

ELECTION CONVECTION 2020: Politics in & out of the classroom

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February 21, 2020**

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PART 1: SCHOOL EMPLOYEE POLITICAL SPEECH

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THE CONNICK-PICKERING FRAMEWORK

Government as Employer: How is school employee speech analyzed differently than non-employee speech?

“... regulating the speech of [government] employees ... differs significantly from ... regulat[ing] speech of the citizenry ... The [government must] balance ... the interests of the teacher, as a citizen, in participating in matters of a political nature, and the interests of the state as an employer, in promoting the efficiency of the public services it performs through its employees.”

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

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THE CONNICK-PICKERING FRAMEWORK

Private Citizen + Matter of Public Concern

“In general, a matter of public concern is a ‘matter of political, social, or other concern to the community.’ Speech that only tangentially touches upon matters of political, social or other concern to the community will not rise to the level of protected speech if it is made as an employee addressing matters of only personal concern ...”

Connick vs. Myers, 461 U.S. at 140-41 (1983)

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THE CONNICK-PICKERING FRAMEWORK

If the speech is made pursuant one’s duties, it is likely not protected.

“Restricting one’s speech that owes its existence to a public employee’s ... responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”

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

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DISRUPTION

Tinker v. Des Moines Sch. Dist., 89 S.Ct. 733 (1969)

“The record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred.”

This is a student case.

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Imprimatur

Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

The Court recognized among other things that school authorities have legitimate educational interests in assuring that *“the views of the individual speaker are not erroneously attributed to the school.”*

This is a student case.

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Employee MAGA-KAG

Clark v Fort Worth Indep. Sch. Dist., Texas Educ. Agency Docket No. 006-R2-10-2019 (Comm’r Educ. 2019). On her own time & resources, a teacher texted President Trump:

- May 17, 2019

Mr. President, [FWISD] is loaded with illegal students from Mexico. Carter-Riverside High School has been taken over by them. Drug dealers are on our campus and nothing was done to them when drug dogs found the evidence.

- May 17, 2019

I contacted the feds here in Fort Worth a few months ago and the person I spoke with did not want to help me or even listen to me. The campus police officer spends his time texting on his cell phone and doing the bidding of Jennifer Orana, Hispanic assistant..

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Employee MAGA-KAG

- May 17, 2019

. . . principal who protects certain students from criminal prosecution. There is fraud being committed by Orana and how the Special Education Department on our campus is being run. The District knows about the issues and turns a blind eye to it.

- May 17, 2019

I need protection from recrimination should I report to the authorities, but I do not know where to turn. I contacted the Texas Education Agency and then my teacher organization. Texas will not protect whistle blowers. The Mexicans refuse to honor our flag.

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