Comment on School District's Termination of Teacher for Facebook Vegan Advocacy

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RE: Termination of public school teacher for vegan advocacy

Dear Members of the Green Local Board of Education,

I write on behalf of a former Title I tutor for the Green Local Schools, Keith Allison. Mr. Allison was an outstanding teacher, receiving excellent evaluations, praise from parents, and the support of his supervisor. Despite these accolades, Mr. Allison was abruptly terminated by the School District in August of this year. According to Superintendent Judy Robinson, the sole reason for his termination was that he posted a message on Facebook—on his own time, off school grounds, and using his own computer—that shared the public practices of some dairy farms and encouraged the consumption of plant-based milk instead of dairy milk. Attached to this letter is a copy of the entire post in question.

Urging people to drink soy milk on Facebook is not a fireable offense.

For 50 years, it has been settled law that the speech of public employees—particularly public school teachers—is protected by the First Amendment to the United States Constitution. E.g., Keyishian v. Bd. of Regents of Univ. of State of N. Y., 385 U.S. 589, 594, 602-04 (1967) (striking down law that made it illegal for any public school teacher to “willfully and deliberately advocate[], advise[] or teach[] the doctrine of forcible overthrow of government”); Tinker v. Des Moines Indep. Cnty. Sch. Dist., 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this
Court for almost 50 years."'). And it is entirely irrelevant for the First Amendment whether Mr. Allison had a contract with the district or not. E.g., Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84 (1977) ("Doyle’s claims under the First and Fourteenth Amendments are not defeated by the fact that he did not have tenure. Even though he could have been discharged for no reason whatever...he may nonetheless establish a claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms."); Perry v. Sindermann, 408 U.S. 593, 597-98 (1972) ("the respondent's lack of a contractual or tenure ‘right’ to re-employment for the 1969—1970 academic year is immaterial to his free speech claim"). Whatever discretion a school district may have under state law to not renew a contract does not allow it to act for unconstitutional reasons. Recasting Mr. Allison’s separation from employment as a decision not to rehire (instead of a termination) does nothing to salvage its legality.

Under the First Amendment, a government employer can discipline an employee for out-of-work speech only if it has a legitimate interest in regulating speech that strongly outweighs the employee’s interest in exercising his constitutional rights. Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois, 391 U.S. 563, 572-73 (1968). Thus, courts have held that it is unconstitutional for the government to discipline an employee for advocating the overthrow of the government, Keyishian, 385 U.S. at 602-04, for expressing a desire that the President of the United States be assassinated, Rankin v. McPherson, 443 U.S. 378, 392 (1987), and for using racial slurs; Hardy v. Jefferson Cnty. Coll., 260 F.3d 671, 675 (6th Cir. 2001). The School District’s decision to punish the expression of a vegan viewpoint falls well short of this high constitutional standard.

To begin, Mr. Allison’s speech was as a private citizen on a topic of political and social concern to the public at large, and as such is given the highest level of protection. See Connick v. Myers, 461 U.S. 138, 152 (1983) ("A stronger showing may be necessary [for the government employer] if the employee’s speech more substantially involved matters of public concern."). Moreover, Mr. Allison’s speech was carried out outside of the workplace. See City of San Diego, Cal. v. Roe, 543 U.S. 77, 80 (2004) ("The Court has held that when government employees speak or write on their own time on topics unrelated to their employment, the speech can have First Amendment protection, absent some governmental justification ‘far stronger than mere speculation’ in regulating it."). Thus, the School District would need a very strong reason to punish a teacher who was both (1) speaking on an issue of public concern, and (2) speaking outside of work in the capacity of a private citizen.

A good reason—much less a very strong one—for the District’s action is nowhere to be found. The post did not violate any laws. It did not threaten anybody. It was not vulgar. It did not say anything that Mr. Allison believed to be untrue. Indeed, nothing about this post is even about teaching, the school district, or any of Mr. Allison’s duties as a teacher. It simply shared Mr. Allison’s perspective on an important political and social issue for the reader to agree or disagree with.

So what reason could the Superintendent come up with to support the termination of a successful and well-liked teacher? According to the Superintendent, the owner of the farm depicted in a photograph in Mr. Allison’s post has children enrolled in the District, and was upset
and fearful because of the post. However nothing in the photograph or post supplied the identity of the landowner (indeed, Mr. Allison had no idea who it was at the time), even though the location of the farm was not specified (apart from a vague and encompassing “within 5 miles” description), and even though there was absolutely no hint of anything resembling a threat within the post. The Superintendent also shared that she disagrees with Mr. Allison’s perspective, and suggested that public teachers in farming communities need to pay attention to whether their outside activities might offend the economic interests of the local agricultural industry. She instructed Mr. Allison to think about whether he wanted to be a public school teacher or a vegan advocate, threatening a reprimand if he continued to try to do both. (Of course, he never received the chance to make this unconstitutional choice because he was subsequently terminated.)

However much a community member or the Superintendent might disagree with Mr. Allison’s speech, they cannot force his removal because of it. Public school teachers are allowed to express unpopular views as well as popular ones. Courts regularly have held that complaints from members of the community are not enough to overcome a teacher’s interest in speaking on a matter of public concern. E.g., Scarbrough v. Morgan Cnty. Bd. of Educ., 470 F.3d 250, 258 (6th Cir. 2006) (violates the First Amendment to fire a superintendent when it became difficult for the Board to work with him after he made a speech about gay rights contrary to the views of the Board and the community); Cockrel v. Shelby Cnty. Sch. Dist., 270 F.3d 1036, 1045 (6th Cir. 2001) (public outcry and “several letters from parents complaining” not enough to overcome elementary school teacher’s interest in speaking about industrial hemp); Hardy v. Jefferson Cnty. Ccoll., 260 F.3d 671, 675 (6th Cir. 2001) (holding it violates the First Amendment to fire college instructor for use of racial and other slurs, even though student complained and there was worry that “African-American enrollment would decline”); Meyers v. City of Cincinnati, 934 F.2d 726, 730 (6th Cir. 1991) (“The record indicates that plaintiff made a controversial statement regarding the means of accomplishing affirmative action to two citizens whose perspective and mission caused them to react with hostility. . . The evidence is straightforward: Daisy Foster, Lucy Green, and thereafter David Rager did not like what they understood plaintiff to say. That fails well short of a showing of a legitimate interest which would allow the city to limit plaintiff’s First Amendment rights in free speech on a controversial political issue.”). Indeed, because the law on this point is so clear, courts regularly hold administrators who discipline an employee based on outside speech personally liable. E.g., Scarbrough, 470 F.3d at 263; Hardy, 260 F.3d at 675; Chappel v. Montgomery Cnty. Fire Prot. Dist. No. 1, 131 F.3d 564, 580 (6th Cir. 1997)

1 There is no plausible suggestion that Mr. Allison ever posed a threat to anyone’s well-being. Indeed, Mr. Allison is an active promoter and adherent of peace and non-violence. During a meeting with his supervisor, he offered to speak with the upset owner of the farm to assuage any concerns—however unfounded—about the well-being of the farmer’s children. Mr. Allison wrote the farm owner a letter, and, at the suggestion of his administrator, sent it out, in which he explained: “Just as I have no desire to intentionally harm a cow, a pig, a chicken, or a spider, I also have no desire to harm another human being or destroy anyone’s property, even when I might disagree with them. I am trying to spread peace, love, and compassion to my fellow humans and to the animals that we share this world with.” In this letter, he shared his personal cell phone number and invited the family to contact him if they wished to discuss. These offers were never taken up.
(“All public officials have been charged with knowing that public employees may not be disciplined for engaging in speech on matters of public concern, and no reasonable public official understanding this charge could conclude that Chappell’s speech did not address such matters.”).

Schools are the training ground for future citizens; forcing those who teach future citizens to relinquish their citizenship rights has no support in law or policy. As Justice Frankfurter wrote nearly 60 years ago:

To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by national or State government.

Wieman v. Updegraff, 344 U.S. 183, 196-97 (1952) (Frankfurter, J., concurring). “[T]he essence of a teacher’s role is to prepare students for their place in society as responsible citizens,” and limiting instructor speech poses a particular threat to their special role in society. Hardy, 260 F.3d at 679; Shelton v. Tucker, 364 U.S. 479, 487 (1960) (“[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”). Ensuring the participation of teachers in the marketplace of ideas is all the more critical as technologies such as Facebook facilitate the political and social debate and inquiry that the First Amendment was designed to protect. A school district teaches and expects its students to follow rules, and its claim to that authority is undermined when its administrators choose to ignore the laws that apply to them.

To remedy the District’s unconstitutional firing, we insist that you promptly issue an apology, replace Mr. Allison in his position as a Title I tutor, provide him with the back pay for the period he was wrongfully deprived of employment, and clarify the District’s policies to bring it into conformity with constitutional rules. If you wish to discuss this matter further, I can be reached at [redacted] or by email at J.Mead@csuohio.edu. If I do not hear from you by December 19, 2014, we will be forced to file a complaint in federal court to vindicate the constitutional rights of your former employee.
This letter also serves to confirm that litigation is imminent. As a result, you are under an obligation to preserve all evidence related to this matter, including but not limited to any electronic communication between and among board members and administrators.

Sincerely,

Joseph Mead
Cooperating Attorney
ACLU of Ohio

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cc: Judy Robinson, Superintendent, Green Local School District
This place is five miles from my house and, for those who don't already know, these are crates to house baby dairy cows who are separated from their mothers usually within a day of birth. As someone who grew up feeling parental love and support and now as a parent who gives parental love and support, I reject the claim that separating babies from loving mothers to raise them isolated in boxes can ever be considered humane. –Keith

The cruelty of separation, loneliness, and infant slaughter lingers inside each glass of cow's milk. Your voice can help change the system. You don't have to support this. Plant-based milks are everywhere and are delicious.