to a 'full inclusion' model for special education. Duvall expressed concerns about the model to supervisors and submitted letters of dissent to Individualized Education Programs (IEPs). She received a written warning on October 25, 2007, regarding her conduct during an IEP meeting. In April 2008, she was reassigned to a first-grade teaching position, resulting in a 5% salary reduction. She resigned in April 2009 and filed suit.

Issues:
Whether the reassignment of Ms. Duvall, a special education teacher, to a first-grade teaching position constituted an adverse employment action under employment discrimination law.

Analysis:
The court found that while Duvall engaged in protected activity and suffered an adverse action (reassignment with pay cut), she failed to show the District's explanation for her transfer was pretextual. Regarding her First Amendment claim, the court determined her communications to supervisors and parents were made pursuant to her official duties and thus unprotected. For any communications to the State Department of Education, Duvall failed to establish Defendants knew the content of these communications, thus failing to show causation. The Tenth Circuit affirmed the district court's grant of summary judgment to Defendants on all claims.

Emergency Coal. to Defend Educ. Travel v. U.S. Dept. of the Treasury, 545 F.3d 4 (D.C. Cir. 2008)

Facts:
In 2004, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) amended its Cuban Assets Control Regulations (CACR) to restrict U.S. academic institutions from sponsoring certain educational programs in Cuba.

The new rule limited study-abroad programs in Cuba to degree-granting institutions, required that such programs last at least 10 weeks, and prohibited independent educational travel not affiliated with a qualifying institution. Previously, shorter programs and courses led by individual professors or non-degree institutions had been permitted.

The Emergency Coalition to Defend Educational Travel (ECDET)—a group of faculty members, students, and educational organizations—sued the Treasury Department, arguing that the restrictions:

1. Violated their First Amendment rights to academic freedom and free speech, and
2. Exceeded the government's authority under the Trading with the Enemy Act (TWEA), which authorizes economic sanctions against Cuba.

The district court dismissed the case for lack of standing and failure to state a claim. ECDET appealed.

Issues:
Did the OFAC restrictions on educational travel violate the plaintiffs' First Amendment rights to academic freedom and free speech?

Analysis:
The D.C. Circuit affirmed the district court's dismissal. The court held that the plaintiffs lacked standing to challenge some of the restrictions, and even assuming standing for others, the OFAC regulations did not violate the First Amendment and were within the agency's statutory authority under the TWEA. The court held that the restrictions did not violate the First Amendment because the regulations targeted conduct (travel to Cuba), not expression. While the plaintiffs argued that academic freedom includes the right to engage in educational exchange and travel, the court noted that academic freedom does not include a constitutional right to travel to a sanctioned country. The regulation did not discriminate based on the content of speech or ideas but rather regulated foreign travel under the federal government's broad authority over foreign affairs and national security. The court emphasized that foreign policy and economic sanctions are primarily entrusted to the political branches, and courts should defer to the executive's judgment in this area.

Gorum v. Sessoms, 561 F.3d 179 (3d Cir. 2009)

Facts:
Wendell Gorum, Ph. D, a tenured professor at Delaware State University (DSU), changed withdrawals, incompletes, and failing grades to passing grades for 48 students in the Mass Communications Department. As a result, Sessoms, the President of the University, began dismissal proceedings. Gorum requested a hearing before an Ad Hoc Disciplinary Committee, which found that Gorum violated the Collective Bargaining Agreement for several reasons, but recommended that he face only a 2-year unpaid suspension, loss of his chair position, and a probationary period thereafter. Sessoms proceeded with dismissal actions and wrote a recommendation to the Board. The Board reviewing the committee's and Sessoms' recommendations, unanimously agreed and voted to dismiss Gorum. Gorum filed suit in

the U.S. District Court of Delaware, alleging that Sessoms retaliated against him for engaging in speech and association protected by the First Amendment to the United States Constitution. The district court rejected Gorum's claims and granted summary judgment in favor of Sessoms and the Board. Gorum appealed.

Issues:
Does making unauthorized grade changes for students and claiming retaliatory motives for the resulting termination qualify as protected activity under the First Amendment?

Analysis:
The Third Circuit affirmed the district court's summary judgment. Gorum's actions were undertaken as part of his official duties, not as citizen speech, and his internal criticisms were not matters of public concern. Therefore, his First Amendment retaliation claim failed. The court ruled that the professor's actions which included objections to the president's appointment and advising a student were conducted "pursuant to his official duties" and thus were not protected by the First Amendment. Furthermore, the court determined that the university would have terminated him anyway due to his unrelated misconduct, which included improperly changing students' grades

Hardy v. Jefferson Cmty. College, 260 F.3d 671 (6th Cir. 2001)

Facts:
Kenneth Hardy, an adjunct professor at Jefferson Community College (JCC) in Kentucky, taught a communications class on the power of language. In one class, he led a discussion about how language reflects social attitudes toward race, gender, and sexual orientation. To illustrate his point, Hardy used examples of racial slurs and profane language, including terms like the "N-word" and derogatory references to women and gays while explaining how language can reinforce stereotypes and oppression.

A student complained to the college administration, claiming Hardy's language was offensive and inappropriate. The college subsequently decided not to rehire Hardy for future semesters, effectively terminating his employment.

Hardy sued under 42 U.S.C. § 1983, alleging that the college and its officials violated his First Amendment right to free speech and Fourteenth Amendment right to due process by retaliating against him for his classroom expression. The district court granted summary judgment to the college, and Hardy appealed.

Issues:
Does a public college's decision not to renew a professor's contract due to controversial in-class speech on racially charged and derogatory language violate the First Amendment's protection of academic freedom and free speech?

Analysis:
The Sixth Circuit reversed the district court and held that Hardy's classroom speech was protected by the First Amendment. His use of controversial language served a legitimate pedagogical purpose and addressed a matter of public concern, the social impact of language and discrimination. The court applied the *Pickering v. Board of Education* balancing test, weighing the employee's interest in commenting on matters of public concern against the employer's interest in maintaining an effective workplace. Weighing Hardy's and the college's interests, the court found that Hardy's right to engage in

protected classroom discourse outweighed the college's interest in avoiding controversy or student discomfort.

The court found that Hardy's classroom discussion dealt with issues of race, gender, and social inequality, which are core matters of public concern. He was not merely expressing personal opinions or grievances but teaching a subject of public significance in an academic setting. Further, the court emphasized that academic freedom is a special concern of the First Amendment and extends strong protection to classroom speech that serves educational purposes. Hardy's lesson, though provocative, was pedagogically relevant to his course objectives and consistent with accepted instructional methods for discussing sensitive social issues.

Johnson v. Poway Unified School Dist., 658 F.3d 954 (9th Cir. 2011)

Facts:
Johnson displayed banners with religious phrases in his math classroom. The school district ordered their removal, citing concerns about promoting a religious viewpoint. Johnson removed the items, but filed suit, alleging his First Amendment rights were violated. The district court ruled in Johnson's favor, finding a limited public forum for teacher speech. The school district appealed the decision.

Issues:
Whether a public school district violated a teacher's First Amendment rights by requiring him to remove religious banners from his classroom.

Analysis:
The court held that Johnson's banners, displayed in his capacity as a teacher, constituted government speech and were not protected under the First Amendment. The school district's actions to remove the banners were justified to avoid potential Establishment Clause violations and maintain neutrality, which is a legitimate government interest. The Equal Protection claim failed because the banners were government speech, and the government has the right to control its own message. The Ninth Circuit reversed the district court's grant of summary judgment to Johnson and remanded with instructions to enter summary judgment in favor of the Poway Unified School District on all claims.

Kirkland v. Northside Indep. School Dist., 890 F.2d 794 (5th Cir. 1989)

Facts:
Kirkland, a world history teacher, was not rehired by the Northside Independent School District after he used a supplemental reading list for his class without approval from the administration. Kirkland believed that his supervisors' complaints are pretextual justifications for nonrenewal of his contract; he asserts that in fact Northside dismissed him in order to censor the contents of his supplemental reading list. However, Kirkland was aware that he could procure approval to use a supplemental reading list; and he did not do so. As his termination, Kirkland filed a lawsuit, alleging a First Amendment violation. Kirkland sought relief under 42 U.S.C. 1983 for alleged violations of his constitutional rights.

Issues:
Did Kirkland's use of the supplemental reading list constitute protected speech under the First Amendment in substitution of the official curricula of the school, and without obtaining administrative approval?

Analysis:
The court concluded that Kirkland's world history reading list does not present a matter of public concern, a teacher does not have a First Amendment right to determine the school's curriculum, and that this case presents nothing more than an ordinary employment dispute. The court noted that labeling Kirkland's actions as protected speech would dilute the protections for genuine free speech by giving it less weight against the school's interest in determining what is best for students. Accordingly, Kirkland's conduct in disregarding Northside's administrative process does not constitute protected speech, and any inquiry into the reasons for the nonrenewal of his employment contract is unnecessary. Kirkland had ample opportunity to present any concerns over censorship, either privately to his supervisors or publicly to Northside's trustees. The district court erred when it failed to hold as a matter of law that Kirkland suffered no constitutional injury. The court reversed the judgment of the district court and rendered judgment in favor of Northside.

Lee v. York Cnty. Sch. Div., 484 F.3d 687 (4th Cir. 2007)

Facts:
Lee taught Spanish at Tabb High School in York County, Virginia. Principal Zanca removed five items with religious content from Lee's classroom bulletin boards after receiving a citizen complaint. The removed items included a National Day of Prayer poster, news articles about White House Bible study and presidential candidates' religious differences, and materials about a missionary. Zanca determined the items were overly religious and irrelevant to the Spanish curriculum. Lee acknowledged posting the items because he liked them, found them uplifting, and believed they were 'positive and good for the kids,' not because they related to Spanish instruction.

Issues:
Whether a public high school teacher's First Amendment rights were violated when the school administration required him to remove certain items from his classroom walls.

Analysis:
The court determined Lee's postings were curricular because they: (1) constituted school-sponsored speech bearing the school's imprimatur as they were posted in a compulsory classroom setting on school-owned bulletin boards subject to administrative oversight; and (2) were designed to impart particular knowledge to students, as Lee admitted posting them to convey social and moral values. Since the postings were curricular, they did not constitute speech on a matter of public concern and were not protected by the First Amendment. The Fourth Circuit affirmed the district court's grant of summary judgment to the School Board.

Lyons v. Vaught, 875 F.3d 1168 (8th Cir. 2017)

Facts:
Lyons was a part-time lecturer at UMKC who gave a student athlete an 'F' grade. The student's grade was changed to 'D+' through UMKC's appeal process. Lyons met with Chancellor Morton to discuss concerns about preferential treatment of student athletes. The following semester, Lyons was not offered a contract. Lyons sued Vaught and Bassa for First Amendment retaliation.

Issues:
1. Whether a state-university lecturer's speech criticizing the university's preferential treatment of

student athletes was protected under the First Amendment.
2. Whether the university officials' decision not to renew his contract constituted unlawful retaliation.

Analysis:
University officials were entitled to qualified immunity from First Amendment retaliation claims because it was not clearly established that a lecturer's speech about preferential treatment of student athletes, which stemmed from his own student's grade appeal, was protected citizen speech rather than speech pursuant to his duties.

The court reasoned that Lyons's meeting with the Chancellor occurred shortly after the student athlete's appeal was upheld, and Lyons specifically told Vaught and Bassa about his request for an investigation. To these officials, this appeared to be an extension of Lyons's unprotected speech during the grade appeal process. The court determined that Vaught and Bassa could reasonably conclude Lyons was speaking as an aggrieved lecturer, not as a citizen on a matter of public concern. The Eighth Circuit reversed the district court's denial of qualified immunity and remanded with directions to dismiss Lyons's damages claims on the basis of qualified immunity.

Mailloux v. Kiley, 448 F.2d 1242 (1st Cir. 1971)

Facts:
Raymond Mailloux was a public high-school English teacher in Massachusetts. During a class discussion on the social impact of language, slang, and obscenity, Mailloux wrote a vulgar slang term for sexual intercourse on the chalkboard. He stated that this was an instructional part of a legitimate pedagogical discussion about words and their power in society. Administrators suspended him and recommended dismissal, claiming the use of the term was inappropriate, unprofessional, and disruptive. Mailloux sued under 42 U.S.C. § 1983, arguing the sanction violated his First Amendment rights as a teacher.

Issues:
Whether a public school teacher's use of an obscene slang word in the classroom claimed to be for legitimate instructional purposes is protected by the First Amendment such that the teacher cannot be disciplined for it.

Analysis:
The First Circuit reversed and remanded, holding that the district court used an incorrect legal approach and that the case required further factual inquiry. The court did not hold that teachers have unlimited First Amendment protection in the classroom; rather, it held that the teacher's use of the term may be protected depending on context, purpose, and the reasonableness of the school's response. The court rejected the idea that a school may discipline a teacher per se for any classroom use of offensive or controversial language. A teacher's expression can have First Amendment dimensions when it relates to instruction. The court emphasized that schools have legitimate authority to maintain standards of decency and to regulate curriculum and pedagogy. The First Circuit instructed that the proper question is: (1) whether the teacher's conduct was reasonably related to a legitimate pedagogical purpose, and (2) whether the school's discipline was reasonable in light of community standards, school policy, and educational needs.

Mayer v. Monroe Cnty. Cmty. Sch. Corp., 474 F.3d 477 (7th Cir. 2007)

Facts:
Deborah Mayer, a probationary elementary school teacher in Monroe County, Indiana, taught current events as part of a social studies program. In early 2003, during a classroom discussion about peace protests related to the Iraq War, a student asked whether she participated in such demonstrations. Mayer responded that she honks for peace when passing protesters and believed people should work for peace.

A parent complained to school administrators, claiming Mayer had expressed a political opinion in the classroom. The school did not renew Mayer's teaching contract, citing concerns about her judgment and classroom conduct. Mayer filed suit under 42 U.S.C. § 1983, alleging her First Amendment right to free speech had been violated because her contract was not renewed in retaliation for her political expression. The district court granted summary judgment to the school district, and Mayer appealed.

Issues:
Does the First Amendment protect a public school teacher's right to express personal political views in the classroom contrary to the school curriculum?

Analysis:
The Court held that the First Amendment does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system. The Court emphasized that the curriculum and classroom content belong to the school board, not individual teachers. A teacher hired to teach the state's curriculum must adhere to that program and cannot use instructional time for personal expression. The Court noted that while universities may have some degree of academic freedom, elementary and secondary schools operate under stricter curricular control, and teachers' speech must reflect the school's educational mission, not their personal viewpoints.

The Court cited *Hazelwood School District v. Kuhlmeier (1988)*, reaffirming that schools may exercise control over classroom expression if it is reasonably related to legitimate pedagogical concerns. Because Mayer's in-class remarks were part of her official teaching duties, her speech was not constitutionally protected, and thus her nonrenewal could not constitute unlawful retaliation under §1983.

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

Facts:
Nicholas Meriwether was a professor at Shawnee State University (SSU), a public university in Ohio. Under SSU's gender-identity policy, professors were required to refer to students by their preferred pronouns. One of Meriwether's students, Doe, a biological male, asked to be referred to with female pronouns in accordance with her gender identity. Meriwether refused, stating that using pronouns that did not match a person's biological sex violated his Christian beliefs. Doe raised objections with SSU's administration, and Meriwether was disciplined.

Meriwether sued SSU, arguing that SSU punishing Meriwether for refusing to use Doe's preferred pronouns violated Meriwether's First Amendment right to free speech. Specifically, Meriwether argued that his right to freely speak about matters of great public concern, such as the gender-identity debate, was protected by the academic-freedom exception, which was an exception to the general rule that public employees, like Meriwether, could be disciplined for statements made during the performance of their duties. SSU countered, arguing that (1) the academic-freedom exception applied only to ideological

speech, such as lecturing, not ministerial speech, such as using a student's correct name and pronouns, and (2) SSU's interest in protecting transgender students from discrimination outweighed Meriwether's free-speech interest. The district court dismissed Meriwether's action. Meriweather appealed to the Sixth Circuit.

Issues:
Is a university professor's choice not to use a student's preferred pronouns protected by the First Amendment?

Analysis:
A university professor's choice not to use a student's preferred pronouns is protected by the First Amendment. The First Amendment protects the right to free speech and ensures to no individual can be forced to express agreement with any particular belief with which the individual disagrees. In general, First Amendment protections do not apply to statements made by public employees during the performance of their duties. However, under the academic-freedom exception, the First Amendment does protect statements made by public-university professors during teaching or scholarship.

The academic-freedom exception expressly covers all statements a professor makes related to a matter of great public concern. If a professor makes a statement on a matter of great public concern, then the university cannot restrict or discipline a professor's speech unless the university can prove that its interests in restricting speech outweigh a professor's academic-freedom interest. To be valid, the university's interest must be related to promoting the efficiency of the public services it provides through its professors.

In this case, Meriwether's refusal to use Doe's preferred pronouns is protected under the academic-freedom exception. It is unquestionable that gender identity, of which the preferred-pronoun debate is an integral part, is currently a matter of great public concern. SSU's gender-identity policy forces professors to use a student's preferred pronouns, thereby forcing each professor to tacitly agree with a position on the gender-identity debate that may not match a particular professor's personal beliefs. Meriwether does not believe that using pronouns that are incongruent with a student's biological sex is appropriate, and the First Amendment protects his right to refuse to imply he believes otherwise by conforming to SSU's policy. Because Meriwether's refusal to use pronouns amounts to a statement regarding a matter of great public concern, it cannot be classified as merely ministerial. Further, Meriwether's academic-freedom interest outweighs SSU's interest in protecting transgender students from discrimination because antidiscrimination policies must not be used to force ideological conformity. The district court's ruling is reversed and remanded.

Panse v. Eastwood, 303 F. App'x 933 (2d Cir. 2008)

Facts:
Panse was a high school art teacher. He encouraged his students to participate in a for-profit nude figure drawing course he wanted to teach outside of school. These statements were made during class time at school. As a result, the school district allegedly restricted Panse's speech and investigated his statements.

Issues:
Whether the speech of a high school art teacher, made during class and related to his official job duties, was protected under the First Amendment.

Analysis:
The Second Circuit affirmed the district court's dismissal of Panse's First Amendment retaliation claim. The school's restrictions on his speech were reasonably related to legitimate pedagogical concerns about limiting commercial solicitation during class and investigating potentially inappropriate sexual content. Panse's statements to his students were made pursuant to his official duties as a teacher, so under Garcetti they are not protected by the First Amendment. Public employees' speech made pursuant to their official duties is not protected by the First Amendment.

Pernell v. Fla. Bd. of Governors of State Univ. Sys., No. 4:22CV304-MW/MAF, 2022 WL 16985720 (N.D. Fla. Nov. 17, 2022)

Facts:
Florida passed the Individual Freedom Act in 2022, prohibiting instruction that espouses or promotes eight specified concepts related to race, sex, and national origin. The law includes a 'savings clause' allowing 'objective' discussion of these concepts without endorsement. The Board of Governors issued Regulation 10.005 requiring universities to implement the law and establish enforcement mechanisms. Universities face loss of performance funding if they 'willfully and knowingly' fail to enforce the regulations. Professor plaintiffs testified they would either self-censor or risk discipline under the law.

Issues:
Whether Florida's IFA prohibit of professor's expressing approval of eight concepts related to race and sex while permitting criticism of those same sex concepts, constitutes impermissible viewpoint discrimination under the First Amendment?

Analysis:
The IFA's provision allowing 'objective' instruction about the eight concepts 'without endorsement' is unconstitutionally vague because it redefines objectivity to permit criticism but prohibit approval, leaving professors unable to determine what speech is allowed.

The court rejected Florida's argument that professors' classroom speech is government speech outside First Amendment protection. Applying Bishop's balancing test, the court found that: (1) the context involved a sweeping prohibition affecting thousands of professors rather than an isolated disciplinary action; (2) Florida's interest in combating racism does not justify viewpoint-based restrictions; and (3) academic freedom weighs heavily in favor of professors' right to express viewpoints about curriculum content. The court also found the 'objective instruction' provision impermissibly vague because it redefines objectivity to permit criticism but prohibit approval of the specified concepts.

The court granted preliminary injunctions prohibiting enforcement of the challenged provisions of the IFA and Regulation 10.005, finding plaintiffs demonstrated: (1) substantial likelihood of success on First Amendment and vagueness claims; (2) irreparable injury from ongoing First Amendment violations; (3) balance of harms favoring plaintiffs; and (4) public interest in enforcing constitutional rights.

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

28 U.S.C. § 1254

Section 1254 outlines how the Supreme Court can review cases from the U.S. Courts of Appeals. It grants the Supreme Court the power to review cases through a writ of certiorari granted upon a party's petition or by accepting a “certified question” from a court of appeals.

42 U.S.C. § 1983

Section 1983 is a federal law that allows individuals to sue state and local government officials for violating their civil rights under the Constitution and other federal laws. This “civil action for deprivation of rights” allows people to seek damages, injunctions, and attorney's fees when their rights, such as freedom of speech, due process, or protection against unreasonable searches, have been violated while the official was acting “under color of state law.”