

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



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

CHAMBERS OF
THE CHIEF JUSTICE

December 24, 1982

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

Dear Byron:

I join.

Merry Christmas,

A handwritten signature in black ink, appearing to be 'W. White', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 18, 1982

MEMORANDUM TO: Justice Marshall
Justice Blackmun
Justice Stevens

RE: No. 81-1251 Connick v. Myers

We four are in dissent in the above. I'll try my
hand at a dissent.

W.J.B.Jr.

Bill

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 22, 1982

RE: No. 81-1251 Connick v. Myers

Dear Byron:

I shall be circulating a dissent in due course in
the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "White", written in dark ink.

Justice White

Copies to the Conference

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Brennan

Circulated: MAR 29 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1251

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

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

[March —, 1983]

JUSTICE BRENNAN, dissenting.

Sheila Myers was discharged for circulating a questionnaire to her fellow Assistant District Attorneys seeking information about the effect of petitioner's personnel policies on employee morale and the overall work performance of the District Attorney's Office. The Court concludes that her dismissal does not violate the First Amendment, primarily because the questionnaire addresses matters that, in the Court's view, are not of public concern. It is hornbook law, however, that speech about "the manner in which government is operated or should be operated" is an essential part of the communications necessary for self-governance the protection of which was a central purpose of the First Amendment. *Mills v. Alabama*, 384 U. S. 214, 218 (1966). Because the questionnaire addressed such matters and its distribution did not adversely affect the operations of the District Attorney's Office or interfere with Myers' working relationship with her fellow employees, I dissent.

I
 The Court correctly reaffirms the long established principle that the government may not constitutionally compel persons to relinquish their First Amendment rights as a condition of public employment. *E. g.*, *Keyishian v. Board of Regents*, 385 U. S. 589, 605-606 (1967); *Pickering v. Board*

pp 3-5, 15;
 Stylistic changes
 they took

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

From: **Justice Brennan**

Circulated: _____

Recirculated: **JPR** : 8/10/83 _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1251

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

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

[April 20, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

Sheila Myers was discharged for circulating a questionnaire to her fellow Assistant District Attorneys seeking information about the effect of petitioner's personnel policies on employee morale and the overall work performance of the District Attorney's Office. The Court concludes that her dismissal does not violate the First Amendment, primarily because the questionnaire addresses matters that, in the Court's view, are not of public concern. It is hornbook law, however, that speech about "the manner in which government is operated or should be operated" is an essential part of the communications necessary for self-governance the protection of which was a central purpose of the First Amendment. *Mills v. Alabama*, 384 U. S. 214, 218 (1966). Because the questionnaire addressed such matters and its distribution did not adversely affect the operations of the District Attorney's Office or interfere with Myers' working relationship with her fellow employees, I dissent.

I

The Court correctly reaffirms the long established principle that the government may not constitutionally compel per-

Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: 20 DEC 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1251

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

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

[December —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

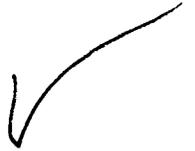
In *Pickering v. Board of Education*, 391 U. S. 563 (1968), we stated that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. We also recognized that the State's interests as an employer in regulating the speech of 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 was arising "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.* We return to this problem today and consider whether the First and Fourteenth Amendments prevent the discharge of a state employee for circulating a questionnaire concerning internal office affairs.

I

The respondent, Sheila Myers, was employed as an Assistant District Attorney in New Orleans for five and a half years. She served at the pleasure of petitioner Harry Connick, the District Attorney for Orleans Parish. During

hold for next circulation

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



CHAMBERS OF
JUSTICE BYRON R. WHITE

December 27, 1982

Re: 81-1251 - Connick v. Myers

Dear Lewis,

The forthcoming circulation will embrace your suggestions, for which I am grateful.

Sincerely yours,

Justice Powell

cpm

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

From: **Justice White**

- pp. 8-10, 13 and
 stylistic changes throughout -

Circulated: _____

Recirculated: 28 DEC 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1251

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

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

[January —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

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, was arising "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.* We return to this problem today and consider whether the First and Fourteenth Amendments prevent the discharge of a state employee for circulating a questionnaire concerning internal office affairs.

I

The respondent, Sheila Myers, was employed as an Assistant District Attorney in New Orleans for five and a half years. She served at the pleasure of petitioner Harry Connick, the District Attorney for Orleans Parish. During

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

pp. 8-10; footnotes renumbered

From: **Justice White**

Circulated: _____

Recirculated: APR 1 _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1251

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

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

[April —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

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, was arising "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.* We return to this problem today and consider whether the First and Fourteenth Amendments prevent the discharge of a state employee for circulating a questionnaire concerning internal office affairs.

I

The respondent, Sheila Myers, was employed as an Assistant District Attorney in New Orleans for five and a half years. She served at the pleasure of petitioner Harry Connick, the District Attorney for Orleans Parish. During

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1982

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

Dear Byron:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 29, 1983

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

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1982

Dear Byron:

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

On this one, I shall await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1983

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

Dear Bill:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice Brennan

cc: The Conference

~~Dec 28~~

December 21, 1982

81-1251 Connick v. Myers

Dear Byron:

I like your opinion and expect to join it. I do have two specific suggestions. On page 10, 5th line, I would strike the word "solely", and add "primarily" after "concern". Thus, this part of the sentence would read:

". . . the First Amendment does not require a public office to be run as a round table for employee complaints that [] concern primarily internal office affairs".

On page 13, I hope you will omit the first sentence that begins on that page. It is unnecessary to your opinion, as you properly apply the Pickering balance throughout. This particular sentence, however, is likely to limit unduly the authority of employers or invite litigation. The sentence states that if close working relationships are not "essential", or if the employee's speech "more substantially involves matters of public concern", then a stronger showing must be made by the employer; and "perhaps actual evidence of the likelihood of disruption might be necessary".

I would have no difficulty with saying that "a stronger showing may be necessary if the employee's speech more substantially involved matters of public concern". But proof of "actual evidence of the likelihood of disruption" often will be unavailable. Nor is "disruption" the only justification for a discharge. I would rank disloyalty (e.g., the kind of "leaks" designed to discredit senior officials or their policies) as being at least as serious as the likelihood of disruption.

Nor do I think "close working relationships" are necessarily of vital importance. A department head, for example, can be handicapped severely by a disloyal subordinate with whom he rarely if ever works closely.

Although you have been there, the difficulty of governing because of various types of insubordination, disloyalty and just plain inefficiency apparently has increased year-by-year. As your opinion states extremely well, the Pickering balance requires a careful weighing of the important but competing interests. We may have reached the point, however, where the scales are tilting a bit too far against the public interest.

Sincerely,

Justice White

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 28, 1982

81-1251 Connick v. Myers

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 21, 1982

Re: No. 81-1251 Connick v. Myers

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1982

Re: 81-1251 - Connick v. Myers

Dear Byron:

I shall await the dissent.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1983

Re: 81-1251 - Connick v. Myers

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

Supreme Court of the United States RECEIVED
Washington, D. C. 20543 SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'82 DEC 35 P1:35

January 4, 1983

No. 81-1251 Connick v. Myers

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference