Respondent Case Briefs

Agency for International Development v. Alliance for Open Society International, 570 U.S. 205 (2013)

Facts:
In 2003, Congress enacted the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act ("the Act"). Through the Act, Congress apportioned billions of dollars towards the funding of non-governmental organizations ("NGOs") involved in the fight against HIV/AIDS. NGOs qualify to receive this funding only if they satisfy certain conditions. One of these conditions requires that all federally funded NGOs implement a policy explicitly opposing prostitution.

The Alliance for Open Society International, Inc., Pathfinder International, Global Health Council, and InterAction are NGOs that receive funding under the Act. The NGOs brought suit against the Agency for International Development and the other agencies responsible for enforcing the Act, challenging the constitutionality of the Act's funding provisions. The NGOs argued that the funding provisions violate the First Amendment by restricting the organizations' speech and forcing them to promote the government's viewpoint on prostitution. The district court agreed with the NGOs and held that the provisions were too broad of a restriction on free speech. The agencies appealed and the United States Court of Appeals for the Second Circuit affirmed.

Issue(s):
Does a requirement that non-governmental organizations institute an explicit anti-prostitution policy in order to receive federal funding violate the First Amendment?

Analysis:
Yes. Chief Justice John G. Roberts, Jr. delivered the majority opinion. The Court held 6-2 that the government may not use funding and the threat of the loss of funding as a method for the regulation of speech and policies of non-governmental organizations. Because the Act's funding provisions represent an ongoing condition on the actions of the group receiving funding, the provisions essentially act as government coercion. The Court held that the funding provisions require the groups to accept the beliefs of the government, which infringes on their First Amendment rights.

Justice Antonin Scalia wrote a dissent in which he argued that the government has the right to choose to give financial support only to groups which share its views on how to address a particular issue. The fact that the government must often choose among many policy options does not mean that the government is coercing groups to adopt its views. Justice Clarence Thomas joined in the dissent.

Justice Elena Kagan did not participate in the discussion or decision in this case.

Bose Corporation v. Consumers Union, 466 U.S. 485 (1984)

Facts:
Bose Corporation, a loudspeaker manufacturer, brought a product disparagement action against Consumer Union for publishing a negative review of Bose products. Among other comments, Consumer Union's article mistakenly said that Bose loudspeakers caused sounds of individual musical instruments to wander "about the room" when they in fact merely wandered "along the wall[s]." Ruling in favor of Bose, the District Court found that the article's statements were factually wrong and made with "actual

malice." On appeal, the Court of Appeals reversed as it found the lower court's ruling to be clearly erroneous. The Supreme Court granted Bose certiorari.

Issue(s):
Was Consumer Union's article written with "actual malice," thereby placing it outside the First Amendment's freedom of speech protections?

Analysis:
No. The Court held that while the record revealed that the article's author mistakenly described the sound path of Bose speakers, he did not do so with actual malice. A review of the author's testimony showed that he heard the Bose speaker sounds as tending to wander "along the wall" between speakers, rather than "about the room." Despite this disparity, the Court held that the description of Bose speaker sounds as wondering "about the room," though a misconception, was not written with actual malice since its author was not aware of his mischaracterization in time to remedy the error. Therefore, his speech was entitled to First Amendment protection.

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.

Issue(s):
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.

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.

Issue(s):
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.

Janus v. American Federation of State, County, & Municipal Employees, Council 31, 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.

Issue(s):
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 Marketing Association, 544 U.S. 550 (2005)

Facts:
The Beef Promotion and Research Act (1985) required cattle producers to pay a fee for generic beef

advertisements done on behalf of the cattle industry. Some cattle producers disagreed with the advertisements. The Livestock Marketing Association sued the Department of Agriculture (USDA) in federal district court and alleged a government-required fee for advertising with which some cattle producers disagreed violated their First Amendment right to free speech. The USDA argued the advertising was government speech immune from First Amendment challenge. Another group of cattle producers, the Nebraska Cattlemen, sided with the USDA and sued the Livestock Marketing Association. The two cases were consolidated. The district court and the Eighth Circuit Court of Appeals ruled the program violated the First Amendment and that the advertising was compelled and not government speech.

Issue(s):
Does the Beef Promotion and Research Act of 1985 (Beef Act) violate the First Amendment by requiring cattle producers to pay to fund advertising with which they disagree?

Analysis:
No. In a 6-3 opinion delivered by Justice Antonin Scalia, the Court held that the fund was for government speech and that therefore the government could not be sued under the First Amendment. The Court pointed to the rule that while compelled funding of private speech raises First Amendment concerns, compelled funding of government speech generally does not.

Johnson-Kurek v. Abu-Absi, 546 U.S. 1175 (2006)

Facts:
Rosemary Johnson-Kurek was a part-time lecturer at the University of Toledo (English and Theater/Film Departments). In her fall 2000 "organizational writing" class, she gave 13 of 17 students a grade of "Incomplete" because their work was substandard: poor formatting, bad citations, or needed textual revisions. She posted on the class listserv (email list) general messages explaining these reasons and how to resubmit work, but refused to send individualized guidance to each student, claiming that such direct feedback would interfere with their learning process. A student complained to her department. Her supervisor, Carol Nelson-Burns, asked her to write specific letters to each student explaining exactly what each needed to do to finish the course and earn a final grade. Johnson-Kurek did not comply with that request, despite repeated follow-ups. She then claimed that the Chair of the English Department (Samir Abu-Absi) and others denied her a second course assignment for Fall 2001 in retaliation for her refusal to provide detailed written instructions to her students. She sued under 42 U.S.C. § 1983, alleging violations of her First Amendment rights (free speech and "academic freedom") and Fourteenth Amendment (due process) against Abu-Absi, Nelson-Burns, and another administrator, Thomas Barden

Issue(s):

1. Whether a public university may constitutionally require a non-tenured lecturer to provide individualized, detailed instructions to students about what they must do to complete a course (i.e., does the First Amendment or "academic freedom" protect her from such a requirement).

2. Whether the denial of a second class assignment in retaliation for her refusal implicates her First Amendment rights.

3. Whether she was denied due process when told she could not file a grievance because she was not in a bargaining unit.

Analysis:
The Sixth Circuit affirmed the district court's dismissal of her § 1983 claims. The court held that the university may constitutionally require her to provide detailed administrative (non-scholastic) guidance to students. Her refusal to comply did not raise a protected First Amendment or academic-freedom violation. It distinguished between her pedagogical philosophy and the administrative function of instructing students what to do. The requirement to explain course requirements more clearly was not forcing her to endorse someone else's speech or change her grading. The court cited precedent that academic freedom (in the First Amendment sense) belongs to the institution, not necessarily to individual, non-tenured instructors. Her due process claim (Fourteenth Amendment) was also dismissed, because she had not adequately tied it to a cognizable constitutional violation. Since there was no underlying First Amendment violation, there was no basis for a due process claim tied to that.

Kennedy v. Bremerton School District, 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.

Issue(s):
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. Board of Regents, 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.

Issue(s):
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.

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

Facts:
In 2006, Edward Lane accepted a probationary position as Director of the Community Intensive Training for Youth ("CITY") program at Central Alabama Community College ("CACC"). He subsequently terminated the employment of Suzanne Schmitz, a state representative who had not performed any work for the program despite being listed on CITY's payroll. Lane also testified against Schmitz in two federal criminal trials between 2008 and 2009. In January 2009, Steve Franks, the president of CACC, sent termination letters to 29 CITY employees, including Lane, but rescinded the terminations of 27 of those employees within a few days. Lane sued Franks in federal district court and alleged that his

termination from the CITY program was in retaliation for his testimony against Schmitz and therefore violated his First Amendment right to free speech. The district court ruled that the doctrine of qualified immunity shielded Franks from liability and granted summary judgment in his favor. The U.S. Court of Appeals for the Eleventh Circuit affirmed but declined to reach a decision on the qualified immunity question. Instead, the appellate court held that the First Amendment did not protect Lane's testimony because it was made pursuant to his official duties as a public employee.

Issue(s):
(1)Does the First Amendment protect a public employee's truthful, sworn testimony that was compelled by subpoena and not a part of the employee's ordinary job responsibilities?

(2) Does the doctrine of qualified immunity preclude Lane from claiming that Franks terminated his employment in an act of retaliation?

Analysis:
Yes and no. Justice Sonia Sotomayor delivered the opinion for the unanimous Court. The Court held that Lane’s testimony clearly constituted citizen speech on a public matter and that the testimony was elicited during a trial for misuse of state funds and corruption. Therefore, Lane did not testify as part of his employment responsibilities. Though Lane learned some of the subject matter of his testimony through the course of his employment, that alone does not make the testimony a part of Lane’s employment responsibilities. However, even though the Court found that Lane’s speech was protected under the First Amendment, ultimately Lane’s claim must be dismissed because Franks had qualified immunity. Previous precedent, specifically Morris v. Crow, had held that public employee testimony was unprotected speech, and thus when Franks fired Lane, he was not violating a clearly established constitutional right.

In his concurring opinion Justice Clarence Thomas agreed that, because Lane did not testify as a part of his employment duties and responsibilities, his testimony constituted citizen speech on a public matter and was entitled to First Amendment protection. Justice Thomas further applauded the Court for not addressing whether the First Amendment protects the testimony of public employee when that testimony is part of the employee’s employment duties. Justice Samuel A. Alito Jr. and Justice Antonin Scalia joined the concurrence.

Legal Services Corporation 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.

Issue(s):

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."

Minnesota State Board of Community Colleges v. Knight, 465 U.S. 271 (1984)

Facts:
Minnesota had a law requiring public employers to engage in official exchanges of views with employees on employment-related policy matters that fell outside the scope of mandatory bargaining. However, under this law, if there existed an official representative for public employees, this exchange could only take place with that official representative. Essentially, public employees could not meet and confer or meet and negotiate outside of the official representative. The Minnesota State Board for Community Colleges (the board) (defendant) operated the Minnesota community college system. The Minnesota Community College Faculty Association (the union) (defendant) represented faculty of the state's community colleges. At the state level, the union and board held meetings and conferred to discuss systemic issues. At the campus level, the union and board established meetings to discuss campus-specific questions. These meetings operated as the Minnesota College Administration. Leon Knight and other community college faculty instructors unaffiliated with the faculty union (collectively, Knight) (plaintiffs) filed suit in federal district court, contending that the limitation on exchanges of views to an official representative violated the constitutional rights of professional employees who were not members of the group represented by the official representative. The district court found that the state law violated the First and Fourteenth Amendments of speech and association for employees who were not members of the union. Knight, the board, and the union all filed an appeal to the Supreme Court.

Issue(s):
Does a state's law that requires public employers to engage in "meet and confer" sessions with the exclusive representative of employees, thereby excluding non-union faculty, violate the non-union employees' First and Fourteenth Amendment rights to speak and associate?

Analysis:
The Supreme Court reversed the lower court's decision, holding that the Minnesota statute was constitutional. The Court held that a state law allowing exclusive employee representation in "meet and confer" sessions with public employers did not violate the First Amendment rights of non-union faculty members. The Court ruled that there is no constitutional right for individual employees to participate in these policy-level discussions and that public employers can restrict them to only dealing with the employees' chosen, exclusive representative. This decision upheld the principle of exclusive representation in public sector labor relations

New York Times Company v. Sullivan, 376 U.S. 254 (1964)

Facts:
During the Civil Rights movement of the 1960s, the New York Times published an ad for contributing donations to defend Martin Luther King, Jr., on perjury charges. The ad contained several minor factual inaccuracies. The city Public Safety Commissioner, L.B. Sullivan, felt that the criticism of his subordinates reflected on him, even though he was not mentioned in the ad. Sullivan sent a written request to the Times to publicly retract the information, as required for a public figure to seek punitive damages in a libel action under Alabama law.

When the Times refused and claimed that they were puzzled by the request, Sullivan filed a libel action against the Times and a group of African American ministers mentioned in the ad. A jury in state court awarded him $500,000 in damages. The state supreme court affirmed and the Times appealed.

Issue(s):
Did Alabama's libel law unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections?

Analysis:
To sustain a claim of defamation or libel, the First Amendment requires that the plaintiff show that the defendant knew that a statement was false or was reckless in deciding to publish the information without investigating whether it was accurate.

In a unanimous opinion authored by Justice Brennan, the Court ruled for the Times. When a statement concerns a public figure, the Court held, it is not enough to show that it is false for the press to be liable for libel. Instead, the target of the statement must show that it was made with knowledge of or reckless disregard for its falsity. Brennan used the term "actual malice" to summarize this standard, although he did not intend the usual meaning of a malicious purpose. In libel law, “malice” had meant knowledge or gross recklessness rather than intent, since courts found it difficult to imagine that someone would knowingly disseminate false information without a bad intent.

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007)

Facts:
The Seattle School District allowed students to apply to any high school in the District. Since certain schools often became oversubscribed when too many students chose them as their first choice, the District used a system of tiebreakers to decide which students would be admitted to the popular schools. The second most important tiebreaker was a racial factor intended to maintain racial diversity. If the racial demographics of any school's student body deviated by more than a predetermined number of percentage points from those of Seattle's total student population (approximately 40% white and 60% non-white), the racial tiebreaker went into effect. At a particular school either whites or non-whites could be favored for admission depending on which race would bring the racial balance closer to the goal.

A non-profit group, Parents Involved in Community Schools (Parents), sued the District, arguing that the racial tiebreaker violated the Equal Protection Clause of the Fourteenth Amendment as well as the Civil Rights Act of 1964 and Washington state law. A federal District Court dismissed the suit, upholding the tiebreaker. On appeal, a three-judge panel the U.S. Court of Appeals for the Ninth Circuit reversed.

Under the Supreme Court's precedents on racial classification in higher education, Grutter v. Bollinger and Gratz v. Bollinger, race-based classifications must be directed toward a "compelling government interest" and must be "narrowly tailored" to that interest. Applying these precedents to K-12 education, the Circuit Court found that the tiebreaker scheme was not narrowly tailored. The District then petitioned for an "en banc" ruling by a panel of 11 Ninth Circuit judges. The en banc panel came to the opposite conclusion and upheld the tiebreaker. The majority ruled that the District had a compelling interest in maintaining racial diversity. Applying a test from Grutter, the Circuit Court also ruled that the tiebreaker plan was narrowly tailored, because 1) the District did not employ quotas, 2) the District had considered race-neutral alternatives, 3) the plan caused no undue harm to races, and 4) the plan had an ending point.

Issue(s):
1) Do the decisions in Grutter v. Bollinger and Gratz v. Bollinger apply to public high school students?

2) Is racial diversity a compelling interest that can justify the use of race in selecting students for admission to public high schools?

3) Does a school district that normally permits a student to attend the high school of her choice violate the Equal Protection Clause by denying the student admission to her chosen school because of her race in an effort to achieve a desired racial balance?

Analysis:
No, no, and yes. By a 5-4 vote, the Court applied a "strict scrutiny" framework and found the District's racial tiebreaker plan unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. Chief Justice John Roberts wrote in the plurality opinion that "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." The Court acknowledged that it had previously held that racial diversity can be a compelling government interest in university admissions, but it ruled that "[t]he present cases are not governed by Grutter." Unlike the cases pertaining to higher education, the District's plan involved no individualized consideration of students, and it employed a very limited notion of diversity ("white" and "non-white"). The District's goal of preventing racial imbalance did not meet the Court's standards for a constitutionally legitimate use of race: "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'" The plans also lacked the narrow tailoring that is necessary for race-conscious programs. The Court held that the District's tiebreaker plan was actually targeted toward demographic goals and not toward any demonstrable educational benefit from racial diversity. The District also failed to show that its objectives could not have been met with non-race-conscious means. In a separate opinion concurring in the judgment, Justice Kennedy agreed that the District's use of race was unconstitutional but stressed that public schools may sometimes consider race to ensure equal educational opportunity.

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.

Issue(s):
(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. Board of Education of Township High School District 205, Will County, Illinois, 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.

Issue(s):
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 v. Summum, 555 U.S. 460 (2009)

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.

Issue(s):
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.

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.

Issue(s):
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.

Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985)

Facts:
Scott Ewing was enrolled in a medical program, and in the spring of 1981, he took and failed the NBME Part 1 (Exam), which is an exam his program required. After reviewing the status of several students in the program, the Promotion and Review Board (Board) voted unanimously to drop Ewing from the program. The Board took into account his recent failure as well as the totality of his academic record when making their decision. Ewing appealed the Board's decision four times and argued that, because every student before him who had failed the Exam had been allowed to retake it, he should be afforded the same opportunity. All of his appeals were unsuccessful.

In August of the following year, Ewing sued in federal district court and alleged a breach of contract as well as a violation of his right to due process. The district court sided with the University and Ewing appealed. The U.S. Court of Appeals for the Sixth Circuit reversed and held that Ewing's right to enrollment qualified as a property right that deserved protection from arbitrary state interference under the Due Process Clause of the Fourteenth Amendment.

Issue(s):
Did the University arbitrarily interfere with Ewing's property, and therefore violate his right to Due Process under the Fourteenth Amendment, by revoking his admission to the medical program?

Analysis:
No. Justice John Paul Stevens delivered the opinion for the unanimous Court. The Due Process Clause of

the Fourteenth Amendment grants citizens a substantive right to own property free from arbitrary state interference. The Court held that, even if Ewing had a property interest in his admission, the careful consideration that went into his dismissal made this interference with his property anything but arbitrary. The Court determined that Ewing's dismissal was reasonable based on all the available evidence.

Justice Lewis F. Powell, Jr. filed a concurring opinion in which he argued that the classification of Ewing's continued admission was not a constitutional property right deserving the protection of substantive due process, but rather a state issue requiring, at most, procedural due process protection.

Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995)

Facts:
Ronald W. Rosenberger, a University of Virginia student, asked the University for $5,800 from a student activities fund to subsidize the publishing costs of Wide Awake: A Christian Perspective at the University of Virginia. The University refused to provide funding for the publication solely because it "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality," as prohibited by University guidelines.

Issue(s):
Did the University of Virginia violate the First Amendment rights of its Christian magazine staff by denying them the same funding resources that it made available to secular student-run magazines?

Analysis:
Yes. The Court, in a 5-to-4 opinion, held that the University's denial of funding to Rosenberger, due to the content of his message, imposed a financial burden on his speech and amounted to viewpoint discrimination. The Court noted that no matter how scarce University publication funding may be, if it chooses to promote speech at all, it must promote all forms of it equally. Furthermore, because it promoted past publications regardless of their religious content, the Court found the University's publication policy to be neutral toward religion and, therefore, not in violation of the establishment clause. The Court concluded by stating that the University could not stop all funding of religious speech while continuing to fund an atheistic perspective. The exclusion of several views is as offensive to free speech as the exclusion of only one. The University must provide a financial subsidy to a student religious publication on the same basis as other student publications.

Sweezy v. New Hampshire, 354 U.S. 234 (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.

Issue(s):
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."

<u>Utah Public Services Commission v. El Paso Natural Gas Company, 395 U.S. 464 (1969)</u>

Facts:
This case arose from a longstanding antitrust dispute concerning El Paso Natural Gas Company's acquisition of Pacific Northwest Pipeline Corporation. The Supreme Court had previously ordered El Paso to divest itself of PNW to restore competition. This district court's decree, which was intended to implement the divestiture, was challenged by the Utah Public Service Commission. The decree allowed El Paso to retain a preferred stock interest in the divested company and allocated gas reserves in a manner that Utah argued was insufficient to restore competition.

Issue(s):
Whether the district court's divestiture decree complied with the Supreme Court's earlier mandate to ensure complete severance of financial and managerial ties between El Paso and the divested company and to restore competition to the natural gas market.

Analysis:
The Supreme Court vacated and remanded the case, finding that the district court's decree failed to

properly comply with its earlier mandate to break up the illegal merger between El Paso and Pacific Northwest Pipeline. The Court held that the gas reserve allocation was insufficient, stating the goal was to restore the New Company's competitive position in the California market to what it was before the illegal merger, rather than just simply dividing the assets. Retaining a preferred stock interest perpetuated the illegal intercorporate relationship.

Walker v. Texas Division, Sons of Confederate Veterans, 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."

Issue(s):
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 Board of Education 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.

Issue(s):
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.

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.

Issue(s):
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."

Abcarian v. McDonald, 617 F.3d 931 (7th Cir. 2010)

Facts:
Abcarian was the Head of the Department of Surgery at the University of Illinois at the College of Medicine and Service Chief at the Medical Center. The University settled a medical malpractice claim for $950,000 related to a former patient of Abacarian. The University reported this settlement to the Illinois Department of Financial and Professional Regulation and the National Practitioner Data Bank as required by law. Abacarian remained employed in his position throughout the proceedings.

Issue(s):
Whether defamation by a government actor could constitute a violation of the Due Process Clause.

Analysis:
The Seventh Circuit reasoning that Abacarian's speech was made as an employee, not a citizen, given his high-level administrative position and the job-related nature of his communications. The court found that defendants had no discretion in reporting the settlement as they were legally required to do so under federal and state law. The court also determined that Abacarian could not establish a due process violation because he remained employed in his profession, showing no tangible loss of liberty interest. The court affirmed the district court's dismissal of all constitutional claims and the denial of Abacarian's Rule 59(e) motion to reconsider and amend his complaint.

Adams v. Trustees of the University of North Carolina-Wilmington, 640 F.3d 550 (4th Cir. 2011)

Facts:

Michael S. Adams, employed by the University of North Carolina-Wilmington ("UNCW"), brought suit against sixteen defendants affiliated with UNCW following the denial of his promotion to full professor. Adams alleged religious and speech-based discrimination and retaliation related to this decision. The district court granted summary judgment to the defendants on all claims, concluding they were entitled to judgment as a matter of law. Adams appealed.

Adams was hired in 1993 as an assistant professor and promoted to tenured associate professor in 1998. After converting to Christianity in 2000, Adams became publicly vocal about conservative political and social issues, publishing columns, making media appearances, and authoring books. Some within UNCW expressed discomfort with his views, but the university recognized First Amendment protections and academic freedom applied to his speech.

In 2004, Adams applied for promotion to full professor. The promotion process at UNCW is self-initiated and evaluated on teaching, research/artistic achievement, service, and scholarship/professional development, with excellence expected especially in teaching and research. Adams' application included his academic record, publications, non-refereed works, public conservative commentary, and service activities, including advising Christian student groups and activism for free speech.

The Department Chair, Dr. Kimberly Cook, after consulting senior faculty, received a majority vote opposing Adams' promotion, citing concerns with the scholarly research component and overall

qualifications. Adams received written explanations emphasizing insufficient scholarly research productivity and service, despite adequate teaching.

Following receipt of a right-to-sue letter from the EEOC, Adams filed claims under 42 U.S.C. § 1983 for First Amendment retaliation and viewpoint discrimination, denial of equal protection under the Fourteenth Amendment, and religious discrimination under Title VII. The district court dismissed some claims and later granted summary judgment for defendants on all remaining claims. Adams timely appealed.

Issue(s):

1. Whether the defendants unlawfully discriminated against Adams on the basis of religion in violation of Title VII.
2. Whether the defendants violated Adams' First Amendment rights through retaliation and viewpoint discrimination related to his protected speech.
3. Whether Adams was denied equal protection under the Fourteenth Amendment due to discrimination based on his religious beliefs.
4. Whether the district court correctly applied the "official duties" analysis from Garcetti v. Ceballos to Adams' speech in the academic context.
5. Whether the defendants are entitled to qualified immunity regarding the First Amendment claims.

Analysis:

The court reviewed Adams' claims with deference to academic decision-making, recognizing the limited role courts play in reviewing university promotion decisions. The court affirmed the district court's grant of summary judgment on Adams' Title VII religious discrimination claim, finding Adams failed to produce direct or indirect evidence that religion motivated the denial of promotion. Adams' comparisons to other faculty and assertions of discrimination were deemed insufficient, especially given the subjective nature of academic evaluations.

Regarding Adams' First Amendment claims, the court focused on the district court's application of the Garcetti "official duties" test. The district court had concluded that Adams' inclusion of his prior protected speech in his promotion application converted that speech into unprotected speech made pursuant to official duties. The appellate court rejected this reasoning as legally erroneous, holding that protected speech does not lose First Amendment protection retroactively based on later use or consideration by the employer.

The appellate court further held that Garcetti's applicability to academic speech is unclear and that the Fourth Circuit's precedent (Lee) counsels against applying Garcetti in this context. Adams' speech, consisting of public commentary on matters of public concern unrelated to his specific teaching duties, was protected under the Pickering-Connick balancing test.

The court concluded Adams satisfied the first prong of the McVey test as a matter of law, meaning he spoke as a citizen on a matter of public concern. Because the district court had not addressed the second and third prongs—balancing of interests and causation—the court remanded for further proceedings on those issues. The court also rejected defendants' claim to qualified immunity, finding the constitutional right at issue was clearly established.

On Adams' Equal Protection claim, the court agreed with the district court that Adams failed to present evidence of intentional discrimination or disparate treatment compared to similarly situated faculty. The court declined to second-guess the subjective academic judgments underlying the promotion decision.

Bishop v. Aronov, 926 F.2d 1066 (11th Cir. 1991)

Facts:

Phillip A. Bishop, an assistant professor of exercise physiology at the University of Alabama, occasionally shared his Christian beliefs during class sessions, framing them as his personal “bias.” In April 1987, he organized an optional after-class lecture titled “Evidences of God in Human Physiology,” which discussed the complexity of the human body and suggested divine creation over evolutionary processes. Attendance was voluntary and did not influence students’ grades. However, some students expressed concerns about potential coercion, given the timing of the lecture before final exams.

In response to these concerns, Carl Westerfield, Head of the Health, Physical Education, and Recreation Department, issued a memorandum instructing Bishop to cease interjecting religious beliefs during instructional periods and to stop holding optional classes presenting a “Christian perspective” on academic topics.

The university’s administration upheld these directives, emphasizing the need to prevent any appearance of endorsing religion, in line with the Establishment Clause.

Issue(s):

Did the restrictions placed on Bishop violate his First Amendment rights to free speech and the free exercise of religion?

Analysis:

The 11th Circuit reversed the district court’s ruling in favor of Bishop, holding that the university’s actions did not violate Bishop’s constitutional rights. The court reasoned that during instructional time, the university classroom is not an open forum; therefore, the university has the authority to determine appropriate curriculum content and limit discussions to relevant subject matter. The court emphasized that the university’s directives aimed to avoid the appearance of endorsing religion, thereby adhering to Establishment Clause requirements.

Bradley v. Pittsburgh Board of Education, 910 F.2d 1172 (3d Cir. 1990)

Facts:

Plaintiff Diane Murray was a tenured high school teacher in a Pittsburgh public high school and an advocate of Learnball, a classroom management technique developed by Dr. Earl Bradley, also a teacher in the Pittsburgh public schools and a co-plaintiff in the district court. Murray was the executive director of the Learnball League International, which promoted the use of Learnball. Murray alleged that she had used Learnball in her classroom for over a decade and that the system has been adopted by many teachers.

Defendants were not supportive of Murray or Bradley's use of Learnball. They admonished both to limit their use of the method and Bradley was eventually fired, allegedly for violating orders that he cease using certain techniques associated with Learnball.

Murray filed suit on July 8, 1986, with Bradley as her co-plaintiff, alleging that defendants had harassed her because of her advocacy and use of Learnball and that they required her to limit her use of Learnball although there is no policy concerning general classroom management techniques teachers may use. She seeks compensatory and punitive damages, an injunction against violating her constitutional rights, and attorneys' fees. Defendants' motion to dismiss this suit was denied.

Murray alleged that harassment of her increased after she filed her lawsuit, culminating in a parent conference during which the parent allegedly assaulted Murray with the involvement of one of the defendants. After the assault Murray was unable to work for most of the school year. She requested a transfer to another school, based on the recommendation of her psychiatrist. During the following summer, Murray was hospitalized with a bleeding ulcer. Upon her release from the hospital she informed the school, based on her doctor's recommendation, that she could return to work but that she should not be placed in a stressful situation and should rest if she felt stomach pain. The Personnel Director informed her that there was no position that met these requirements, that she should remain on sick leave, and that if her sick leave was exhausted before she could return to work without restrictions, she would have to request an unpaid leave of absence.

Plaintiff sought a temporary restraining order or preliminary injunction allowing her to return to work, but the parties entered into a consent order which provided that she could return to work, that she would be given a new supervisor, and that complaints about her teaching would be processed through special procedures.

Just before the start of the following school year, the principal informed Murray that she could not use Learnball at all because he did “not consider Learnball to be benefiting our students.” Murray then filed a motion for a preliminary injunction, which the district court denied.

Issue(s):

Whether the Learnball ban abridged Murray’s right to academic freedom, was punishment for protected First Amendment activities, was in retaliation for filing her lawsuit, or was overbroad and vague?

Analysis:

The court held that it did not have to delineate the scope of academic freedom afforded to teachers under the First Amendment, because a teacher's out-of-class conduct is protected, but her in-class conduct is not. The court also held that Murray had no right of academic freedom that extends to the choice of Learnball classroom management techniques despite the school's ban or that would render the ban unconstitutional.

The court found, however, that if evidence supported Murray's claim that defendants had engaged in a pattern of harassment in an effort to punish and restrict her First Amendment activity outside the classroom, that conduct would violate Murray's First Amendment rights because the School District's undisputed right to control the classroom curriculum does not extend to a right to control a teacher's expressing support for certain teaching methods.

The court also found that Murray may have a valid retaliation claim if defendants' actions were in retaliation for Murray's filing of her lawsuit, and that Murray's argument that the ban on Learnball was vague and overbroad was really a due process claim.

Ultimately, the court held that the district court erred by not including findings of fact and conclusions of law upon its denial of Murray's motion for a preliminary injunction. While the court found a plausible basis for the district court to deny Murray's First Amendment and retaliation claims, the court remanded the case for the district court to make findings of fact and conclusions of law on her vagueness claim.

Brown v. Armenti, 247 F.3d 69 (3d Cir. 2001)

Facts:

The plaintiff, Robert Brown, was employed as a professor at California Universwity of Pennsylvania, a public university. refused to change a student's failing grade to an "Incomplete" rather than an "F" after the student attended three of fifteen class sessions, as ordered by the university president. Brown was subsequently suspended. He wrote a critical review of the university president to be presented to the University Board of Trustees, and two years later, Brown was fired.

Issue(s):

1. Whether retaliation following Brown's refusal to change the grade violated a right to academic free expression under the First Amendment.

2. Whether Brown's firing after he submitted a written criticism violated his generalized free speech rights under the First Amendment.

Analysis:

The court rejected Brown's claims. On the first issue, the court ruled that assigning a grade is a core part of a university's academic freedom to decide how a course is taught. On the second, the court found that Brown's criticism of the university president was not a matter of public concern sufficient to meet the balancing test between the interests of the employee in commenting upon the matters of public concern as compared to the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

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

Facts:

The plaintiff, Lincoln Brown, was a sixth-grade teacher at a Chicago public school. While teaching what ordinarily was a grammar lesson, Brown caught students passing a note containing music lyrics with the offensive word "nigger."

He used the incident as a springboard to conduct a classroom discussion on why such words are hurtful and should not be used.

The school principal observed the lesson and subsequently the school system disciplined Brown: he was suspended for five days under Chicago's employee discipline policy (specifically violations of policy sections forbidding verbally abusive language to or in front of students, and a more general rule forbidding racial/ethnic epithets).

Issue(s):

1. Were Brown's First Amendment rights violated when he was disciplined?

2. Was the disciplinary policy unconstitutionally vague as applied to Brown under the due process component of the Fourteenth Amendment ?

Analysis:

Brown's First Amendment claim failed because as a public employee, his speech would only be protected if he was acting "as a citizen" and if he was speaking "on a matter of public concern." Because Brown was speaking as a teacher, not as "a citizen," and therefore his suspension did not implicate his First Amendment rights.

Brown's vagueness challenge failed because the court found that the word he used is "one of the most reviled in American English" and is "the archetypal racial epithet," and therefore the school's policy gave adequate warning that his use of that word was prohibited.

Bruce v. Worcester Regional Transit Authority, 34 F.4th 129 (1st Cir. 2022)

Facts:

Christopher Bruce is a former bus driver for the Worcester Regional Transit Authority ("WRTA"), a public authority that provides transit service. He was employed in that capacity by Central Mass Transit Management, Inc. ("CMTM"), which had contracted with WRTA to provide bus service to the City of Worcester and surrounding towns. While so employed, Bruce also served as president of the bus drivers' union, Amalgamated Transit Union Local 22 ("Local 22"). Bruce was fired on February 8, 2018, from his job as a WRTA bus driver. His termination followed the public comments that he made to a television network about proposed budget cuts to the WRTA.

Issue(s):

Did defendants violate Bruce's right to free speech under the First Amendment?

Analysis:

First, because Bruce was speaking in his capacity "as a citizen" during the interview with the television network, and the proposed budget cuts were a matter of public concern, Bruce's speech was protected by the First Amendment. Second, defendants did not have an adequate justification for treating Bruce differently from any other member of the general public by terminating him for his protected speech. Finally, Bruce could demonstrate that the protected expression was a substantial or motivating factor in the adverse employment decision. For these reasons, the court reversed the district court's grant of summary judgment.

Cambridge Christian School, Inc. v. Florida High School Athletic Association, 942 F.3d 1215 (11th Cir. 2019)

Facts:

At the end of the 2015 high school football season, Cambridge Christian School and University Christian School faced off in the Division 2A State Championship Game, supervised and regulated by the Florida High School Athletic Association ("FHSAA"), a state actor. The two schools, both Christian institutions, asked the FHSAA for permission to conduct a joint prayer over the loudspeaker before kickoff, as they each typically did before all other games. The schools presented this request and the practice of communal prayer more generally as being tied to their religious missions and as being very important to the members of their communities. The FHSAA denied the request, citing the Supreme Court's Establishment Clause precedent and the principle of "separation of church and state."

Cambridge Christian then sued in federal district court, raising a variety of claims, primarily arising under the Free Speech and Free Exercise Clauses of the United States and Florida Constitutions. The district court granted defendant's motion to dismiss the school's claims.

Issue(s):

Did the FHSAA violate the school's right to freedom of speech or right to free exercise of religion by denying access to the loudspeaker for proposed religious speech while at the same time allowing secular messages to be transmitted?

Analysis:

The court found that the district court was too quick to dismiss all of Cambridge Christian's claims out of hand. Taking the complaint in a light most favorable to the plaintiff, the schools' claims for relief under the Free Speech and Free Exercise Clauses were adequately and plausibly pled. There were too many open factual questions for the court to say with confidence that the allegations could not be proven as a matter of law.

The question of whether all speech over the microphone was government speech was a heavily fact-intensive one that looks at the history of the government's use of the medium for communicative purposes, the implication of government endorsement of messages carried over that medium, and the degree of government control over those messages.

Here, the history factor weighed against finding government speech and the control factor was indeterminate, so, based on this limited record, it was plausible that the multitude of messages delivered over the loudspeaker should be viewed as private, not government, speech. And while the loudspeaker was a nonpublic forum, Cambridge Christian plausibly alleged that it was arbitrarily and haphazardly denied access to the forum in violation of the First Amendment.

Likewise, again drawing all inferences in favor of the appellant, the court could not say that in denying communal prayer over the loudspeaker, the FHSAA did not infringe on Cambridge Christian's free exercise of religion. The court therefore reversed the district court's decision in part.

<u>Chiras v. Miller, 432 F.3d 606 (5th Cir. 2005)</u>

Facts:

The Texas State Board of Education had statutory authority to adopt and purchase or license textbooks for use in public education. The state board requested bids from publishers for environmental-science textbooks to be used in public high schools. An environmental-science textbook written by Michael Chiras was submitted to a review panel of state college professors who reported to the state board commissioner that no additional corrections were necessary.

After public comment, the commissioner placed the textbook on the proposed list of textbooks and recommended that the state board adopt the textbook. The state board allowed additional public comment on the textbook at a public hearing. Two conservative organizations spoke in opposition to the textbook and the state board voted not to adopt the textbook without offering formal findings or reasons for its rejection.

Chiras and a high-school student (plaintiff) filed an action against the state board in the district court and claimed that rejection of the textbook constituted impermissible viewpoint discrimination in violation of the Free Speech Clause of the First Amendment to the United States Constitution. The state board filed a motion to dismiss. The district court ruled that the state board could permissibly discriminate on the basis of viewpoint when selecting public-school-curriculum textbooks. The district court granted the state board's motion to dismiss the claim. Chiras and the student appealed.

Issue(s):

Is the selection and use of textbooks in public schools government speech that is not subject to the free-speech rights of textbook authors or students?

Analysis:

The selection and use of textbooks in public schools is government speech that is not subject to the free-speech rights of textbook authors or students. States have the authority to establish curricula for the public schools that accomplish the state's objectives for education.

In this case, the state board has a statutory obligation under Texas law to exercise its discretion over the instructional materials it selects for public classrooms in order to promote the state's educational policy. The stated educational policy in the adoption of textbooks is to continue traditional methods of teaching United States and Texas history and the free enterprise system.

When the state board voted not to place Chiras's textbook on the adopted list of textbooks, there was no violation of Chiras's First Amendment free-speech rights because this decision regarding public-school education is considered government speech. The state board's selection of which textbooks will convey the state's educational message does not involve a public forum to which Chiras can claim access under the First Amendment. There is also no violation of the First Amendment free-speech rights of the student.

Edwards v. California University of Pennsylvania, 156 F.3d 488 (3d Cir. 1988)

Facts:

Tenured professor Dilawar Edwards taught a course called "Introduction to Educational Media." Syllabi from the early 1980s indicate that the IEM course initially focused on how teachers can effectively use various classroom tools, such as projection equipment, chalkboards, photographs, and films. Later syllabi prepared by Edwards, however, included a new emphasis on issues of bias, censorship, religion, and humanism, and Edwards listed numerous publications concerning these issues as required or suggested reading.

In May 1989, one of Edwards's students complained to university officials that Edwards had used the IEM class to advance religious ideas. The university officials directed him to avoid advancing religious beliefs through his lectures and handouts. A few years later, faculty voted to reinstate an earlier version

of the IEM syllabus, and the department chair revoked certain book orders that Edwards had made for the fall 1993 semester. Edwards' schedule was also rearranged, and he was assigned to teach an additional course that he had never taught. Students complained that Edwards failed to attend some of these classes and walked out of others.

In response to the student complaints, school administrators put together a packet of materials that they wished to discuss with Edwards. The administration scheduled a meeting for Monday, October 25, 1993, but apparently did not mail the packet to Edwards until Friday, October 22, 1993. Upon arriving at the meeting, Edwards stated that he had not received any materials in the mail and he asked for additional time to prepare. At this point, Edwards was relieved of his duties, with pay, until he was ready to discuss the University's concerns. remained suspended with pay for the remainder of the semester but returned to the classroom for the Spring 1994 term.

Issue(s):

Did the university's restrictions on Edwards' choice of classroom materials, criticisms of his teaching performance, and imposition of discipline violate his constitutional rights to free speech and due process?

Analysis:

The First Amendment did not restrict the university's right to control its curriculum or grant Edwards the right to decide what would be taught in his classroom or select materials to be used in contravention of university policy. Any stigma to Edwards' reputation which may have resulted from his suspension with pay did not implicate a liberty interest to support his due-process claim.

<u>Evans-Marshall v. Board of Education of Tipp City Exempted Village School District, 624 F.3d 332 (6th Cir. 2010)</u>

Facts:

Shelley Evans-Marshall was an English teacher for the Tipp City Board of Education. During the 2001–2002 school year, Evans-Marshall assigned *Fahrenheit 451* as a reading assignment. Afterward, Evans-Marshall divided the class into groups and had the groups choose a book from a list of the most frequently challenged books, compiled by the American Library Association. Two groups chose *Heather Has Two Mommies*. The board received a parent complaint about the book, and the principal told Evans-Marshall to have the groups choose a different book.

Evans-Marshall complied and then assigned *Siddhartha* as the next book for the whole class to read and discuss. Evans-Marshall wanted the class to discuss spirituality, Buddhism, romantic relationships, personal growth, and familial relationships.

During the October 2001 school board meeting, parents complained about several books in the school's curriculum and library. The parents spoke for over an hour and focused on *Siddhartha*. One group of parents presented a petition with 500 signatures calling for decency and excellence in the classroom.

Following the meeting, Evans-Marshall asked a school staff member to make copies of examples of student writing samples that were given to students who had asked for additional guidance. One sample contained a first-hand account of a rape, and one sample was a story about a young boy who murdered a priest and desecrated a church. The school principal discovered these samples and confronted Evans-Marshall. The principal directed Evans-Marshall not to use those samples.

A few months later, the board decided not to renew Evans-Marshall's contract for the following school year. The board held a formal hearing on the nonrenewal at Evan-Marshall's request. After the hearing, the board again voted against renewing Evan-Marshall's contract.

Evans-Marshall sued the board, alleging a violation of her First Amendment right to select books and methods of instruction for use in the classroom without interference from public officials. The trial court ruled in favor of the board, and Evans-Marshall appealed to the United States Court of Appeals for the Sixth Circuit.

Issue(s):

Under the First Amendment, are public schools permitted to determine what teachers may or may not teach in the classroom?

Analysis:

Under the First Amendment, public schools are permitted to determine what teachers may or may not teach in the classroom. Generally, to prevail on a First Amendment retaliation claim, a plaintiff must prove that she was involved in activity protected by the Free Speech Clause of the First Amendment. Speech by public employees may be protected if the speech deals with matters of public concern. However, under *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the speech is not protected if it is made pursuant to the employee's job duties. In this case, the speech was made as part of Evan-Marshall's duties as a teacher for the board. The board is not regulating a teacher's speech in the classroom. Rather, the board hires that speech. The teacher's statements and choices regarding curriculum in the classroom are made on behalf of the board. Therefore, the teacher's speech is not protected under the First Amendment.

<u>Gundy v. City of Jacksonville, 50 F.4th 60 (11th Cir. 2022)</u>

Facts:

During a City Council meeting in 2019, Rev. R.L. Gundy was delivering an invocation but had his microphone turned off after he made comments critical of the City Council and the current mayor. The president of the City Council also posted on Twitter about the invocation the next day.

Issue(s):

Did the City Counsel violate Gundy's rights to free speech and free exercise under the First Amendment?

Analysis:

The court analyzed the history, endorsement, and control factors to determine whether Gundy's speech constituted government speech. Because Mr. Gundy's speech was a legislative invocation, the history factor weighed in favor of finding Mr. Gundy's speech to be government speech. Because he and other speakers were chosen by City Council members to give an invocation, the endorsement factor weighed in favor of a government speech finding. Finally, because the City Counsel selects the speaker, the selection process gave the City Council inherent control over invocations and their messages. Because all three factors supported finding Mr. Gundy's speech was government speech, not private speech in a nonpublic forum, his First Amendment rights were not violated.

Johnson-Kurek v. Abu-Absi, 423 F.3d 590 (6th Cir. 2005)

Facts:

Rosemary Johnson-Kurek, a part-time lecturer at the University of Toledo, gave thirteen of seventeen students in her organizational writing class an "incomplete" due to substandard work. Instead of giving individualized feedback, she posted a general message on the course listserv explaining that students' incompletes were due to issues such as formatting, citations, or textual problems, leaving each student to determine which applied.

Her supervisor, Carol Nelson-Burns, requested that she prepare individualized letters for each student detailing what was needed to complete the course. Johnson-Kurek refused, asserting that doing so would interfere with her teaching philosophy. After continued refusals, Nelson-Burns and other administrators (Samir Abu-Absi, English Department Chair, and Thomas Barden, Associate Dean) allegedly denied her a second class assignment in retaliation.

Johnson-Kurek sued under 42 U.S.C. § 1983, claiming violations of her First Amendment rights (free speech and academic freedom) and Fourteenth Amendment due process rights.

Issue(s):

1. Whether the district court erred in holding that Johnson-Kurek failed to present sufficient evidence that her constitutional rights were violated by the defendants' alleged attempts to compel her to write individualized letters to her students, thereby justifying dismissal of her claims for failure to state a claim and on qualified immunity grounds.
2. Whether the district court erred in denying Johnson-Kurek leave to amend her complaint to clarify that her Fourteenth Amendment due process claim against Barden was based on alleged violations of her First Amendment rights to free speech and academic freedom.

Analysis:

The Sixth Circuit affirmed the dismissal, holding that the university's instruction did not violate Johnson-Kurek's constitutional rights, and therefore, her § 1983 claim failed. Citing *Urofsky v. Gilmore* and *Sweezy v. New Hampshire*, the Court emphasized that constitutional "academic freedom" primarily protects the university's autonomy to decide what is taught and how, rather than guaranteeing professors independence from institutional oversight.

The Court also noted that universities have broad discretion to direct teaching methods and grading. A lecturer cannot claim a constitutional right to be "a sovereign unto herself" in how classes are conducted or graded (*Parate*). Unlike *Parate*, where a professor was forced to endorse a grade change he disagreed with, Johnson-Kurek was not required to adopt or express others' views. She was merely required to clarify her own grading criteria and communicate them to students—a task akin to preparing a syllabus. Because Johnson-Kurek's refusal to comply was not itself protected by the First Amendment, the alleged denial of an additional course could not constitute unconstitutional retaliation. Further, her derivative Fourteenth Amendment claim failed because it relied on the alleged First Amendment violation.

Leake v. Drinkard, 14 F.4th 1242 (11th Cir. 2021)

Facts:

A member of the Sons of Confederate Veterans applied to participate in the Old Soldiers Day Parade, a pro-American veterans parade funded and organized by the city of Alpharetta, Georgia, and was informed that the organization could participate if it agreed not to fly the Confederate battle flag.

In a suit under 42 U.S.C. § 1983, alleging that the City violated the First and Fourteenth Amendments, the district court held that the Parade constituted government speech and entered summary judgment against the Sons.

Issue(s):

1. Whether the City of Alpharetta's Old Soldiers Day Parade constituted government speech, such that the City could lawfully exclude the Confederate battle flag without violating the First and Fourteenth Amendments.
2. Whether the Sons of Confederate Veterans' exclusion from the parade constituted an unconstitutional restriction of private speech under the First Amendment.

Analysis:

The Court applied the three-factor "government speech" test—history, endorsement, and control—drawn from *Walker v. Texas Division, Sons of Confederate Veterans, Inc., 576 U.S. 200 (2015)*:

History: Parades have historically been a medium of government expression, used to honor military service and national pride (e.g., Roman triumphs, U.S. military celebrations). Alpharetta's parade,

sponsored since 1952, was aimed at honoring American veterans, a message traditionally associated with government expression. Thus, the historical context supported the conclusion that the parade was government speech.

Endorsement: The City publicly advertised and hosted the parade, listing itself (and the American Legion) as organizers, funding almost all expenses, and identifying the event's theme as celebrating American veterans. Reasonable observers would attribute the parade's message to the City, not private participants. The limited involvement of the American Legion did not alter the City's endorsement, since the Legion contributed little financially and acted as a partner, not as the principal organizer.

Control: The City controlled participation by requiring applications that described the messages proposed by participants and retained final approval authority over which groups could participate based on message consistency with the City's goals. This level of control over expressive content confirmed that the parade's overall message was the City's speech.

The Court rejected the plaintiffs' reliance on *Matal v. Tam* (2017), noting that unlike trademarks, the City actively reviewed, edited, and approved the parade's expressive content. The Court further held that excluding the Confederate flag served the City's legitimate interest in maintaining a message of unity and honoring all veterans. The Eleventh Circuit emphasized that recognizing this as government speech avoided "absurd results"—otherwise, governments could be compelled to allow conflicting or offensive messages in parades they organize and fund. Finally, the Court noted the Confederate flag's modern association with racial oppression and segregation, concluding that the City could lawfully decline to promote such a symbol in its own expressive activity.

The Eleventh Circuit affirmed the district court's ruling, holding that the parade was government speech, and therefore the City did not violate the plaintiffs' First or Fourteenth Amendment rights by prohibiting the display of the Confederate battle flag.

Maples v. Martin, 858 F.2d 1546 (11th Cir. 1988)

Facts:

Five tenured professors in Auburn University's Mechanical Engineering Department—Drs. Maples, Swinson, Barbin, Turner, and Shaw—had been part of a long-standing faction that opposed several department heads and criticized departmental management. In 1986, as Auburn prepared for an accreditation review by the American Board of Engineering and Technology (ABET), the professors created and distributed a report titled "Mechanical Engineering at Auburn University—A Review."

The report was highly critical of the department's leadership and management style and was sent to faculty, students, alumni, and ABET. ABET characterized the report as "academic terrorism" and concluded that internal conflict in the department was seriously disrupting its educational function. Based on these findings, university administrators, including President James Martin and Dean Lynn Weaver, transferred the professors to other engineering departments.

The professors sued under 42 U.S.C. § 1983, alleging that their transfers violated their Fourteenth Amendment due process rights and were retaliation for protected speech under the First Amendment.

The district court granted summary judgment for the university on the due process claim and later granted judgment notwithstanding the verdict (JNOV) on the First Amendment claim of Dr. Turner, the only plaintiff who prevailed before the jury. The professors appealed.

Issue(s):

Does the transfer of tenured university professors for departmental disruption violate their First and Fourteenth Amendment rights?

Analysis:

The professors claimed a right to "academic freedom" and to remain in their department. The court held that Auburn's Faculty Handbook and university custom did not create an entitlement to a specific departmental assignment. Citing *Board of Regents v. Roth* and *Perry v. Sindermann*, the Court distinguished job tenure from departmental placement, emphasizing that transfers without loss of rank, salary, or tenure do not implicate a constitutional property right. The professors were given written notice of the transfers and had access to a faculty grievance procedure that satisfied due process requirements. Their failure to use it defeated their claim. No liberty interests were violated because the transfers did not stigmatize the professors or prevent other employment opportunities; therefore, there was no reputational harm rising to a constitutional level.

Applying *Pickering v. Board of Education*, the court balanced Turner's interest in speaking against the university's interest in efficient operations. The *Review* was distributed widely just before the ABET accreditation visit, exacerbating existing internal conflicts. Second, it was written amid long-standing departmental feuds, used inflammatory language against the department head, and undermined internal cohesion and communication. Finally, ABET's report confirmed that the *Review* disrupted educational operations and harmed Auburn's reputation.

Because the *Review* significantly disrupted the department's ability to function, the Court found that Auburn's interest in departmental efficiency and stability outweighed Turner's speech interests. Thus, even though the *Review* addressed a matter of public concern, its disruptive impact justified the administrative response.

<u>Mayer v. Monroe County Community School Corporation, 474 F.3d 477 (7th Cir. 2007)</u>

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.

Issue(s):

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.

Mech v. School Board of Palm Beach County, 806 F.3d 1070 (11th Cir. 2015)

Facts:

David Mech owned a math tutoring business, "The Happy/Fun Math Tutor." Mech participated in a sponsorship banner program run by the Palm Beach County School Board, through which local businesses could pay to display banners on school fences. His banners appeared at three public schools and identified him as "The Happy/Fun Math Tutor" with his business contact information.

After some parents and school officials learned that Mech's tutoring business had the same mailing address as a pornography production business that he also owned, the schools removed his banners, fearing that his background conflicted with the schools' image and message. Mech filed suit under 42 U.S.C. § 1983, alleging that the removal of his banners violated his First Amendment right to free speech, claiming the banners were his private expression on government property. The district court granted

summary judgment for the School Board, finding that the banners constituted government speech. Mech appealed.

Issue(s):

Whether the sponsorship banners displayed on school property constituted private speech protected by the First Amendment or government speech that the school district could control without violating the Constitution.

Analysis:

The Eleventh Circuit applied the three-factor "government speech" test developed in *Walker v. Texas Division, Sons of Confederate Veterans (2015)*: (1) history of the medium; (2) public perception of endorsement; (3) control over the message.

History of the Medium: The court noted that schools traditionally use signs, banners, and displays to communicate official school messages, such as promoting community support or student activities. The sponsorship banners were displayed on school fences, a space historically associated with school communications, not public debate.

Perception of Endorsement: The banners appeared to be endorsed by the schools because they used official school colors and fonts and were placed alongside school announcements. Reasonable observers would believe the schools approved or endorsed the messages on the banners.

Control over the Message: The schools exercised direct control over the banners—they set the design standards, approved sponsors, and could remove banners at any time. The program's purpose was to support and reflect the schools' values, not to create a public forum for individual expression.

The Eleventh Circuit affirmed, holding that the sponsorship banners were government speech, not private speech. Therefore, the school district's removal of Mech's banners did not violate the First Amendment.

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.

Issue(s):

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.

__Open Society International v. United States Agency for International Development, 651 F.3d 218 (2d Cir. 2011)__

Facts:

In 2003, Congress passed the Leadership Act "to strengthen and enhance United States leadership and the effectiveness of the United States response to the HIV/AIDS, tuberculosis, and malaria pandemics." Section 7631(f) of the Act imposed a "policy requirement" stating that: "No funds made available to carry out this Act may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."

Several U.S.-based nonprofit organizations involved in public health initiatives—such as Alliance for Open Society International (AOSI) and Pathfinder International—challenged this requirement. They argued that the "anti-prostitution pledge" forced them to adopt a government-prescribed ideological position as a condition of receiving federal funds, which violated their First Amendment rights. The government contended that organizations were free to decline the funds if they disagreed with the condition, and that the restriction was necessary to ensure that U.S. foreign aid would not appear to support prostitution or sex trafficking. The district court granted a preliminary injunction in favor of the plaintiffs, and the government appealed.

Issue(s):

Whether the "policy requirement" in the Leadership Act requiring funding recipients to adopt an explicit organizational policy opposing prostitution and sex trafficking violates the First Amendment by compelling speech as a condition of federal funding.

Analysis:

The Court relied on the doctrine that the government cannot condition a benefit (such as federal funding) on the surrender of a constitutional right, even if participation in the program is voluntary.

While the government can define the limits of its program (*Rust*), it cannot compel private organizations to affirm its ideological beliefs as a condition of receiving funds. The policy requirement went beyond restricting how funds could be used; it required organizations themselves to adopt and publicly affirm a government-favored position on prostitution, even in their privately funded activities. This went beyond permissible funding limitations and constituted viewpoint-based compelled speech. The compelled affirmation effectively restricted the organizations' private expression, violating their First Amendment rights.

While the government has a legitimate interest in opposing prostitution, it cannot coerce ideological conformity from private entities as a condition for participation in a funding program. The court concluded that the requirement was not narrowly tailored and directly burdened speech.

The Second Circuit affirmed the preliminary injunction, holding that the policy requirement likely violates the First Amendment because it compels recipients to affirm the government's viewpoint as their own and restricts protected private speech outside the scope of the federally funded program.

Parate v. Isibor, 868 F.2d 821 (6th Cir. 1989)

Facts:

Parate was an untenured professor in the Civil Engineering Department at Tennessee State University (TSU). Parate had two students, Student X and Student Y, in his class that received a letter grade of "B," and each requested that their grade be changed to an "A." Parate agreed to change Student X's grade to an "A" due to the student's extenuating circumstances but refused to change Student Y's grade.

Student Y then contacted the Dean of the School of Engineering and Technology, Isibor, with whom Student Y shared a Nigerian background. Isibor instructed Parate to change Student Y's grade to an "A." Over the next two years, Isibor retaliated against Parate in a variety of ways, and subsequently, Parate's contract to teach at TSU was not renewed.

Parate filed a lawsuit against Isibor and other administrators of TSU, alleging that his First and Fourteenth Amendment rights had been violated. The district court granted summary judgment in favor of Isibor and dismissed Parate's claims. Parate appealed.

Issue(s):

1. Did university officials violate the First Amendment rights of an untenured professor if those officials compelled the professor to change the grade of a student?

2. Did university officials interfere with the professor's substantive due process liberty interest in the free and full pursuit of his profession as a TSU professor?

Analysis:

Defendants violated Parate's First Amendment rights by compelling him to change the grade of a student. A professor's assignment of grades to a student is communication that sends a specific message to the student. That communication is entitled to First Amendment protection, as the professor has wide discretion is evaluating the performance of his or her students. The grades assigned by a professor are subject to review by university officials, and university officials are free to change the grades of students in order to comply with university grading policies.

However, university officials may not compel a professor to change the grade he or she assigned to a student, as this constitutes compelled speech and is a violation of the First Amendment. In this case, Isibor ordered Parate to change Student Y's grade. Parate has no constitutional interest in the final grade received by Student Y from the university, but he does have a constitutional interest in the grade he assigns. The act of ordering Parate to change Student Y's grade gives rise to a constitutional violation. If Isibor had simply changed Student Y's grade himself, no constitutional violation would have occurred. Because Isibor compelled Parate to communicate in a way in which he did not agree, Parate's First Amendment rights were violated. The district court's grant of summary judgment to Isibor on this claim is reversed.

However, defendants did not violate Parate's Fourteenth Amendment rights because he was a nontenured professor and was subjected to discharge without cause at the end of his one-year contract. Parate was not denied the choice of his career, but remained free to pursue his chosen profession at another university.

Piggee v. Carl Sandburg College, 464 F.3d 667 (7th Cir. 2006)

Facts:

Mildred Piggee, an instructor at Carl Sandburg College, a public community college in Illinois, taught cosmetology. She was also a born-again Christian who believed homosexuality was immoral. One of her students was a lesbian, and Piggee began sharing her religious beliefs with the student. Piggee:

- Gave the student religious pamphlets that condemned homosexuality as sinful.
- Told the student that being gay was wrong and could be "cured."
- Engaged in multiple religious and moral discussions during class-related interactions.

The student complained to school administrators, stating that the conduct was harassing and discriminatory. The College disciplined Piggee, removing her from her student advisor role and issuing a formal reprimand. Piggee filed suit under 42 U.S.C. § 1983, alleging violations of her First Amendment rights to free speech and free exercise of religion, claiming the college retaliated against her for expressing her beliefs. The district court granted summary judgment for the college, and Piggee appealed.

Issue(s):

Can a public college restrict an instructor's religious speech in the workplace when it disrupts the educational environment?

Analysis:

The Court applied the public employee speech doctrine (later reaffirmed in *Garcetti v. Ceballos, 2006*). When a public employee speaks pursuant to her official duties, her speech is not protected by the First

Amendment. Piggee's interactions with students occurred in her capacity as an instructor, not as a private citizen. Therefore, her classroom communications fell within her official duties as a teacher.

The College had a legitimate pedagogical interest in ensuring that instructors did not use their positions to promote personal religious or moral views, especially when doing so created discomfort or hostility toward students. Citing *Hazelwood School District v. Kuhlmeier (1988)*, the Court held that schools may regulate classroom speech reasonably related to legitimate educational concerns. Piggee's conduct risked creating an atmosphere of religious coercion and discrimination. The Court also emphasized that the College's actions were not based on hostility toward Piggee's religious beliefs but on the context and appropriateness of her communications within a professional instructional setting.

For Piggee's Free Exercise claim, the college did not burden her because she remained free to hold and express her religious beliefs outside of her teaching role. The discipline was content-neutral and related to her role as an employee, not an attempt to suppress religion. The Court explained that Piggee could not invoke the Free Exercise Clause to demand the right to evangelize in her official capacity as a teacher.

The Seventh Circuit affirmed the district court, holding that the college did not violate Piggee's First Amendment rights because her speech occurred as part of her official teaching duties and was therefore not protected.

Rampey v. Allen, 501 F.2d 1090 (10th Cir. 1974)

Facts:

Fourteen plaintiffs (11 faculty members and 3 administrators) at Oklahoma College of Liberal Arts were terminated on April 26, 1973. The President of the college recommended termination, citing "divisiveness" as the reason. The plaintiffs held a press conference criticizing the President and some Regents on April 24, 1973. Evidence showed that the President had decided to terminate 13 of the 14 plaintiffs before the press conference. The 14th plaintiff, Ward, was terminated specifically for participating in the press conference.

Issue(s):

Whether a public school's teacher termination in retaliation for criticizing school administration violates the First Amendment.

Analysis:

The Court found that the President's definition of divisiveness revealed he was punishing constitutionally protected activities. His testimony showed he considered faculty members divisive for associating with colleagues he disapproved of, for defending others' rights to criticize, for discussing the issues with students, and for having different philosophies than his own. The Court determined that requiring faculty to demonstrate personal loyalty to the President, prohibiting them from discussing problems among

themselves or with students, and demanding philosophical alignment infringed upon their First Amendment rights.

Savage v. Gee, 665 F.3d 732 (6th Cir. 2012)

Facts:

Scott Savage, Head of Reference and Library Instruction at Ohio State University–Mansfield, served on a committee to select a book for incoming freshmen in 2006.

Savage suggested several titles, including The Marketing of Evil by David Kupelian, which describes homosexuality as aberrant behavior.

Faculty members Norman Jones and Hannibal Hamlin—one of whom was openly gay—criticized the suggestion as "homophobic" and questioned Savage's professionalism. Emails circulated campus-wide, faculty meetings were held, and a sexual harassment complaint was filed against Savage.

The University investigated and found no basis for the harassment claims. However, hostility toward Savage persisted among faculty. He went on medical leave citing emotional distress and eventually resigned, claiming that he had been constructively discharged due to a hostile environment and lack of institutional support.

Savage filed multiple lawsuits, including in Ohio state courts and later in federal court, alleging:

1. First Amendment retaliation (speech-based discrimination),
2. Equal protection and civil rights conspiracy under §§ 1983, 1985, and 1986,
3. Vagueness and overbreadth challenges to the University's sexual harassment policy, and
4. Constructive discharge in violation of constitutional rights.

Issue(s):

1. Whether Savage's First Amendment rights were violated when he faced hostility and alleged retaliation after recommending a controversial book.
2. Whether Savage was constructively discharged by intolerable working conditions created by faculty and administrators.
3. Whether Ohio State University's sexual harassment policy was unconstitutionally vague or overbroad, either facially or as applied.
4. Whether Savage's damages claims were barred by his earlier lawsuit in the Ohio Court of Claims.

Analysis:

The Court determined that Savage's damages claims were barred because he had previously filed in the Ohio Court of Claims.

His First Amendment claim failed because his book recommendation was made pursuant to his official duties, not as a citizen. Applying *Garcetti v. Ceballos (2006)*, the Court held that speech made pursuant to official duties is not protected under the First Amendment. Savage's email recommending The Marketing of Evil was part of his work responsibilities as a librarian serving on an official book selection committee. The Court rejected his claim of an "academic freedom" exception to *Garcetti,* noting that his speech was not part of classroom teaching or scholarship and thus did not fall within any potential academic exception. Citing *Evans-Marshall v. Board of Education (6th Cir. 2010)*, the court reaffirmed that curricular or professional speech within an employee's official duties is not protected.

The constructive discharge claim failed because Savage had support from his supervisors and could not show the University intended for him to quit. Finally, as a former employee not entitled to reinstatement, Savage lacked standing to challenge the harassment policy.

The Sixth Circuit affirmed the district court's grant of summary judgment to the defendants on all claims

Urofsky v. Gilmore, 216 F.3d 401 (4th Cir. 2000)

Facts:

Virginia state law prohibited state employees from accessing lascivious, sexually explicit material on state computers unless authorized by a state agency. Six professors employed by various colleges and universities in Virginia sued the Commonwealth of Virginia, alleging that the law violated their First Amendment right to academic freedom.

The plaintiffs alleged that the law hindered their ability to teach and perform research. One plaintiff alleged that he declined to assign an online research project on indecency law, and another plaintiff alleged that he could not research sexually explicit poetry in connection with his study of Victorian poets.

The plaintiffs were joined in their case by the American Civil Liberties Union (ACLU). The district court held in favor of the plaintiffs. Virginia appealed the decision, and a three-judge panel of the United States Court of Appeals for the Fourth Circuit reversed the decision. The ACLU requested a rehearing in front of a full court.

Issue(s):

Does a public-university professors have an individual right of academic freedom under the First Amendment?

Analysis:

A public-university professor does not have an individual right of academic freedom under the First Amendment. Generally, public employees do not give up all First Amendment rights by working for the government. However, the government does have greater authority to restrict the speech of its employees than to restrict the speech of the general public. Academic freedom is a concept that is

endorsed by the American Association of University Professors. Academic freedom has been defined as a right claimed by the accredited educator, as teacher and investigator, to interpret his findings and communicate his conclusions without being subjected to any interference, molestation, or penalization, because the conclusions are unacceptable to some constituted authority within or beyond the institution.

However, this is a professional norm, rather than a constitutional requirement. The United States Supreme Court has referenced academic freedom only as a right held by the actual institution rather than by individual professors. The First Amendment does not protect the academic freedom of individual professors. In this case, the law challenged by the plaintiffs concerns only the official use of state computers, meaning the manner in which state employees discharge their duties. Therefore, the law does not violate the First Amendment with regard to all state employees, and the First Amendment does not protect the academic freedom of individual professors. As a result, the law does not violate the First Amendment, and the judgment of the district court is reversed.

Webb v. Board of Trustees, 167 F.3d 1146 (7th Cir. 1999)

Facts:

Gary Webb, a tenured professor and former chair of the Criminal Justice and Criminology Department at Ball State University, along with two colleagues, Susan Sayles, an untenured professor, and Melissa Wisner, Webb's administrative aide, filed suit under 42 U.S.C. § 1983. They alleged that the university administration retaliated against them for engaging in protected speech related to internal disputes and complaints about misconduct.

Webb filed a complaint accusing another member of the department of sexually harassing a student. Wynola Richards, the Assistant Provost with jurisdiction over such matters, had been dating Webb, but their relationship had ended. When Richards recommended a reprimand rather than immediate discharge of the faculty member in question, Webb accused Richards (and other members of the central administration, such as Ronald Johnstone, Dean of the College of Sciences and Humanities and thus Webb's immediate superior, and John E. Worthen, President of the University) of ethical lapses for not taking stronger action.

During the ensuing months Webb filed multiple charges with the University's disciplinary machinery, and other members of the department—some of them objects of Webb's charges—responded by accusing Webb himself of improprieties, after which Webb charged his accusers with misconduct of their own. Dissatisfied with the outcome of the initial waves of complaints, Webb wrote and presented to the President and the Board of Trustees a 225–page broadside laying blame on almost everyone but himself. In response, administrators replaced him as department chair, denied Sayles tenure, and transferred Wisner.

The plaintiffs sought a preliminary injunction to reverse these decisions and stop further alleged retaliation. The district court denied the injunction, finding no irreparable harm and concluding that the plaintiffs' behavior had become disruptive. They appealed.

Issue(s):

1. Whether the district court erred in denying a preliminary injunction by finding that the university's actions were justified and not unconstitutional retaliation for protected speech.
2. Whether the plaintiffs' speech was protected under the First Amendment given the internal and disruptive nature of the departmental conflict.

Analysis:

The Seventh Circuit affirmed the district court's denial of preliminary junction because: (1) most of the relief requested could be deferred until final judgment without irreparable injury; (2) much of the plaintiffs' speech appeared personal rather than on matters of public concern; (3) the plaintiffs' conduct had become disruptive to the university's educational mission; and (4) the university's interest as an employer in achieving its goals effectively outweighed the plaintiffs' speech interests.

The Court emphasized that some of Webb's initial complaints, such as reporting alleged sexual harassment could involve matters of public concern. However, the ongoing departmental feud and constant accusations became personalized and disruptive, losing First Amendment protection under *Connick v. Myers (1983)* and *Pickering v. Board of Education (1968)*.The Court noted that during the years of conflict, Webb produced no scholarly work, the department suffered, student dissatisfaction increased, and university resources were diverted from education to managing internal disputes.

<u>28 U.S.C. § 1254</u>

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.

<u>42 U.S.C. § 1983</u>

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."

<u>Federal Rule of Civil Procedure 12(b)(6)</u>

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to file a motion to dismiss a case for "failure to state a claim upon which relief can be granted." This motion tests the legal sufficiency of the

complaint, meaning the court must accept all factual allegations as true and construe them in the plaintiff's favor to determine if the complaint contains enough facts to state a plausible claim for relief. If the complaint contains only legal conclusions or lacks sufficient facts, it may be dismissed.