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Case Brief #2
November 15, 2022

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

The United States Fifth Circuit Court of Appeals affirmed the Middle District of Louisiana District Court’s ruling for summary judgment in favor of the defendants, finding no infringement on the plaintiffs rights. This instant lawsuit was initially brought forth against individuals at Louisiana State University (LSU)—the university's president/chancellor, a college dean, the vice chancellor for human resources, and the director for equal employment opportunity—in January of 2016, when the plaintiff sought reinstatement to her position as well as declaratory and injunctive relief. The plaintiff alleged that her rights to free speech and academic freedom were violated (the “as-applied challenge”), and that she was denied proper procedure and substantive due process rights. She also asserted a “facial challenge” to the university’s sexual harassment policies.

The issue in this case as it pertains to freedom of speech includes determining if the plaintiff was disciplined for speech that is considered “public concern,” and that the university’s interest in regulating the speech was outweighed by the plaintiff’s interest in the speech, as outlined in [Connick v. Myers](#), 461 U.S. 138 (S.Ct. 1983) and [Pickering v. Board of Education](#), 391 U.S. 563 (S.Ct. 1968) as a structure to do so. The remainder of this case is spent discussing the issues of the facial challenge and if it is appropriately applied, and on the defendants’ qualified immunity.

The court constructed a thorough and detailed timeline of incidents related to this matter. Beginning with the plaintiff, Dr. Buchanan, and her behavior with her students, a 2012 letter of

complaint detailed students discomfort and complaints of inappropriate comments that covered a variety of topics: offensive and derogatory microaggressions against women and lesbians, discussions of students' sex lives, extreme profanity, and inappropriate recording of a crying student.

Her conduct outside of the classroom was also reported to LSU in November of 2013 by the superintendent of a local school district. Her unprofessional conduct when visiting schools as part of her role in the early childhood teaching program prompted him to prohibit her from any of the district's schools. Further evidence showed that Dr. Buchanan was removed from the classroom in December 2013 pending a human resources investigation, which was conducted in early 2014 and detailed to Dr. Buchanan in a May 2014 memorandum and a June 2014 meeting. The process to dismiss Dr. Buchanan officially began in July 2014, and a meeting was conducted by a faculty committee in March of 2015. The committee found she had violated campus policies; however, they recommended a censure rather than dismissal. In April 2015, the president/chancellor recommended to the university board that she be dismissed, which ultimately happened in June 2015.

The court referenced several key findings in this case in order to issue judgment. In regards to potential infringement of Dr. Buchanan's first amendment rights, two cases were presented to support the notion that the classroom space and speech in that space is a "protected activity" and that academic freedom has value ([*Keyishian v. Board of Regents*](#), 385 U.S. 589 (S.Ct. 1967), [*Kingsville Indep. Sch. Dist. v. Cooper*](#), 611 F.2d 1109 (5th Cir. 1980)). In order to use the Pickering-Connick Balancing Test referenced previously, the court indicated that the content and context of speech determine its potential as public concern ([*Connick, Adams v. Trustees of the Univ. of N.C.–Wilmington*](#), 640 F.3d 550 (4th Cir. 2011)); furthermore, speech in a

classroom that falls outside of public opinion, even if the speaker is a public employee, cannot be subject to a First Amendment claim (Connick, [*Kennedy v. Tangipahoa Parish Library Bd. of Control*](#), 224 F.3d 359 (5th Cir. 2000)).

With this background, timeline, and grounded understanding in mind, the court ultimately sided with the defendants and affirmed the previous ruling. Since the subject matter of students' complaints were of material not related to her courses, or the subject matter and purpose of training young teachers, the court held that this speech does not serve an academic purpose and therefore is not of public concern. This further supports the court's opinion in regards to the defendants' qualified immunity; since the policy was applied to speech outside of public concern, the policies as applied did not violate the First Amendment and were considered objectively reasonable.

Furthermore, in regards to the facial challenge, the court determined that the plaintiff sued the wrong parties. As written in the Louisiana Constitution (La. Const. art. VIII, § 7), the LSU Board of Supervisors is the responsible party for the creation and enforcement of policies instead of the previously mentioned defendants. On these grounds, the Fifth Circuit Court of Appeals affirmed the as-applied challenge ruling, but vacated and then dismissed the facial challenge claim on March 22, 2019.