Social Media and Academic Freedom under Garcetti

Theresa Chmara
American Association of University Professors

Follow this and additional works at: https://thekeep.eiu.edu/jcba

Part of the Higher Education Commons, and the Labor Relations Commons

Recommended Citation
DOI: https://doi.org/10.58188/1941-8043.1326
Available at: https://thekeep.eiu.edu/jcba/vol0/iss9/13

This Proceedings Material is brought to you for free and open access by the Journals at The Keep. It has been accepted for inclusion in Journal of Collective Bargaining in the Academy by an authorized editor of The Keep. For more information, please contact tabruns@eiu.edu.
NCSCBHEP CONFERENCE
SOCIAL MEDIA AND ACADEMIC FREEDOM UNDER GARCETTI
APRIL 7, 2014

Prepared by: Theresa Chmara, AAUP General Counsel

CASES TO BE DISCUSSED:

Garcetti v. Ceballos, 547 U.S. 410 (2006) (rejected the First Amendment retaliation claim of a public prosecutor on the ground that the memorandum that he claimed led to his termination was written as part of the official duties of his job and was not speech on a matter of public concern, but the majority opinion left open whether the new rule “would apply in the same manner to a case involving speech related to scholarship and teaching”).

Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, 391 U.S. 563 (1963) (finding that a school board violated the First Amendment when it dismissed a teacher for writing a letter to the local newspaper objecting to the school board’s allocation of tax revenue between education and athletics).

Rankin v. McPherson, 483 U.S. 378 (1987) (holding that dismissal of a clerical employee in the constable’s office over political comments made privately to another employee violated First Amendment).

Connick v. Myers, 461 U.S. 138, 147 (1983) (assistant district attorney’s questionnaire regarding office procedures was not a matter of public concern).

City of San Diego v. Roe, 543 U.S. 77 (2004) (holding that “public concern is something that is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public at the time of publication”).

Demers v. Austin, 2014 U.S. App. LEXIS 1811 (9th Cir., Jan. 29, 2014) (holding that “Garcetti does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing that are performed ‘pursuant to the official duties’ of a teacher and professor” and that “academic employee speech not covered by Garcetti is protected under the First Amendment, using the analysis established in Pickering”).
Adams v. Trustees of the University of North Carolina-Wilmington, 640 F.3d 550 (4th Cir. 2011) (speech provided to tenure review committee should be insulated from Garcetti’s holding by virtue of the Supreme Court’s cautionary language regarding the decision’s application to issues of “academic scholarship or classroom instruction”).

Savage v. Gee, 665 F.3d 732 (6th Cir. 2012) (applied Garcetti in a case involving the Head of Reference and Library Instruction at Ohio State University)

Renken v. Gregory, 541 F.3d 769 (7th Cir. 2008) (held that the administration of grants was part of a tenured professor’s official duties and dismissed the First Amendment retaliation claim pursuant to Garcetti).

Lopez v. Fresno City College, No. 1:11-CV-01468 AWI-MJS, 2012 U.S. Dist. LEXIS 32846 (E.D. Cal. Mar. 12, 2012) (Court found that Garcetti did not apply because both the Supreme Court and the Ninth Circuit had expressed concerns about its application to a professor).

Flyr v. City Univ. of N.Y., No. 09 Civ. 9159 (JGK), 2011 U.S. Dist. LEXIS 44047 (S.D.N.Y. Apr. 25, 2011) (applies Garcetti to a university professor holding that speech related to a university department election or grant proposals did not relate to a matter of public concern).

Miller v. Univ. of S. Ala., No. 09-0146-KD-B, 2010 U.S. Dist. LEXIS 48643 (S.D. Ala. May 17, 2010) (applied Garcetti in a case involving a tenure-track Assistant Professor of English at University of South Alabama who alleged she was dismissed because she raised the issue of lack of diversity during department meetings).

Nichols v. Univ. of S. Miss., 669 F. Supp. 2d 684, 698-99 (S.D. Miss. 2009) (held that speech between a professor and a student constitutes classroom speech made in an official capacity and thus is not subject to the First Amendment’s protections).
Van Heerden v. Bd. of Sup. of La State Univ., 2011 U.S. Dist. LEXIS 121414 (M.D. La. Oct. 20, 2011) (court stated that it “shares Justice Souter’s concern that wholesale application of the *Garcetti* analysis to the type of facts presented here could lead to a whittling-away of academics’ ability to delve into issues or express opinions that are unpopular, uncomfortable or unorthodox and “[a]llowing an institution devoted to teaching and research to discipline the whole of the academy for their failure to adhere to the tenets established by university administrators will in time do much more harm than good” because “[a]cademics are, by the very nature of their employment, urged to make what is sometimes unpopular speech” and “[u]niversities must be cognizant and tolerant of such speech in order to foster the requisite level of comfort so research can be undertaken free of detrimental political pressure”).