CAUSE NO. 19-1234

IN THE

SUPREME COURT OF THE UNITED STATES

MARCH TERM 2019

JEFFERSON MOORE UNIVERSITY

Petitioner,

v.

DR. A.J. RODRIGUEZ

Respondent.

ON WRIT OF CERTIRORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

I. Do Dr. Rodriguez's statements made on his private blog regarding new avenues of treatment for a medical condition trigger possible First Amendment protection?

II. If so, did Jefferson Moore University violate Dr. Rodriguez's free speech rights by terminating his employment due to the statements he made on his blog?

PARTIES TO THE PROCEEDING

Respondent, Dr. A.J. Rodriguez was the plaintiff before the United States District Court for the District of Gonzalez, and appellant before the United States Court of Appeals for the Fourteenth Circuit.

Petitioner, Jefferson Moore University was the defendant before the United States District Court for the District of Gonzalez, and appellee before the United States Court of Appeals for the Fourteenth Circuit.

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The United States District Court for the District of Gonzalez's Opinion and Order granting Defendant's Motion to Dismiss With Prejudice is unpublished. R. at 14. The United States Court of Appeals for the Fourteenth Circuit's Opinion and Order is unpublished. R. at 17.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on January 6, 2017. R. at 18. After Petitioner filed a Petition for Writ of Certiorari, this Court granted the Petition on November 13, 2018. R. at 19. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STANDARD OF REVIEW

This Court reviews a district court's fact findings for clear error and its legal conclusions *de novo.*

PROVISIONS INVOLVED

"Congress shall make no law… abridging the freedom of speech." U.S. Const. amend. I.

STATEMENT OF THE CASE

Jefferson Moore University (JMU) is a public research university. Dr. Rodriguez was, employed at JMU as an Assistant Professor of Medicine teaching in the department of surgery where he was responsible for teaching classes and "engaging in research, scholarship, and discourse to further the academic mission of the medical school." He also served as chairman of the medical school's task force on improving public access to medical care.

Dr. Rodriguez privately owned and operated a website (www.Arod.com) where he posted mostly personal topics and some references to medical topics. On December 25, 2014, Dr. Rodriguez posted a blog entry advocating alternative treatments for epilepsy. Dr. Rodriguez never discussed these theories nor mentioned his blog in class. JMU has no policy on faculty social media usage. Dr. Rodriguez did not identify as being affiliated with JMU on the website except for mentioning he was a professor in the biography section. To post on the blog, an email address is required and Rodriguez used his university email.

Following the post, a vigorous discussion ensued. The blog post went viral, receiving 50,000 views within days. A local news website also linked to the blog entry. Unbeknownst to Dr. Rodriguez, another doctor used the general statements in the blog post to treat a patient. The patient died as a result of the doctors treatment. During the subsequent wrongful death trial, the connection to Dr. Rodriguez's blog post led to negative publicity for Dr. Rodriguez and JMU, resulting in a student protest and one class being canceled.

On April 6, 2016, a few of Dr. Rodriguez's faculty colleagues wrote a derogatory letter calling for Rodriguez's dismissal. On April 25, 2016, JMU issued a press release announcing the firing of Rodriguez and attached the faculty letter to the release. Since the wrongful termination Rodriguez has not been able to find employment.

On June 16, 2016, Rodriguez filed suit against JMU in the District Court of Gonzalez asserting JMU violated his First Amendment rights for retaliating against his protected speech. JMU filed a motion to dismiss for failure to state a claim for reason that Dr. Rodriguez's speech was pursuant to his official duties, and therefore not constitutionally protected. The motion was granted. Rodriguez appealed, and the Court of Appeals for the Fourteenth Circuit reversed, holding Dr. Rodriguez's statements were academic in nature and implemented the academic exception, and that the *Pickering* balance of interests weighed in favor of Rodriguez. JMU filed petition for writ of certiorari which this Court granted.

SUMMARY OF THE ARGUMENTS

Petitioner, Jefferson Moore University, has committed a constitutional injustice against Respondent, Dr. A.J. Rodriguez. The Supreme Court has repeatedly held that public employees do not relinquish First Amendment rights by virtue of public employment. To determine whether a public employee's First Amendment rights have been violated *Pickering* requires the balancing of the employee's interest in speaking as a citizen on a matter of public concern against the interests of the employer in promoting efficiency in the services it performs. Speech made pursuant to the employee's official duties is employee speech, which was not protected, rather than citizen speech, which is protected. However, even if an employee spoke pursuant to his official duties an academic exception may apply if the speech relates to academic scholarship and teaching. Dr. Rodriguez's First Amendment rights were violated because he was speaking as a citizen on a matter of public concern, and the balance of interests weighs in his favor. Even if Dr. Rodriguez spoke pursuant to his official duties, the Appellate court was correct in applying the academic exception and holding the *Pickering* balancing test weighs in favor of Dr. Rodriguez.

ARGUMENTS

I. Dr. Rodriguez's statements made on his private blog regarding alternative treatments for a medical condition trigger First Amendment protections.

Public employees do not relinquish First Amendment rights by virtue of public employment. *Pickering v. Board of Ed. of Tp. High School Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968). Dr. Rodriguez's statements on his personal blog regarding alternative treatments for a medical condition trigger First Amendment protections because he spoke as a citizen rather than an employee, and the blog post covered a matter of public concern. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). Furthermore, even if Dr. Rodriguez spoke as an employee pursuant to his official duties, his speech relates to academic scholarship and falls under the academic exception mentioned in *Garcetti*, and therefore the *Pickering* test still applies. *Id.* at 425.

A. Dr. Rodriguez spoke as a citizen on a matter of public concern because his statements were not made pursuant to his official duties

To determine whether a public employee's First Amendment rights have been violated, the first inquiry is whether the speech in question is made as a citizen on matters of public concern. *Lane v. Franks*, 573 U.S. 228, 238 (2014).

The First Amendment was created to assure the uninhibited interchange of ideas. *Roth v. United States*, 354 U.S. 476, 484 (1957). The ability of citizens to speak on matters of public concern is protected by the First Amendment. *Garcetti*, 547 U.S. at 417. Speech of a citizen may trigger First Amendment protection, while speech as an employee affords no protection. *Id*. at 421. To determine if the public employee spoke as a citizen or employee, the controlling question is whether or not the employee spoke pursuant to his official duties. *Id*.

Garcetti held that when Ceballos, a calendar deputy, wrote a memo wherein he expressed concerns about the validity of a search warrant he was speaking pursuant to his official duties because it was part of his responsibilities as a calendar deputy to advise his supervisor about how best to proceed with a pending case. *Id*. In contrast, Dr. Rodriguez's official duties did not include posting on his blog or the topics of this post. Dr. Rodriguez's responsibilities at JMU are to teach classes and engage in research, scholarship, and discourse to further the academic mission of JMU. R. at 6. Dr. Rodriguez's job responsibilities say nothing about blogging or any other kind of public writing on behalf of JMU, and JMU has no policy on faculty social media usage. R. at 3. The record is unclear about Dr. Rodriguez's responsibilities as chairman of the medical school's task force on improving public access to medical care. It cannot be concluded that his responsibilities in this role required him to speak in the manner at hand without additional discovery.

The District Court found that Dr. Rodriguez's comments were made pursuant to his official duties because his responsibilities as professor included "engaging in research, scholarship, and discourse to further the academic mission of the medical school." R. at 14, 15. A similar argument was rejected by the Fourth Circuit Court of Appeals in *Adams v. Trustees of the University of North Carolina-Wilmington*, 640 F.3d 550, 564 (4th Cir. 2011). Adams, a professor, claimed he was denied a promotion due to his advocacy of social issues through extracurricular writing, television and radio appearances. *Id*. at 555. The university argued Adams's speech was made pursuant to his official duties because his position required him to engage in scholarship, research, and service, and his writing and public appearances fit into those categories. *Id*. at 564. The court held the connection between his speech and those duties was too thin to render Adams' speech pursuant to his official duties because the speech was not tied any

more to an official duty than the general concept that professors will engage in writing, public appearances, and service within their fields. *Id*.

Similarly, while Dr. Rodriguez has a responsibility to "engage in research, scholarship and discourse to further the academic mission of the medical school," R. at 6, the link between those duties and Dr. Rodriguez's speech is only a general one, and not closely tied to any specific duty such that the speech was to his official duties. *See Adams*, 640 F.3d at 564.

Additionally, Dr. Rodriguez's speech did not relate to special knowledge or experience he gained through his employment. The Third Circuit held that an employee's speech might be considered part of his duties if it relates to any special knowledge or experience acquired through his job. *Gorum v. Sessoms*, 561 F.3d 179, 185 (3rd Cir. 2009). The Appellate Court found that Professor Gorum was not speaking as a citizen when he advised a student on disciplinary measures because it was his special knowledge of and experience with the schools disciplinary code that made him "the defacto advisor" for students with disciplinary issues even though that role was not explicitly among his official duties. *Id*. at 186. Here, Dr. Rodriguez was a professor of medicine, and the blog was advocating chiropractic treatment of epilepsy in lieu of more traditional treatments. R. at 2, 8. Dr. Rodriguez had no special knowledge on the topic because he was not a chiropractor and taught no subjects on chiropractic.

Moreover, just because Dr. Rodriguez's statements covered medical issues does not make such statements pursuant to his official duties, and does not transform that speech into employee rather than citizen speech. *See Garcetti*, 547 U.S at 421 (stating speech concerning the subject matter of employment is not dispositive). The First Amendment protects some expression related to the speakers job. *Lane*, 573 U.S. at 239-240. The question posed in *Garcetti* was not whether the speech merely concerned the employee's duties, but whether it was ordinarily within the

scope of their duties. *Id*. at 240. In *Pickering*, the court made note that public employees are more likely to have informed opinions about issues relating to their employment than other members of the community, and it is essential they be able to speak freely on such questions. *Pickering* 391 U.S. at 572. Following this reasoning, as a doctor, Rodriguez is going to be more informed about medical issues than the average person, and to suppress such opinions from being voiced will not benefit the free flow of information the First Amendment so adamantly seeks to protect. Thus, when Dr. Rodriguez made the statements on his blog he was speaking as a citizen rather than as an employee speaking pursuant to his official duties.

B. The content, form, and context of the blog post show Dr. Rodriguez's statements were on a matter of public concern.

"Debate on public issues should be uninhibited, robust, and wide open." *New York Times Co. v. Sullivan*, 367 U.S. 254, 270 (1964). To determine whether speech addresses a matter of public concern, the Court must consider the content, form and context of the speech. *Connick v. Myers*, 461 U.S. 138, 147 (1983). The form and context of the speech cannot be separated as a basis for discharge of public employment. *Id*. at 147-148. Whether an employee's speech addresses matters of public concern must be determined by the record as a whole. *Id*. The controversial character of the speech is irrelevant in determining whether it is on a matter of public concern. *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

Speech addresses a matter of public concern if the content is a legitimate news interest, in other words, a subject of general interest, value, and concern to the public. *Lane*, 573 U.S. at 241. For example, topics such as culture, sex, feminism, and morality have been held to be matters of public concern because they are frequently discussed in the news. *Adams*, 640 F.3d at 564-565. Dr. Rodriguez's blog was a critique of medical professional's "myopic focus" on traditional treatments for epilepsy and suggested looking into chiropractic treatment as a possible

alternative. R. at 2, 8. Rodriguez's blog post generated 50,000 views in a matter of days and led to substantial debate within members of the public. R. at 3. A local news website even linked to the blog entry. R. at 3.

Like Adams, Rodriguez is a professor who spoke publicly on a legitimate news interest outside the scope of his official duties. It follows if Professor Adams' speech over aspects of religion and morality addressed matters of public concern the same must be said about Dr. Rodriguez's speech over alternative treatments for a medical disorder.

The form and context of the speech cannot be separated as a basis for discharge of public employment. *Connick*, 461 U.S. at 147-148. Whether an employee's speech addresses matters of public concern must be determined by the record as a whole. *Id*. For example, in *Connick*, after being transferred against her wishes, Myers circulated a questionnaire within the office during work hours which contained various issues including office moral, level of confidence in supervisors, and whether employees felt pressured to work in political campaigns. *Id*. at 141. The Court found that Myers's speech was a private complaint meant to gather ammunition to combat her superiors, and did not address a matter of public concern with an intent to inform the public about controversy in the District Attorney's office. *Id*. at 148.

The form of Rodriguez's speech differed from the questionnaire in *Connick*. Dr. Rodriguez's speech, made outside of the workplace, was in the form of an internet blog post open to the public to view. R. at 6. The questionnaire was circulated during work hours and only within the office to other assistant district attorneys. *Connick*, 461 U.S. at 153. The context of Myers's speech was one of personal vendetta against her superiors, *Id*. at 153, whereas Dr. Rodriguez was simply informing the public about alternative treatments to epilepsy on his own personal time and on a blog which he personally owned and operated. R. at 3. The content, form,

and context of Dr. Rodriguez's blog post clearly indicate the speech addressed a matter of public concern.

C. Dr. Rodriguez's statements are covered by an academic exception to the *Garcetti* rule because they relate to academic scholarship.

Under the First Amendment, the courts have consistently highlighted the importance of protecting academic freedom. *Keyishian v. Board of Regents of University of State of N.Y.*, 385 U.S. 589, 603 (1967). To restrict the academic freedom of professors and teachers would imperil the future of our nation. *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957). Justice Souter's dissent in *Garcetti* articulated the importance of protecting academic freedom in public colleges and universities where professor's speech and writing is necessarily pursuant to their official duties. *Garcetti*, 547 U.S. at 438. The Court acknowledged speech relating to academic scholarship or classroom instruction implicates additional constitutional interests and stated their holding might not apply in such instances. *Garcetti*, 547 U.S. at 425. Since then other courts have recognized this academic exception. *See e.g., Adams*, 640 F.3d at 563; *Demers v. Austin*, 746 F.3d 402, 411 (9th Cir. 2014). The academic exception applies when the speech of a public employee speaking pursuant to their official duties relates to academic scholarship or teaching. *Garcetti*, 547 U.S. at 425. Even if Dr. Rodriguez's speech was pursuant to his official duties, the Appellate court was correct in holding Dr. Rodriguez's statements were academic in nature and applying the academic exception. R. at 18.

In *Demers*, a professor was fired by a university for distributing a pamphlet advocating for the reorganization of his academic department. *Demers*, 746 F.3d at 414. The Ninth Circuit held Demers spoke pursuant to his official duties because he served on a university committee tasked with the same issue, but further held the speech to be covered by the academic exception

because the proposals in the pamphlet related to academic scholarship and teaching as they involved altering the nature of what was taught at the school. *Id*. at 415.

The *Adams* court recognized the academic exception, but found it was not necessary because professor Adam's speech was speaking as citizen addressing a matter of public concern. *Adams*, 640 F.3d at 565. In the ensuing discussion, the court noted Professor Adams' speech, which covered campus culture, sex, feminism, and morality involved scholarship and teaching. *Id*.

On the other hand, in *Savage v. Gee*, 665 F.3d 732, 739 (6th Cir. 2012), the plaintiff, who was Head of Reference and Library Instruction for The Ohio State University, was pressured to resign after suggesting a book for incoming freshmen that contained homophobic statements. *Id*. at 736. The plaintiff unsuccessfully attempted to apply the academic exception by arguing that his book recommendation related to academic scholarship and classroom instruction. *Id*. at 738. The court struck down this argument holding that Savage's book recommendation made as part of his committee service "was not related to classroom instruction and was only loosely, if at all, related to academic scholarship." *Id*. at 739.

The facts of *Demers* and *Adams* are more analogous to Dr. Rodriguez's situation than those in *Savage*. In the former, the speech related to academic scholarship and teaching because it expanded the knowledge of others over issues pertaining to academia. *See Demers*, 746 F.3d at 415 (Demers's proposal related to academic scholarship or teaching because if implemented it would alter the nature of what was taught and who was teaching it); *Adams*, 640 F.3d at 564 (recognizing that holding Adams's speech pursuant to his duties would underscore the problem in *Garcetti* that academic scholarship or teaching implicates additional constitutional protections). In the latter, the court held the plaintiff's speech, recommending a book to be

suggested to incoming freshmen, did not relate to academic scholarship and teaching. *Savage*, 665 F.3d at 739. Even if Dr. Rodriguez's statements were made pursuant to his duties, his speech relates to academic scholarship and teaching in that it promotes discussion about alternative treatments for a medical condition. R. at 8, 18. Thus, Dr. Rodriguez's are covered by an academic exception to the rule in *Garcetti*, and can be protected by the First Amendment under the *Pickering* test.

II. JMU was not justified in firing Dr. Rodriguez because Dr. Rodriguez's interest in speaking on a matter of public concern outweighs JMU's interest in promoting efficiency in the services it provides.

Because Dr. Rodriguez spoke as a citizen on a matter of public concern, the *Pickering* analysis next requires a balancing of the interest of Dr. Rodriguez in making the statements on his blog against the interest of JMU in promoting efficacy in the services it provides. *See Pickering* 391 U.S. at 568. Courts have laid out several factors to guide this analysis. First, courts will consider the time, place, and manner of the speech. *Connick*, 461 U.S. at 152. Second, whether the speech caused interference with work, personal relationships for which personal loyalty and confidence are necessary, or the speaker's job performance are all examined to determine the amount the speech might have detracted from the public employer's function. *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). Third, statements that undermine the organizations mission may be disruptive to the promotion of efficiency of public service and increase an employer's interest in regulating such statements. *Id*. at 390. Because the stated factors weigh in favor of Dr. Rodriguez, JMU violated Dr. Rodriguez's free speech rights by terminating his employment due to the statements he made on his blog.

A. The time, place, and manner of Dr. Rodriguez's statements as well as the context of the statements did not cause interference with J.M.U.'s operation.

The time, place, and manner of the speech are relevant to the balance of interests. *Connick,* 461 U.S. at 152. In *Connick*, this factor weighed in favor of the District Attorney's office because Myers's questionnaire was created and distributed within the workplace during work hours, which supported her supervisor's fears that the functioning of the office was endangered *Id*. at 153. In contrast, Dr. Rodriguez's blog was privately owned and operated, and the statements were made at Dr. Rodriguez's home on his own personal time. R. at 6. Dr. Rodriguez's situation is more like *Pickering* where the employee wrote a letter to the editor of a local newspaper on his own time outside of work. *Pickering*, 391 U.S. at 566. There, the Court weighed the balance of interests in favor of Pickering because there was no immediate disruption to operations or working relationships due to the indifferent reaction to the letter by other faculty members, and the fact the substance of the letter was not directed at any immediate supervisors or colleagues. *Id*.

The context of the speech in question is also relevant. *Connick*, 461 U.S. at 153. The Court noted the employee in *Connick* did not speak out of purely academic interest, but instead in retaliation for being transferred against her wishes. *Id*. Conversely, Dr. Rodriguez was in fact speaking purely out of academic interest, and there is no evidence his speech was in retaliation against a superior, or arose from any other circumstances that would lessen his interest against the interest of JMU. R. at 8.

Where there has been a delay of several months between the speech and the adverse action, the employer must display evidence of actual disruption. *Hulen v. Yates*, 322 F.3d 1229, 1238 (10th Cir. 2003). In *Hulen*, a tenured professor voiced his support for the revocation of a co-worker's tenure and was involuntarily transferred to another department two years later. *Id*. at 1237. The university claimed the speech caused disharmony in the accounting department, and

disrupted the efficient operations of the school. *Id*. at 1239. The court held although a government employer can rely on predictions of disruption this did not apply because the adverse action came several months after the protected speech. *Id*.; *See also Kent v. Martin*, 252 F.3d 1141, 1145-46 (10th Cir. 2001) (predictions of disruption inapplicable when the employer has continued to work after the protected speech).

Here, sixteen months passed between the blog post in question and Dr. Rodriguez's subsequent dismissal from JMU. R. at 8, 9. JMU's only stated reason for the dismissal was that Rodriguez disseminated advice inconsistent with the standards of JMU. R. at 9. JMU has offered scant evidence of actual disruption. The student protest and single class cancelation were a result of a wrongful death of a patient under the care of a doctor unknown to Dr. Rodriguez. R. at 3. Dr. Rodriguez in no way took part in the care of that patient. R. at 3. There are more realistic causes of death than the vague statements Dr. Rodriguez made on his blog. For example, malpractice or negligence on the part of the doctor could have been the cause of death.

Dr. Rodriguez's speech was made on his personal time away from work. The context of the speech was coming from purely academic interest, and JMU has not offered any evidence of actual disruption despite the fact that there has been a delay of several months. In light of these findings it follows that the time, place, and manner of Dr. Rodriguez's speech weighs in favor of Dr. Rodriguez's interests to speaking on matters of public concern.

B. Dr. Rodriguez's statements did not interfere with work, personal relationships for which personal loyalty and confidence are necessary, or his job performance.

The public employer's interest focuses on the effective functioning of the public services it performs. *Rankin*, 483 U.S. at 388. Interference with work, personal relationships for which

personal loyalty and confidence are necessary, or the speakers job performance can each detract from the public employer's function. *Id*.

Much like in *Pickering*, Dr. Rodriguez's statements did not affect his work or job performance because he never mentioned his beliefs as a professor in the classroom setting, R. at 4, and there is no evidence he was unable to effectively fulfil his responsibilities after posting the statements on his blog. Nor do Dr. Rodriguez's statements affect personal relationships for which personal loyalty and confidence are necessary. Rodriguez's beliefs about alternative treatments to epilepsy he expressed on his blog were previously known to his colleagues, yet there is no evidence any of his colleagues were motivated to write a letter calling for his dismissal until after the blog post received backlash. R. at 10. Clearly his colleagues were able to work and cohabitate just fine knowing his beliefs about alternative treatments to epilepsy. In fact, Dr. Rodriguez's colleagues admit he is a well-liked professor. R. at 10. It was only after JMU received negative publicity from the wrongful death of a patient under the care of another doctor did a few of Dr. Rodriguez's colleagues express concern about his beliefs. R. at 11. Furthermore, the record is silent on whether or not these colleagues work close enough with Dr. Rodriguez to form a relationship where personal loyalty and confidence are necessary. It is more than reasonable to assume that a university can function efficiently when not all of the professors employed share the same stance on every issue. See *Hulen*, 322 F.3d at 1239 (noting conflict is not unknown in a university setting due to autonomy of professors and the academic freedom they enjoy). For these reasons Dr. Rodriguez's speech did not interfere with work, personal relationships, or his job performance, and this factor weighs in favor of Dr. Rodriguez.

Furthermore, the more speech touches on matters of public concern the higher a showing of disruption will be needed to outweigh the interests of the speaker. *Connick*, 461 U.S. at 154.

The Court concluded Myers' speech only minimally touched on matters of public concern, and found the interests of the employer in promoting efficiency in the services it performs outweighed Myers' interest in making the speech. *Id*. As discussed earlier, Dr. Rodriguez's speech substantially involved a matter of public concern. A student protest and a single class cancelation is not enough to suppress Dr. Rodriguez's free speech rights. College campuses are environments where debate over controversial issues are welcomed. *Sweezy,* 354 U.S. at 250. There is scant evidence in the record to show JMU's operation has been damaged to a point where constitutionally protected speech warrants suppression. For the interests of JMU to outweigh the interests of Dr. Rodriguez speech on a matter of public concern a higher showing of disruption is required, and JMU has not made such a showing. *See Connick*, 461 U.S. at 154.

C. Dr. Rodriguez's statements did not undermine the mission of JMU.

Statements which undermine the mission of the public employer may be disruptive to the promotion of efficiency in the services it provides. *Rankin*, 483 U.S. at 390. However, the employee's responsibilities within the organization are relevant in respect to disciplinary action taken for such statements. *Id*. Where an employee does not hold a confidential, policy making, or public contact role, the danger statements which undermine the organization's mission pose to the operation of that organization are minimal. *Id*.

In *Rankin*, a clerical employee at a Constable's office was fired when a statement she made,where she expressed support for an attempted assassination of the President was overheard by a co-worker who reported it to their superior. *Id*. at 381-382. Although the Court recognized the state's interest of having employees worthy of working in law enforcement, it held the Constable was not justified in firing McPherson because she held no confidential, policy making, or public contact role, thus any potential danger to the employer's mission posed by her

statements was extremely limited. *Id*. at 392. Her interests in speaking on a matter of public concern outweighed the interest of the Constable. *Id*.

Dr. Rodriguez's statements did not undermine JMU's mission statement. Although the record is silent on what the mission statement of JMU was at the time Dr. Rodriguez posted the blog, the record does include the mission statement recently adopted by JMU. R. at 11. Part of the current mission statement states JMU strives to "foster intellectual curiosity to actively explore the acquisition of new knowledge and skills," and to have a "welcoming and inclusive learning environment." R. at 11. Parts of Dr. Rodriguez's blog posts states "that substantial numbers of epilepsy patients have reported incredible results from systematic chiropractic treatments" and he calls for doctors to "discuss less invasive and alternative treatments." R. at 11. Dr. Rodriguez's advocacy of alternatives treatments to epilepsy show he is directly adhering to JMU's mission statement. A look into a possible new viable avenue of medical treatment demonstrates Dr. Rodriguez's intellectual curiosity in the acquisition of new knowledge and skills that JMU strives to achieve. Dr. Rodriguez's statements on his blog did not undermine the mission of JMU, therefore, the balance of interests weighs in favor of Dr. Rodriguez.

Under the second prong of the *Pickering* analysis courts must weigh the interests of an employer in promoting efficiency in the services it performs against the interests of an employee on speaking on a matter of public concern. *Pickering* 391 U.S. at 568. Because the three factors mentioned above all weigh in favor of Dr. Rodriguez, JMU was not justified in terminating Rodriguez's employment.

CONCLUSION

Petitioner Jefferson Moore University has violated respondent Dr. A.J. Rodriguez's First Amendment rights by terminating his employment in response to statements he made on a blog.

R. at 9. Dr. Rodriguez's statements require First Amendment protections because he spoke as a citizen on a matter of public concern, and the balance of interests weigh in his favor. *See Garcetti*, 547 U.S. at 418; *Pickering* 391 U.S. at 568. Even if Dr. Rodriguez in fact spoke as an employee pursuant to his duties, his comments related to academic scholarship and are covered by the academic exception to the rule in *Garcetti*, and therefore the *Pickering* test still applies. *Garcetti*, 547 U.S. at 425. For the reasons stated above, the judgement and order of the Court of Appeals should be affirmed.

Respectfully submitted
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CERTIFICATE OF SERVICE

Undersigned counsel for Petitioner certifies that this brief has been prepared and served upon all opposing counsel in compliance with the Rules of the Supreme Court of the United States by certified mail on the 9th day of March 2017.

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