No. 12345

IN THE

Supreme Court of the United States

OCTOBER 2014 TERM

COLLEGE OF SOUTHERN PEMBERLEY,

Petitioner,

v.

ELIZABETH BENNET,

Respondent.

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

BRIEF FOR PETITIONER

Jesús N. Joslin
Counsel of Record
Collins & Associates, LLP
One Camino Santa Maria
San Antonio, TX 78228
jjoslin3@mail.stmarytx.edu
512.736.4068

Counsel for Petitioner

QUESTIONS PRESENTED

I. Does the First Amendment's free speech protection extend to grades administered to a student?

II. If not, does the doctrine of academic freedom afford protection to individual professors in addition to universities?

PARTIES

The plaintiff in this action is Elizabeth Bennet. The defendant is the College of Southern Pemberley.

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The United States District Court for the Southern District of Pemberley's Opinion and Order Granting Defendant's Motion to Dismiss (R. at 13) is unreported. The Opinion and Order of the Court of Appeals for the Sixteenth Circuit (R. at 19) is unreported.

STATEMENT OF JURISDICTION

The Court of Appeals for the Sixteenth Circuit entered judgment on June 5, 2014. (R. at 21). Petitioner filed her petition for writ of certiorari on June 25, 2014 (R. at 23). This Court granted the petition on October 15, 2014. (R. at 24). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2006).

STANDARD OF REVIEW

A district court's fact-findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

CONSTITIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I

PRELIMINARY STATEMENT

On June 8, 2013, Elizabeth Bennet ("Respondent") filed a complaint against the College of Southern Pemberley (the "College") in the United States District Court for the Southern District of Pemberley, alleging the College violated her free speech rights when they dismissed her for refusing to follow a directive to reevaluate a student's paper and grade. (R. at 1–4). The College filed a motion to dismiss on the grounds that Respondent failed to state a free speech claim upon which relief could be granted. (R. at 6–8). The District Court granted the College's motion to dismiss. (R. at 13–16). Respondent appealed, and the United States Court of Appeals for the Sixteenth Circuit reversed the judgment of the District Court. (R. at 17–21). On October 15, 2014, this Court granted the College's petition for Writ of Certiorari. (R. at 24).

STATEMENT OF THE CASE

In August of 2008, the College employed Respondent, who had just completed her Ph.D., as an assistant professor of English literature. (R. at 13). A month later, Respondent began teaching a class at the College based on author Jane Austen. *Id.* In the fall of 2012, the College admitted George Wickham, a junior, as a transfer student-athlete from New York University. (R. at 14). Mr. Wickham immediately joined the College's basketball team and, in January of 2013, enrolled in the Jane Austen class Respondent taught. *Id.* During the 2013 season, the College's basketball program improved greatly and defeated Respondent's alma mater, the University of Pemberley, for the first time in school history. *Id.* Later that season, the College won its first state championship and was invited to a national invitational tournament to be held in October. *Id.* The team's historic success brought the College unprecedented publicity, even from out-of-state newspapers. *Id.* Alumni donations increased, and more prospective students visited the College that spring than ever before. *Id.*

That same semester, a local newspaper alleged Mr. Wickham received special treatment due to his athletic ability. *Id.* In mid-April, they reported the College dean ordered professors to excuse all of Mr. Wickham's absences. *Id.* An opinion piece in the newspaper also criticized the school for providing special accommodations to student-athletes. *Id.*

Given Mr. Wickham's participation in interscholastic basketball, his attendance in Respondent's classes was around 50 percent. *Id.* Based on his final paper on *Pride and Prejudice*, which was worth merely 60 percent of his grade, Respondent issued Mr. Wickham an "F" in the class due to poor performance. *Id.* Under Pemberley Athletic Division rules, an "F" on his transcript prohibited Mr. Wickham from participating in any sports-related activities. *Id.*

When the College found out about Respondent's actions, they ordered her to re-evaluate Mr. Wickham's paper and grade. (R. at 14–15). Though the College could have administratively re-evaluated Mr. Wickham's performance in class, they directed Respondent to do so because they wanted to avoid playing into the newspaper's narrative. (R. at 14). As to why she refused to comply with the College's directive, Respondent cited her disapproval of the College's preferential treatment of Mr. Wickham as a student-athlete and his sub-par performance. (R. at 15). The College subsequently changed the grade and received public criticism for their decision. *Id.* On May 22, 2013, the College sent Respondent a letter terminating her employment. *Id.*

SUMMARY OF ARGUMENT

I.

This Court has repeatedly stressed the importance of limiting the extent to which conduct should be granted free speech protection. Not only did this Court emphasize the inherently expressive nature required for conduct to fall within the ambit of protected speech, it has stressed the politically expressive nature of the conduct time and again. Here, Respondent's act of issuing a grade, though it may be considered inherently expressive, is not political in nature and is thus not protected speech.

II.

The majority of circuit courts hold, for the First Amendment to apply, a professor's refusal to follow a university grading directive must be accompanied by both meaningful protest or advocacy and the university's retaliation to the professor for his protest or advocacy. The Court of Appeals for the Sixth Circuit is the only circuit court that has held a university unconstitutionally dismissed a professor for refusing to follow a university grading directive. In doing so, the Sixth Circuit not only undermined this Court's free speech jurisprudence, it has

since been repudiated by other circuit courts. Additionally, the factual scenario is markedly different from the case at hand and involved much more than a simple refusal to grade as directed. Hence, this Court must reject the Sixth's Circuit's ruling as an exception to the rule.

III.

The academic freedom doctrine, itself borne of the First Amendment, was initially established by this Court to preserve the "essential freedoms" colleges and universities. The ability of colleges and universities to set their own grading standards and criteria, as well as the fact that grades are integral to a university's ability to fulfill its function in society, suggests grades belong to the university not individual professors.

How much academic freedom teachers and professors are afforded, and what exactly that freedom entails, is an issue with which courts have struggled. For the most part, courts hold a professor's academic freedom relates to his or her ability to control classroom content and to choose which teaching method is best. Because grades are not part of classroom content or a teaching method, they are not protected by academic freedom. Hence, the doctrine does not apply to Respondent in these circumstances. As between the College's academic freedom and the professor's academic freedom, and grading policy belongs to the College.

IV.

The public employee doctrine asserts, if a public employee claims her employer fired her in retaliation to her exercise of free speech, the employee must have spoken in her role as a private citizen speaking on a matter of public concern in order for such a claim to stand on First Amendment grounds. Another aspect of the doctrine is, if a public employee is speaking in her capacity as an employee pursuant to her official duties, such speech is not protected even if she is fired for such speech. Respondent's speech, if her grade is speech at all, was not only made as

part of her official duties as a professor, but it was not made in Respondent's role as a private citizen speaking on a matter of public concern. Therefore, she cannot claim the College violated her free speech rights in terminating her for insubordination.

V.

Based on the importance of colleges and universities to furthering democratic ideals, and the academic freedom this Court has granted to such institutions, colleges and universities should enjoy minimal judicial oversight when their actions are done in the furtherance of an educational mission. Indeed, many lower courts have recognized the need to allow colleges and universities to function without excessive judicial oversight. Additionally, even though a college or university's decisions may be completely lawful, their decisions are still subjected to free market forces and measures taken by regulatory and licensing agencies—both of which serve as efficient, non-judicial checks on college and university behavior.

ARGUMENT

This Court has long held a non-tenured professor may be terminated for just about any reason other than expressing a constitutionally protected right. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Consequently, Respondent's employment as a non-tenured professor at the College—a public school—is at-will and the College may dismiss her for any reason short of her expression of a constitutionally protected right.

I. THE COLLEGE DID NOT VIOLATE RESPONDENT'S FREE SPEECH RIGHTS BECAUSE THE ACT OF ISSUING A GRADE IS NOT PROTECTED SPEECH.

A. This Court has recognized the limitations on equating conduct with protected speech.

When faced with the issue of when conduct rises to the level of protected speech, this Court has expressed great trepidation in labeling an unlimited variety of conduct as such. *See*

United States v. O'Brien, 391 U.S. 367, 376 (1968) (rejecting the view that free speech protection extends to all activity an actor intends to be communicative); *see also Spence v. Wash.*, 418 U.S. 405, 409 (1974) (acknowledging the *O'Brien* court's limitation on labeling conduct as speech). Moreover, it is not enough that the actor intends the conduct to express an idea; the conduct must be expressive in and of itself. *Rumsfeld v. Forum of Academic & Institutional Rights, Inc.*, 547 U.S. 47, 65–66 (2006).

In *Rumsfeld*, an association of law schools and law school faculties claimed a federal law violated law schools' free speech rights because it conditioned federal funding on whether universities provided military recruiters the same access to students as other recruiters, and some law schools refused to do so because they objected to the military's treatment of homosexuals. *Id.*at 52–53. Nevertheless, this Court upheld the constitutionality of the law. *Id.* at 70. This Court partly based its holding on the conclusion that the law schools' conduct was not inherently expressive; that is, law schools' exclusion of military recruiters—on its face—did not express anything at all. *Id.* at 66–67. The only way the law schools' conduct could be expressive, the Court noted, is if it was accompanied by speech explaining it—even then not rising to the level of protected speech. *Id.*

B. When equating inherently expressive conduct with protected speech, this Court has stressed the political nature of the expressive conduct.

In *Spence*, this Court fully developed the "symbolic speech" test and held conduct may be considered speech if one intends such conduct to convey a particularized message highly likely to be understood by those viewing it. 418 U.S. at 410–11. Furthermore, this Court has repeatedly emphasized the political nature of the expressive conduct essential to a bringing it within the realm of free speech. *See id.* at 410 (noting the student expressed his distress about current affairs by displaying an upside-down, peace symbol-bearing flag in his apartment

window); *see also O'Brien*, 391 U.S. at 376–77 (stating the speech involved, assuming it existed at all, consisted of an individual expressing his antiwar beliefs by burning his draft card); *Rumsfeld*, 547 U.S. at 66 (pointing out the First Amendment protects the inherently expressive act of burning the American flag).

Here, although the act of issuing a letter grade may be considered an inherently expressive conduct, such conduct obviously does not express anything political in nature; Respondent's conduct merely expressed her dissatisfaction with Mr. Wickham's performance. (R. at 14). Hence, under *O'Brien* and its progeny, this Court should not consider Respondent's conduct as protected speech, regardless if her conduct may be labeled expressive.

II. THE COLLEGE DID NOT VIOLATE RESPONDENT'S FREE SPEECH RIGHTS BECAUSE HER REFUSAL TO COMPLY WITH THE COLLEGE'S DIRECTIVE IS NOT CONSTITUTIONALLY PROTECTED.

A. Circuit courts largely hold a professor's refusal to follow a university directive alone does not qualify for First Amendment protection.

In cases involving a professor's refusal to grade as directed, the Court of Appeals for the First Circuit and the Court of Appeals for the Fifth Circuit declared the First Amendment does not protect such a refusal unless some form of meaningful protest or advocacy—and retaliation on behalf of the university for that protest or advocacy—accompanies it. *See Hillis v. Stephen F. Austin State Univ.*, 665 F.2d 547, 550–53 (5th Cir. 1982) (stressing the First Amendment may protect a professor against retaliation for her protest against a university policy, but not for simply refusing a university grading directive); *see also Lovelace v. Se. Mass. Univ.*, 793 F.2d 419, 425 (1st Cir. 1986) (concluding the university did not terminate a professor due to his act of *advocating* a change in grading standards but for refusing to *change* his grading standards) (emphasis in original).

In *Hillis*, the court denied a professor's First Amendment claim because the only substantial First Amendment activity involved the professor's complaint to his superiors regarding university grading procedures, which the court stressed occurred after a meeting regarding his re-assignment and which, therefore, could not have played a part in the university's decision to fire him. 665 F.2d at 550. The *Lovelace* court similarly denied a professor's First Amendment claim. 793 F.2d at 425. The court pointed out, while the professor advocated a change in grading standards, the university was receptive to his ideas and did not fire him in retaliation for his exercise of any constitutionally protected right, but dismissed him for his refusal to change his standards to meet their criteria. *Id.* Additionally, the Court of Appeals for the Seventh Circuit held a university could sanction a professor for refusing to follow their grading policy even if he publically voiced opposition to the policy. *Wozniak v. Conry*, 236 F.3d 888, 889 (7th Cir. 2001). In *Wozniak*, the professor refused to follow the university's grading policy, which required him to submit his grading materials at the end of the semester, and he defied subsequent orders to comply. *Id.* The university then sanctioned him for his insubordination. *Id.* The court struck down the professor's claim that the university retaliated against him for taking a stand against their grading policy because they concluded the university was free both to decide their own grading policy and to sanction him for his insubordination. *Id.* at 891.

Here, the record shows Respondent's refusal to reevaluate Mr. Wickham's grade was steeped in her dislike of the College's treatment of student-athletes and Mr. Wickham's subpar performance on his final paper. (R. at 15). Indeed, Respondent's refusal to follow the College's directive was unaccompanied by any meaningful protest or advocacy vis-à-vis the College's grading policies or procedures. *Id. A fortiori*, the College could not have retaliated against her for

the exercise of any protest or advocacy associated with her refusal and thus did not infringe on her free speech rights.

B. This Court must reject the Sixth Circuit's rationale in *Parate* because the court erred in holding grades are protected speech and because *Parate* is distinguishable from our case.

Contrary to this Court's free speech jurisprudence and the rulings in *Lovelace*, *Hillis*, and *Wozniak*, the Court of Appeals for the Sixth Circuit concluded grades are not only "symbolic speech," grades are protected speech. *Parate v. Isibor*, 868 F.2d 821, 827 (6th Cir. 1989). The *Parate* court held university administrators violated the professor's constitutional rights by unduly coercing him to change a grade he had previously assigned to a student rather than changing the grade themselves. *Id.* at 829. With regard to the ruling in *Parate*, the Court of Appeals for the Third Circuit suggested the Sixth Circuit's analysis presented an unrealistic view of the university-professor relationship and declined to apply the *Parate* rationale to a similar case. *Brown v. Armenti*, 247 F.3d 69, 75 (3rd Cir. 2001).

Beyond the fact that *Parate* contradicts preceding and succeeding authority regarding whether a grade should rise to the level of protected speech, the factual scenario is markedly different from the present case. In addition to university administrators directing the professor to change the grade, *Parate* involved repeated abusive and coercive tactics on behalf of administrators in an attempt to compel the professor to act and in retaliation for his refusal to change the student's grade. *Id.* at 824. For example, university administrators castigated the professor on multiple occasions, threatened to wreck his evaluations, hindered his ability to pursue research opportunities, and otherwise undermined his ongoing research efforts. *Id.* In the present case, the College has not coerced Respondent in the least; they have simply directed her

to re-evaluate Mr. Wickham's performance in her class, she refused, and they fired her for insubordination. (R. at 14–15).

III. THE COLLEGE DID NOT VIOLATE RESPONDENT'S FREE SPEECH RIGHTS BECAUSE THE DOCTRINE OF ACADEMIC FREEDOM DOES NOT APPLY TO HER UNDER THESE CIRCUMSTANCES.

A. Under the doctrine of academic freedom, if grades are considered speech, such speech belongs to the College.

The doctrine of academic freedom was first articulated in reference to the "four essential freedoms" of the university. *See Sweezy v. N.H.*, 354 U.S. 234. 263 (1957) (Frankfurter, J., concurring) (stating the four essential freedoms include the university's ability to decide who may teach, what is taught, how a course is taught, and who is admitted to study). This Court went on to fully adopt Justice Frankfurter's concurring language regarding the "four essential freedoms" in *Regents of the University of California v. Bakke*, 438 U.S. 265, 312 (1978) (underscoring the university's freedom to choose who may be admitted to study). Moreover, in light of the fact that grading is pedagogic in nature, the issuance of a grade as it relates to academic freedom is incorporated into the university's freedom to choose how a course is taught. *Brown*, 247 F.3d at 75.

Because grades are a university's "stock and trade," and appear on university-issued transcripts, the Seventh Circuit determined grades—to the extent they can be considered speech—belong to the university, not to individual professors. *Wozniak*, 236 F. 3d at 891. Additionally, the *Wozniak* court concluded the amount of control universities grant their professors over grading is a decision wholly vested in the university. *Id.* The Third Circuit likewise recognized the limitations on free speech as it relates to a professor's grades. *Brown*, 247 F.3d at 74–75. In *Brown*, the professor assigned an "F" to a student because the student missed 80 percent of his class. *Id.* at 72. University officials ordered the professor to change the

student's grade, the professor refused, and the university reprimanded him for his refusal. *Id.* The court ultimately held the university did not violate the professor's free speech rights because professors speak as a "proxy" of the university when issuing grades so a professor cannot claim free speech protection via the university's grade assignment protocols because grades belong to the university and not individual professors. *Id.* at 75. In the present case, the College has essentially done the same as the university in *Brown*; that is, they requested Respondent reevaluate a student's grade and discharged her for insubordination after she refused to fulfill their request. (R. at 14–15).

B. Protection under the doctrine of academic freedom relates to Respondent's course content and teaching method only, and issuing a grade is neither.

Courts have struggled to define the parameters of academic freedom—in terms of whether, and to what extent, it affords protection to individual professors. *See Hillis,* 665 F.2d at 553 (noting courts' inconsistent approaches to academic freedom); *see also Urofsky v. Gilmore*, 216 F.3d 401, 410–11(4th Cir. 2000) (en banc) (discussing the history and inconsistent court decisions regarding academic freedom). As a result, decisions range from broad declarations and qualified protection to outright denial. *Compare Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (rejecting as unconstitutional any university action or state law casting a "pall of orthodoxy" over the classroom), *and Piarowski v. Ill. Cmty. Coll.*, 759 F.2d 625, 629 (7th Cir. 1985) (concluding academic freedom signifies the individual professor's freedom to undertake his or her ends without university interference), *with Urofsky*, 216 F.3d at 410 (holding academic freedom is an institutional right not an individual right). Nevertheless, while recognizing academic freedom may apply both to universities and individual professors, courts have been reluctant to extend protection beyond a professor's classroom content and teaching method. *See Hillis*, 665 F.2d at 553 (stating academic freedom protects against violations of a teacher's class

content and teaching method). *But see Hetrick v. Martin*, 480 F.2d 705, 709 (6th Cir. 1973) (holding academic freedom does not shield a non-tenured teacher's teaching method from review). Even assuming academic freedom protects against infringements on a professor's teaching method, assigning grades is not part of a professor's teaching method. *Hillis*, 665 F.2d at 553. Respondent's act of assigning a grade, which is not a part of her teaching method, is thus not protected by the doctrine of academic freedom.

IV. EVEN IF GRADES ARE CONSIDERED RESPONDENT'S SPEECH, THE PUBLIC EMPLOYEE DOCTRINE PRECLUDES A FREE SPEECH CLAIM UNDER THESE CIRCUMSTANCES.

The public employee doctrine, as this Court set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968) and *Connick v. Meyers*, 461 U.S. 138 (1983), limits a public employee's ability to bring a free speech claim against a their employer. The majority in *Pickering* proposed a balancing test wherein the employee's interests—as a private citizen speaking on issues of public concern—are weighed against the public employer's interests in bolstering the efficiency of the services it provides via its employees. 391 U.S. at 568. In *Connick*, this Court adopted a contextual approach to determining whether a public employee's speech involves a matter of public concern. 461 U.S. at 147–48. That is, any such determination must be based on the content and form of the speech, as well as the context in which it was made. *Id.* What is more, this Court has since placed further limitations on public employee free speech claims arising in the workplace. *See Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (holding the Constitution does not protect a public employee's speech if their statements are made "pursuant to their official duties"). It follows that where, as here, a public employee claims her dismissal was based on employer retaliation to her exercise of free speech, the Court must deny her claim: (1) if her

speech was not made in her capacity as a citizen speaking on a matter of public concern; or (2) if the she was speaking pursuant to her official duties.

In the present case, the public employee doctrine clearly precludes Respondent's claim. If Respondent's act of issuing a grade is to be construed as her speech, it clearly was not made in her capacity as a citizen speaking on a matter of public concern. Applying the content-form-context standard, she issued the grade to "communicate" to Mr. Wickham what she thought of his performance on his final paper. (R. at 15). Moreover, even if Respondent's issuance of a grade can be fairly understood as speaking on a matter of public concern, issuing grades is part of her official duties as a professor at a public college. Therefore, the College is free to discipline her for that communication. *See Garcetti*, 547 U.S. at 421 (holding when employees speak "pursuant to their official duties," they are not speaking as citizens for First Amendment purposes and their speech is therefore not Constitutionally protected from employer discipline).

Respondent may argue she is exempt from the public employee doctrine because, as an assistant professor, she is of a special class of public employee. This argument is untenable. Indeed, the very case from which this doctrine derived involved a public teacher, and several cases have since applied the doctrine to professors. *See Pickering*, 391 U.S. at 564 (involving a public school teacher reprimanded for publically criticizing the school board's handling of past revenue proposals); *see also Brown*, 247 F.3d at 79 (applying the public employee doctrine to a tenured professor who claimed he was retaliated against for publically criticizing the university president); *Urofsky*, 216 F.3d at 404 (applying the doctrine to public university professors who claimed a state law unconstitutionally infringed their First Amendment rights).

In *Brown*, the court ultimately concluded the public employee doctrine precluded the professor's claim because his speech did not regard a matter of public concern. 247 F.3d at 79.

Instead, he was voicing his displeasure with his employer's decision to dismiss him. *Id.* The *Urofsky* court similarly held the doctrine prevented the professors' First Amendment claims because the state law in question, which prevented public employees from using state-controlled computers to access sexually explicit material, did not affect the professors' speech in their capacity as private citizens speaking on matters of public concern. 216 F.3d at 409.

V. THIS COURT MUST REFRAIN FROM EXCESSIVE JUDICIAL OVERSIGHT AND UPHOLD THE COLLEGE'S FREEDOM TO FULFILL ITS EDUCATIONAL MISSION

In *Sweezy*, this Court emphasized the fundamental role American institutions of higher learning play in the democratic process. 354 U.S. at 250. In so many words, the court suggested colleges and universities are the incubators of democratic freedom. *Id.* As such, colleges and universities are the conduits through which teachers, professors, and students exercise their academic freedom "to inquire, to study and to evaluate." *Id.*

In the context of First Amendment claims, this Court stressed the perilous implications of "impos[ing] any strait jacket" on the leaders of colleges and universities. *Id*. In *Keyishian*, this Court reiterated that sentiment. *See* 385 U.S. at 603 (citing *Sweezy*, 354 U.S. at 250) (commenting on the importance of academic freedom). In light of this, many courts have often refrained from interfering with public college and university officials' decisions not adversely affecting the constitutional rights of others. *See Lovelace*, 793 F.2d at 426, n.2 (expounding the need for judicial restraint and deference to university officials in judging whether a professor's grading policy complied with the university's criteria); *see also Wozniak*, 236 F.3d at 891 (stating university officials, not federal judges, are better suited to decide their grading assignment procedures); *Brown*, 247 F.3d at 75 (holding grade assignments are not an issue warranting intrusive judicial oversight for First Amendment purposes); *cf. Connick*, 461 U.S. at 146 (stating the judiciary should avoid "intrusive oversight" over public officials' personnel

decisions if the manner of termination is lawful yet may seem unreasonable or mistaken). In the present case, the College exercised its academic freedom in dismissing Respondent for her refusal to comply with a directive to reassess a student's performance—a personnel decision they are free to make.

Of course, minimal judicial oversight does not mean colleges and universities can exercise their academic freedom without consequence. External factors, such as market forces and regulatory and licensing organizations like the NCAA, generally discourage college and university administrators from making decisions that, though they are legal in a constitutional sense, may be considered unreasonable or worthy of sanction.

CONCLUSION

The College did not violate Respondent's free speech rights by dismissing her refusing to comply with a grading directive. First of all, Respondent's act of issuing a grade does not constitute protected speech because such conduct is not inherently and politically expressive in nature. Secondly, though this is a case of first impression in this Court, lower courts have largely ruled against professors who claim free speech protection when dismissed for refusing to follow a university grading directive when the professor's refusal lacks any meaningful protest or advocacy. Third, because the College's academic freedom to decide how a course is taught means grades, and grading policies and procedures belong to the College, as well as the fact that Respondent's academic freedom does not include superseding the university's grading procedures, the doctrine of academic freedom does not apply under the circumstances. Fourth, based on the public employee doctrine, Respondent cannot bring a free speech claim against the College. In issuing a letter grade, she was not speaking in her role as a private citizen commenting on issues of public concern; rather, she was speaking pursuant to her official duties

as a public college professor. Finally, due to the important role colleges and universities play in shaping the minds of this Nation's future, this Court should refrain from impeding on freedom of the academy to pursue its lawful ends. Lower courts have also stressed the need for minimal judicial oversight in the arena of academics. Finally, there are other, less judicially intrusive means, such as free market forces and quasi-governmental regulatory agencies, that may serve as a check on unpopular, though lawful, university decisions.

PRAYER

For these reasons, Petitioner College of Southern Pemberley prays that this Court reverse the judgment of the U.S. Court of Appeals for the Sixteenth Circuit and render judgment in favor of Petitioner College of Southern Pemberley.

Respectfully Submitted,

/s/ Jesús N. Joslin

Jesús N. Joslin
Counsel of Record
Collins & Associates, LLP
One Camino Santa Maria
San Antonio, TX 78228
jjoslin3@mail.stmarytx.edu
512.736.4068

Counsel for Petitioner

CERTIFICATE OF SERVICE

Counsel for Petitioner certifies that this Brief has been prepared and served on all opposing counsel in compliance with the Rules of the 1L Moot Court Competition.

/s/ Jesús N. Joslin

Counsel for Petitioner