

The Burger Court Opinion Writing Database

Connick v. Myers

461 U.S. 138 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



7HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 4, 1982

Re: No. 81-1251 - Connick, etc. v. Myers

MEMORANDUM TO THE CONFERENCE:

I agree this holding is "dead-wrong" and I would vote to grant and reverse summarily.

Regards,



71A

well
set right

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: 2/26/82

Recirculated: _____

No. 81-1251, Connick v. Myers

JUSTICE WHITE, dissenting from the denial of certiorari.

In Pickering v. Board of Education, 391 U.S. 563 (1968), we stated that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. We also recognized that the state's interests as an employer in regulating the speech of its employees "differ significantly from those it possess in connection with regulation of the speech of citizenry in general." Id. at 568. The problem, we thought, is arriving "at a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Ibid.

Striking the correct balance concededly is a difficult endeavor. One cannot expect the results to be aligned with mathematical precision. Nevertheless, the finding in this case

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

cc: Justice White

circulated: _____

circulated: 1 MAR 1982

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

HARRY CONNICK, INDIVIDUALLY AND IN HIS
 CAPACITY AS DISTRICT ATTORNEY, ETC. *v.*
 SHEILA MYERS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
 STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 81-1251. Decided March —, 1982

JUSTICE WHITE, dissenting from the denial of certiorari.

In *Pickering v. Board of Education*, 391 U. S. 563 (1968), we stated that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. We also recognized that the state's interests as an employer in regulating the speech of its employees "differ significantly from those it possess in connection with regulation of the speech of citizenry in general." *Id.*, at 568. The problem, we thought is arriving "at a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Ibid.*

Striking the correct balance concededly is a difficult endeavor. One cannot expect the results to be aligned with mathematical precision. Nevertheless, the finding in this case that—as a matter of law—a questionnaire solely concerning internal office policy constitutes discussion of a matter of "public concern" goes so far beyond *Pickering* and beyond the decisions in other Circuits, that review by this Court is warranted.

Respondent Sheila Myers, an Assistant District Attorney was informed that she was being transferred to prosecute cases in a different section of the criminal court. Myers resisted the transfer, and, after several discussions with her

To: The Chief Justice
Justice Brennan
Justice Marshall
~~Justice Blackmun~~
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1

From: Justice White

Circulated: 2 MAR 1982

2nd DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

**HARRY CONNICK, INDIVIDUALLY AND IN HIS
CAPACITY AS DISTRICT ATTORNEY, ETC. v.
SHEILA MYERS**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 81-1251. Decided March —, 1982

JUSTICE WHITE, with whom JUSTICE O'CONNOR joins, dis-
senting from the denial of certiorari.

+ R + J

In *Pickering v. Board of Education*, 391 U. S. 563 (1968), we stated that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. We also recognized that the state's interests as an employer in regulating the speech of its employees "differ significantly from those it possesses in connection with regulation of the speech of citizenry in general." *Id.*, at 568. The problem, we thought is arriving "at a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Ibid.*

Striking the correct balance concededly is a difficult endeavor. One cannot expect the results to be aligned with mathematical precision. Nevertheless, the finding in this case that—as a matter of law—a questionnaire solely concerning internal office policy constitutes discussion of a matter of "public concern" goes so far beyond *Pickering* and beyond the decisions in other Circuits, that review by this Court is warranted.

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7A

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 4, 1982

Re: No. 81-1251 Connick v. Myers

Dear Byron:

Please join me in your opinion dissenting from the denial of certiorari in this case.

Sincerely,
WW

Justice White

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 1, 1982

Re: No. 81-1251 Connick v. Myers

Dear Byron,

You have persuaded me that we should grant certiorari in this case. I will change my vote to grant.

Sincerely,



Justice White

Copies to the Conference