

Academic Freedom and Public-Employee Speech Rights at Public Universities: Understanding and Applying the Law

Institute for Academic Leadership

Howey-in-the-Hills, Florida

September 15, 2026

Copyright © 2026 Clay Calvert

Roadmap

- **Profs in the News After Charlie Kirk's Assassination**
- **Three Recent Rulings Involving Professors' Speech**
- **Different Conceptions of Academic Freedom**
- **Public-Employee Speech Rights Framework**
- **Return to Analyze the Three Recent Rulings**

Profs in the News



Subscribe

Log In



● July 30, 2026

Fired Over Speech, Professors Take Their Employers to Court—and Win

The recent spate of censorship and academic freedom violations is the worst since the McCarthy era, according to one lawyer. But as faculty rack up legal victories, universities may start to think twice before punishing extramural speech.

By [Emma Whitford](#)

Profs in the News

The Washington Post
Democracy Dies in Darkness

Higher Education

Professor reaches \$1.9M settlement after being fired for criticizing Charlie Kirk

The former University of Tennessee at Knoxville anthropology professor, who sued the school on First Amendment grounds, is the latest person to prevail in such litigation.

June 30, 2026

Profs in the News

The University of Tennessee at Knoxville reached a \$1.9 million settlement with a former professor who was fired after she criticized slain conservative activist Charlie Kirk.

Tamar Shirinian, who had been an anthropology professor at the university, sued the university's chancellor, the state university system president and the faculty senate president, claiming that the school violated her constitutional rights by retaliating against her. Her lawsuit said her speech was protected by the First Amendment.

Profs in the News

The New York Times

Jan. 7, 2026

University to Pay \$500,000 to Professor It Fired Over Charlie Kirk Post

Austin Peay State University in Tennessee also reinstated Darren Michael, a tenured acting professor whose post about Mr. Kirk's killing inflamed conservatives.

Profs in the News

South Carolina DAILY GAZETTE

[COURTS](#)[ECONOMY](#)[EDUCATION](#)[ENVIRONMENT & HEALTH](#)[STATEHOUSE](#)[COURTS](#)[EDUCATION](#)

Clemson professor fired over Charlie Kirk post will get paid but won't teach

The professor must resign at semester's end under a settlement agreement. Two other fired Clemson employees didn't sue.

BY: **SKYLAR LAIRD** - JANUARY 8, 2026 4:31 PM



Profs in the News

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

JOSHUA BREGY V. BOARD OF TRUSTEES OF CLEMSON UNIVERSITY, ET AL.

Docket No. 8:25-cv-12810-JDA

MEDIATED SETTLEMENT AGREEMENT

As a result of mediation, the parties have agreed as follows:

1. All defendants will be dismissed at this time with prejudice, except for Defendant Robert H. Jones, as the acting President and Chief Executive of Clemson University.
2. Clemson University hereby rescinds Plaintiff's September 26, 2025 termination. Plaintiff hereby irrevocably resigns his employment at Clemson University, effective May 15, 2026. Clemson University hereby accepts his resignation.
3. Plaintiff hereby dismisses his pending grievance against Robert H. Jones and agrees not to assert or reassert any grievance arising from the facts alleged in his Complaint in this matter. Recognizing that the grievance process would occupy a majority of the Spring semester, Plaintiff shall receive his contractual pay with benefits, less deductions for taxes and benefits, through May 15, 2026.

Profs in the News

4. Plaintiff shall have no teaching, research, faculty obligations, or interactions with students through May 15, 2026. Through May 15, 2026, Plaintiff may continue to use Clemson University as his institutional affiliation for purposes of any pending grants.
5. Defendant Robert H. Jones while employed at Clemson University will issue, upon request, positive letters of recommendation to Plaintiff's potential employers recommending Plaintiff's employment based on the Plaintiff's classroom teaching.

Profs in the News

[NEWS](#)[WEATHER](#)[SPORTS](#)[COMMUNITY](#)[WISHES WORK](#)

Fired professor sues UALR officials after her termination for Charlie Kirk posts

by Thomas Farrar | Fri, May 29, 2026 at 1:07 PM

Updated Fri, May 29, 2026 at 1:08 PM



Profs in the News

"It never fails," Branch said in one of several now-deleted posts. "I will not pull back from CELEBRATING that an evil man died by the method he chose to embrace."

The post references [Psalm 109](#), a Bible passage she described as calling for justice in the face of evil.



In another Facebook post, Branch appears to compare those mourning Kirk's death to the Ku Klux Klan. The caption reads "we certainly see you."

Public officials condemned the posts. Attorney General Tim Griffin posted screenshots to his Facebook page, calling them

Profs in the News



← **Post**



Sarah Huckabee Sanders ✓



@SarahHuckabee

Felicia Branch, an Arkansas law professor, publicly celebrated the assassination of Charlie Kirk.

Her comments are vile, disgusting, and unacceptable - she must be fired immediately.

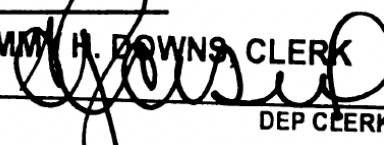
7:11 PM · Sep 16, 2025 · **234.1K** Views

Profs in the News

IN THE UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF ARKANSAS CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 26 2026

TAMM H. DOWNS, CLERK
By:  DEP. CLERK

FELICIA BRANCH,

v.

CASE NO.: *4:26-cv-535-JM*

PLAINTIFF

UNIVERSITY OF ARKANSAS AT LITTLE ROCK,

COLIN CRAWFORD,
in his individual and official capacities;

DEFENDANTS.

CHRISTINA S. DRALE,
in her individual and official capacities; and

TIM GRIFFIN,
in his individual capacity,

COMPLAINT

Profs in the News

COUNT I: First Amendment Retaliation / Viewpoint-Based Termination

42 U.S.C. § 1983

***Against Defendants University of Arkansas at Little Rock, Colin Crawford, and
Christina S. Drale***

77. Plaintiff incorporates by reference paragraphs 1 through 76 as though fully set forth herein.

78. At all relevant times, Branch engaged in activity protected by the First Amendment. Her Facebook posts were made from her personal account, outside the performance of her faculty and clinic duties, and did not constitute official University speech, classroom instruction, clinic advice, client communication, or any other speech made pursuant to her assigned professional responsibilities.

Profs in the News

81. Branch's speech addressed matters of public concern. Her posts concerned Charlie Kirk, a public figure, and broader public, political, and social issues arising from his death and public legacy. Even if defendants considered the speech offensive, harsh, or controversial, its character as public-concern speech did not disappear for that reason.

82. The controversial, offensive, or unpopular character of speech does not remove it from First Amendment protection or from public-concern status. See *Rankin v. McPherson*, 483 U.S. 378, 387 (1987). Accordingly, even if Defendants regarded Branch's speech as harsh, offensive, or deeply misguided, that reaction did not eliminate its constitutional protection.

Three Recent Rulings

- *Hook v. Rave* (D. South Dakota 2025)
- *Reges v. Cauce* (9th Circuit 2026)
- *Corlett v. Tong* (S.D. California 2025)

Hook v. Rave (D. South Dakota 2025)

**Firing a Tenured Professor
For a Facebook Post
After Charlie Kirk's Killing**

Hook v. Rave (D. South Dakota 2025)

Okay. I don't give a flying f*** about this Kirk person. Apparently he was a hate spreading Nazi. I wasn't paying close enough attention to the idiotic right fringe to even know who he was. I'm sorry for his family that he was a hate spreading Nazi and got killed. I'm sure they deserved better. Maybe good people could now enter their lives. But geez, where was all this concern when the politicians in Minnesota were shot? And the school shootings? And Capitol Police? I have no thoughts or prayers for this hate spreading Nazi. A shrug, maybe.

Reges v. Cauce (9th Circuit 2026)

**Parody Mocking a University's
Land Acknowledgment Statement
Included in a Course Syllabus**

Reges v. Cauce (9th Circuit 2026)

“I acknowledge that by the labor theory of property the Coast Salish people can claim historical ownership of almost none of the land currently occupied by the University of Washington.”

Corlett v. Tong

(S.D. Cal. 2025)

**The N-Word Using,
Gender-Slurring Professor**

Corlett v. Tong

(S.D. Cal. 2025)

- N-Word repeatedly used by professor in an entry-level, gen-ed philosophy class at SDSU (*Critical Thinking and Composition*) to explore the “use-mention distinction.”

Corlett v. Tong

(S.D. Cal. 2025)

- Also used “p---y” and “bitch” in an upper-division and grad-level philosophy course (*Political Philosophy*) to refer to people or groups of people as weak or not assertive.

Academic Freedom

**Professional
Norm**

v.

**Legal
Right**

- AAUP Statements

- Judicial Opinions
- CBAs (Contracts)

“the freedom of a teacher or researcher in higher education to investigate and discuss the issues in his or her academic field, and to teach or publish findings without interference from political figures, boards of trustees, donors, or other entities.”

<https://www.aaup.org/programs/academic-freedom/faqs-academic-freedom>



AAUP's 1940 Statement of Principles on Academic Freedom

“Teachers are entitled to freedom in the **classroom** in discussing **their subject**, but they should be careful not to introduce into their teaching **controversial matter** which has **no relation to their subject.**”

Legal Perspectives on Academic Freedom

- Rhetorically Rich, Doctrinally Deficient
- First Amendment Right *or* Value?
- Institutional Right *or* Individual Right?

Rhetorically Rich

Two aging subversive persons and
loyalty oath cases involving

Profs. **Paul Sweezy** (Marxist economist)
& **Harry Keyishian** (English professor).



**Paul Sweezy (L, facing camera)
& Harry Keyishian (R)**

Sweezy v. New Hampshire (1957)

“The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth.”

Sweezy v. New Hampshire (1957)

“To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.”

Sweezy v. New Hampshire (1957)

“Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”

Frankfurter's Concurrence

4 Essential Freedoms of a University:
To determine for itself . . .

- 1) *who* may teach;
- 2) *what* may be taught;
- 3) *how* it shall be taught; and
- 4) *who* may be admitted to study.

Keyishian v. Bd. of Regents (1967)

“Our Nation is deeply committed to safeguarding *academic freedom*, which is of *transcendent value* to all of us and not merely to the teachers concerned.”

Keyishian v. Bd. of Regents (1967)

“That freedom is therefore a *special concern* of the First Amendment, which does **not tolerate** laws that cast a **pall of orthodoxy** over the classroom.”

Doctrinally Deficient

“At present . . . the doctrine of academic freedom stands in a state of *shocking disarray* and *incoherence*.”

Robert Post

Doctrinally Deficient

Pernell v. Florida Bd. of Governors

(11th Cir. July 2026)

these declarations about its importance, the Supreme Court's discussions of the nature of academic freedom are murky at best: "Lacking definition or guiding principle, the doctrine floats in the law, picking up decisions as a hull does barnacles." J. Peter Byrne, *Academic Freedom: A "Special Concern of the First Amendment,"* 99 Yale L.J. 251, 253 (1989). But the fact remains that these decisions are unequivocal in their recognition that the First Amendment protects at least some core aspects of teaching and scholarship, even in public universities. Extending *Garcetti*'s rationale to allow

Two Strands of Legal Doctrines

I. Academic Freedom

- “special concern” of the First Amendment
- “constitutional value” + “transcendent value”
- “restrained judicial review” of decisions

II. Freedom of Speech

- Public Institution v. Private Institution
- Professors & Public-Employee Speech Rights
- Speaking Inside the Classroom
- Speaking Outside the Classroom

Public-Employee Speech Rights: *Pickering/Connick/Garcetti* Framework

1. **Speaking as a . . .**

Private Citizen *or* Pursuant to Job Duties?*

2. **Speaking about a matter of . . .**

Personal Interest *or* Public Concern?

3. **Weigh Competing Interests**

[Depending on Answers to 1 & 2]

*Academic Freedom Exception/Carveout to No. 1?

Private Citizen / Public Concern

When A Public Employee Is Most Protected

“So long as employees are speaking as *citizens* about matters of *public concern*, they must face only those speech restrictions that are *necessary* for their employers to operate *efficiently* and *effectively*.”

Garcetti v. Ceballos (2006)

Matters of Public Concern

- Speech that can “be *fairly considered* as relating to *any matter* of political, social, or *other concern* to the community”

OR

- is “subject of *legitimate news interest*; that is, a subject of general interest and of value and concern to the public.”

Garcetti v. Ceballos (2006)

Bad News

“[W]hen public employees make statements pursuant to their *official duties*, the employees are *not* speaking as citizens for First Amendment purposes, and the Constitution does *not* insulate their communications from employer discipline.”

Garcetti v. Ceballos (2006)

Good News

“There is some argument that expression related to *academic scholarship* OR *classroom instruction* implicates *additional constitutional interests* that are not fully accounted for by this Court’s customary employee-speech jurisprudence.”

Garcetti v. Ceballos (2006)

“We need *not* . . . decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to *scholarship* OR *teaching*.”

Lower Courts After *Garcetti*

Seven federal appellate courts hold that *Garcetti's* rule does **NOT** apply to *classroom teaching* and *academic writing* at public universities (2nd, 4th, 5th, 6th, 7th, 9th & 11th Circuits). Profs possess *qualified* First Amendment speech rights in these two contexts. Amounts to an *academic freedom exception/carveout* from the first step.

Public-Employee Speech Rights: *Pickering/Connick/Garcetti* Issues

1. ~~Speaking as a . . .~~

~~Private Citizen or Pursuant to Job Duties?*~~

2. ~~Speaking about a matter of . . .~~

~~Personal Interest or Public Concern?~~

3. ~~Weigh Competing Interests~~

~~[Depending on Answers to 1 & 2]~~

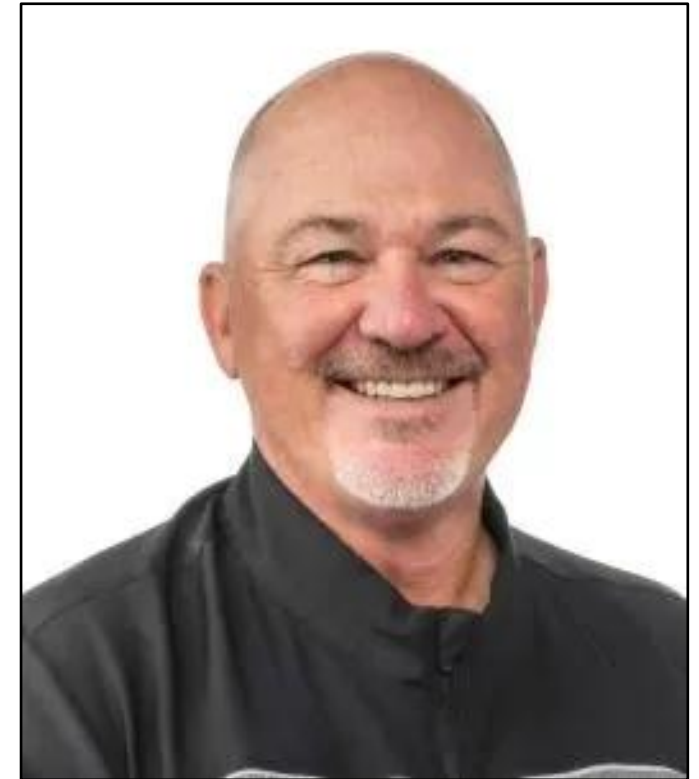
*Academic Freedom Exception/Carveout to No. 1

*Hook v.
Rave
(2025)*

Plaintiff

**Phillip Michael
Hook, MFA**

**Professor of Art
Univ. of South Dakota**



Hook v. Rave (D. South Dakota 2025)

Okay. I don't give a flying f*** about this Kirk person. Apparently he was a hate spreading Nazi. I wasn't paying close enough attention to the idiotic right fringe to even know who he was. I'm sorry for his family that he was a hate spreading Nazi and got killed. I'm sure they deserved better. Maybe good people could now enter their lives. But geez, where was all this concern when the politicians in Minnesota were shot? And the school shootings? And Capitol Police? I have no thoughts or prayers for this hate spreading Nazi. A shrug, maybe.

Hook v. Rave (D. South Dakota 2025)

- **At Home**
- **Off Work**
- **On Facebook (private account)**

Hook v. Rave (D. South Dakota 2025)

**Hook deleted the post three hours later
and posted an apology, but the original
post was screenshotted and . . .**

Hook v. Rave (D. South Dakota 2025)

Reaction

- **South Dakota House Speaker Jon Hansen:**

“I immediately reached out to USD President Sheila Gestring and called on the professor to be fired.”

- **South Dakota Governor Larry Rhoden:**

“When I read this post, I was shaking mad. The Board of Regents intends to FIRE this University of South Dakota professor, and I’m glad.”

Hook v. Rave (D. South Dakota 2025)

University's Official Response

Dean of College of Fine Arts sends a letter to Hook notifying him the dean's "intent to terminate [Hook's] contract as Professor with The University of South Dakota" for violating a South Dakota Bd. of Regents policy.

Hook v. Rave (D. South Dakota 2025)

SDBOR Policy 4.4.8

“Neglect of duty, misconduct, incompetence, abuse of power or other actions that manifest an unfitness to discharge the trust reposed in public university faculty members or to perform assigned duties.”

Hook v. Rave (D. South Dakota 2025)

The dean's letter specified that evidence of violating the policy "includes a social media post from [Hook's] personal account that we have attached as an addendum for reference."

Hook v. Rave (D. South Dakota 2025)

- Placed on admin. leave pending final decision.
- Hook sues “seeking injunctive relief based on a single claim of unconstitutional retaliation against core political speech in violation of the First Amendment.”

Hook v. Rave (D. South Dakota 2025)

First Amendment Retaliation Claim

- 1. Engaged in Protected Speech**
- 2. Suffered an Adverse Employment Action**
- 3. Protected Speech Was a Substantial Motivating Factor**

Hook v. Rave (D. South Dakota 2025)

Was Hook Engaged in Protected Speech?

Analysis of US District Judge Karen Schreier

“To determine whether Hook’s speech is entitled to First Amendment protection, the court must first determine whether Hook ‘spoke as a citizen on a matter of public concern.’”

Hook v. Rave (D. South Dakota 2025)

“As a Citizen” Analysis

- “While at home and off work . . .”
- “Hook’s Facebook page identified himself as a professor at the University of South Dakota . . . but this alone does not show that a post made on his personal Facebook account is speech that arises from Hook’s duties as a professor.”

Hook v. Rave (D. South Dakota 2025)

“Public Concern” Analysis

- “post discussed the murder of a public figure—Charlie Kirk—and went on to question the difference in reactions between the murder of Kirk and other recent public murders and shootings.”

Hook v. Rave (D. South Dakota 2025)

“Public Concern” Analysis

- “This is speech that can ‘be fairly considered as relating to any matter of political, social, or other concern to the community.’”

Hook v. Rave (D. South Dakota 2025)

Conclusion on Steps 1 & 2

“Hook spoke as a citizen and on a matter of public concern . . .”

Hook v. Rave (D. South Dakota 2025)

Next Step in Analysis

“whether defendants have ‘produced evidence to indicate the speech had an adverse impact on the efficiency of the [University’s] operations.’”

Hook v. Rave (D. South Dakota 2025)

Next Step in Analysis

“If the court determines there is an adverse impact, then the court applies the balancing test laid out in *Pickering*.”

Hook v. Rave (D. South Dakota 2025)

University's Argument

“in the days following Hook’s post, ‘hundreds of calls and message were made to the Board of Regents and/or the University of South Dakota commenting negatively regarding the comment or calling for the removal of Professor Hook.’”

Hook v. Rave (D. South Dakota 2025)

Judge Schreier's Analysis

“[m]ere allegations the speech disrupted the workplace or affected morale, without evidentiary support, are insufficient.”

Hook v. Rave (D. South Dakota 2025)

Judge Schreier's Analysis

“Defendants have not demonstrated that there was any disruption to on-campus activities, Hook’s teaching lessons, or the University’s operations.”

Hook v. Rave (D. South Dakota 2025)

Judge Schreier's Analysis

“And without more, such ‘vague and conclusory’ concerns . . . runs the risk of constitutionalizing a heckler’s veto.”

Hook v. Rave (D. South Dakota 2025)

Judge Schreier's Conclusion

- No need to balance the interests
- Hook's post was a **substantial or motivating factor** in the University's decision to place Hook on **administrative leave** and notify him of their intention to fire him.

Hook v. Rave (D. South Dakota 2025)

Judge Schreier's Conclusion

Grants temporary restraining order (TRO) in Hook's favor on Sept. 24 requiring University to set aside the administrative leave and reinstate Hook as Professor of Art until the court hears Hook's motion for a preliminary injunction on October 8.

Hook v. Rave (D. South Dakota 2025)

University Drops Actions Against Hook

October 3, 2025

“We have taken into consideration your remorse for the post, your past record of service, and the university’s interest in efficient operations. Based upon these factors, the university, in consultation with the Board of Regents, hereby withdraws its intent to terminate your contract.”

Hook v. Rave (D. South Dakota 2025)

Case 4:25-cv-04188-KES Document 23 Filed 10/07/25 Page 1 of 1 PageID #: 149

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PHILLIP MICHAEL HOOK,

Plaintiff,

vs.

TIM RAVE, in his official capacity as
President of the South Dakota Board of
Regents; SHEILA K. GESTRING, in her
official capacity as President of the
University of South Dakota; and
BRUCE KELLEY, in his official capacity
as Dean of the University of South
Dakota College of Fine Arts,

Defendants.

4:25-CV-04188-KES

JUDGMENT OF DISMISSAL

Pursuant to plaintiff's notice of dismissal (Docket 22), it is

ORDERED, ADJUDGED, and DECREED that the above-entitled action is
dismissed without prejudice, without further notice or hearing, and the parties
shall bear their own costs.

DATED October 7, 2025.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

*Reges v.
Cauce*
(2024)

Protagonist
Professorial
Plaintiff

Stuart Reges

Teaching Professor
Paul G. Allen School of
Computer Science &
Engineering
University of Washington



Reges v. Cauce (9th Circuit 2026)

Object of Plaintiff's Ire

UW Allen School's Suggested Syllabus

“Indigenous Land Acknowledgment Statement”

Reges v. Cauce (9th Circuit 2026)

Suggested (“Best Practices”) Syllabus “Indigenous Land Acknowledgment Statement”

“The University of Washington acknowledges the Coast Salish peoples of this land, the land which touches the shared waters of all tribes and bands within the Suquamish, Tulalip and Muckleshoot nations.”

Reges v. Cauce (9th Circuit 2026)

Statement Reges Includes in His Syllabus
(a required course for some majors)

“I acknowledge that by the labor theory of property the Coast Salish people can claim historical ownership of almost none of the land currently occupied by the University of Washington.”

Reges v. Cauce (9th Circuit 2026)

Reaction to Syllabus Statement

“Students, faculty, staff, and teaching assistants contacted UW administrators. . . The Allen School’s recruiter for diversity and access . . . expressed concern to Defendant Balazinska* that Plaintiff’s statement undermined their function within the Allen School.”

*** Director of the Allen School**

Reges v. Cauce (9th Circuit 2026)

Reaction to Syllabus Statement

“Multiple Native American students expressed feelings of being targeted by the statement, and one felt compelled to drop out of UW.”*

*** Appellate Court:** “The record does not support the existence of the second student who reportedly dropped out.”

Reges v. Cauce (9th Circuit 2026)

Reaction to Syllabus Statement

Union representing Allen School TAs files a complaint, alleging statement violates an antidiscrimination provision in the CBA.

Reges v. Cauce (9th Circuit 2026)

Response from Administration

- Created alternative section with a different instructor
- About 170 of about 500 students transfer to it (the alternative section meets at 8:00 a.m.)
- After formal investigation, Reges warned that if he includes his statement again, it will be treated as an intentional violation of UW faculty code.
- Reges intends to include it again

Reges v. Cauce (9th Circuit 2026)

Response from Administration

- Let him post his parody of a land acknowledgment statement by his office door and let him include it in the signature block of his emails.

Reges v. Cauce (9th Circuit 2026)

Reges Sues UW: First Amendment Retaliation Claim

- 1) Engaged in Protected Speech**
- 2) Suffered an Adverse Employment Action**
- 3) Protected Speech Was a Substantial Motivating Factor**

FIRE represents Reges

Reges v. Cauce (9th Circuit 2026)

Key Issue

**Was the Parody Land Acknowledgment Statement
Included in Reges's Syllabus Protected Expression?**

Reges v. Cauce (9th Circuit 2026)

More Specifically . . .

Who should prevail under the *Pickering/Connick* balancing test, when weighing Reges's First Amendment right to speak out on a matter of public concern against UW's right to effectively and efficiently deliver its services to the public?

Reges v. Cauce (9th Circuit 2026)

Two to One In Favor of Stuart Reges

Majority: Judges Daniel A. Bress* & Milan D. Smith**

Dissent: Sidney R. Thomas***

* Donald Trump

** George W. Bush

*** Bill Clinton

Reges v. Cauce (9th Circuit 2026)

Majority Conclusion

“The statements, which mocked the university’s model syllabus statement on an issue of public concern, caused offense in the university community. Yet debate and disagreement are hallmarks of higher education. . . .

Reges v. Cauce (9th Circuit 2026)

Majority Conclusion

Student discomfort with a professor's views can prompt discussion and disapproval. But this discomfort is not grounds for the university retaliating against the professor.”

Reges v. Cauce (9th Circuit 2026)

Majority on Reges's 1st Amend. Interests

“He included a parody land acknowledgment in his syllabus to comment on the propriety of land acknowledgments, to challenge the Allen School’s recommendation to include a land acknowledgment on syllabi, and to question for the factual basis . . .

Reges v. Cauce (9th Circuit 2026)

Majority on Reges's 1st Amend. Interests for UW's land acknowledgment. Reges also sought to situate land acknowledgments within a broader agenda of 'diversity, equity, and inclusion,' which he opposes."

Reges v. Cauce (9th Circuit 2026)

Majority on Reges's 1st Amend. Interests

“Reges’s statement sought to contribute to the debate on land acknowledgments and the culture that promotes them.”

Reges v. Cauce (9th Circuit 2026)

Majority on Reges's 1st Amend. Interests

**“Reges’s speech had significant
First Amendment value.”**

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

Universities are Different: “What counts as a legitimate administrative interest in managing a police department, for example, does not necessarily carry over to the public university setting.”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“It is readily apparent that the disruption that occurred at UW after Reges included his land acknowledgment in his Winter 2022 syllabus is attributable to one irreducible source: student discomfort and anger with Reges’s views.”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“In the public university setting, student disagreement with a professor’s academic speech on an issue of public concern cannot alter the *Pickering* analysis in the government’s favor. The reason is foundational: the First Amendment’s protections for academic freedom in public universities will necessarily lead to disagreements on campus.”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“Student unrest is an inevitable byproduct of our core First Amendment safeguards in the higher education context. This unrest therefore cannot be the type of disruption that permits restricting or punishing a professor's academic speech.”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“If student anxiety or outrage toward a professor’s academic speech could justify restricting what a professor says, then universities would cease to occupy any ‘special niche’ in our First Amendment traditions. . . . Student discontent that leads university administrators to censor professors would ‘cast a pall of orthodoxy over the classroom.’”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“It is speculative whether the university faced or would face difficulties recruiting Native students because of a statement on Reges’s Winter 2022 computer science syllabus. UW has supplied no concrete evidence supporting this speculation.”

Reges v. Cauce (9th Circuit 2026)

Majority on UW's Interests

“As for the second student, it appears undisputed that this student does not exist. . . . suffice it to say, the university cannot justify retaliating against Reges based on a phantom evidence of disruption.”

Reges v. Cauce (9th Circuit 2026)

Dissent's View

“Universities have a responsibility to protect their students. This University, like other universities in the American West, has a particular obligation to its Native students. . . .

Reges v. Cauce (9th Circuit 2026)

Dissent's View

The disruption Reges's speech caused to Native students' learning outweighed his own First Amendment interests."

Reges v. Cauce (9th Circuit 2026)

Dissent's View

**“Educating and enrolling Native students is a core part of the University’s ‘mission,’ as well as the ‘effective functioning’ of its ‘operations.’
... Universities have a responsibility to educate all of their students. . . .**

Reges v. Cauce (9th Circuit 2026)

Dissent's View

American universities, especially in the West, have a special responsibility to their Native students.”

Reges v. Cauce (9th Circuit 2026)

Dissent's View

“Reges has not argued that the propriety of land acknowledgments on syllabi is remotely related to the fundamentals of computer science. The University has an interest . . .

Reges v. Cauce (9th Circuit 2026)

Dissent's View

in their students learning about topics related to their classes, rather than engaging in whatever controversial discussion their professor feels like having.”

Reges v. Cauce (9th Circuit 2026)

Dissent's View

“The only forum the University disallowed him from repeating his ‘land acknowledgment’ was a syllabus for an introduction to computer science course—a course that is required for certain majors. . . .

Reges v. Cauce (9th Circuit 2026)

Dissent's View

Reges's interest in speaking about land acknowledgments in this single forum does not outweigh the University's interest in avoiding disruption to its Native students' learning."

Reges v. Cauce (9th Circuit 2026)

Dissent's View

“Student learning is the heart of any university’s mission, and it is common sense that students do not learn well when they experience extreme distress, as happened here.

Reges v. Cauce (9th Circuit 2026)

Dissent's View

In a case like this, where student unrest went beyond mere offense and rose to the level of distress and absences, and where the University's particular responsibility to Native students is implicated, such disruption can outweigh a professor's speech interests."

*Corlett v.
Tong*
(S.D. Cal.
2025)

**Protagonist
Professorial
Plaintiff**

J. Angelo Corlett

**Prof. of Philosophy
& Ethics
San Diego State Univ.**



Corlett v. Tong

(S.D. Cal. 2025)

- **Racial Slur:** Uses N-Word in an entry-level, gen-ed philosophy class at SDSU (*Critical Thinking and Composition*) to explore the “use-mention distinction.”

Corlett v. Tong

(S.D. Cal. 2025)

Use-Mention Distinction: Tong claims he just “mentioned” the N-Word in class and was not “using” it to refer to a person or object when he was teaching the difference between racist and racial language.

Corlett v. Tong

(S.D. Cal. 2025)

- **Gender Slurs:** Used “p---y” and “bitch” in an upper-division and grad-level philosophy course (*Political Philosophy*) to refer to people or groups of people as weak or not assertive.

Corlett v. Tong

(S.D. Cal. 2025)

Punishment/Discipline

- **Reassignment of Classes for N-Word**
- **One-Semester Suspension Without Pay
for Gender-Based Slurs**

Corlett v. Tong (S.D. Cal. 2025)

Corlett Files Lawsuit

First Amendment Retaliation Claim

- 1. Engaged in Protected Speech**
- 2. Suffered an Adverse Employment Action**
- 3. Protected Speech Was a Substantial Motivating Factor**

Corlett v. Tong (S.D. Cal. 2025)

**Does Corlett Prevail Against
SDSU's Motion for
Judgment on Pleadings
(akin to an MTD)?**

Corlett v. Tong (S.D. Cal. 2025)

Corlett . . .

- Prevails on N-Word
- Loses on Gender Slurs

Corlett v. Tong (S.D. Cal. 2025)

N-Word Analysis

- **Public Concern:** Usage was a matter of public concern because it was “*germane to the subject matter*” of teaching about the “*use-mention distinction*” in a course called “Critical Thinking and Composition.”

Corlett v. Tong (S.D. Cal. 2025)

N-Word Analysis

- **Balance of Interests:** Because of the inherently *fact-intensive nature* of this inquiry, the Court can rarely perform the *Pickering* balancing on a motion to dismiss. Corlett thus prevails at this early stage.

Corlett v. Tong (S.D. Cal. 2025)

Gender Slurs Analysis

- **Public Concern:** Corlett failed to prove that his use of the words ‘p---y’ and ‘bitch’ was *germane to the subject matter* of the course called “Political Philosophy,” and thus he was NOT engaging in protected speech about a matter of public concern. Instead, he used the terms in a “derogative fashion” and “derogatory manner.”

Corlett v. Tong (S.D. Cal. 2025)

Takeaway re: Offensive Language

Germane to Subject Matter

vs.

Gratuitous, Derogatory Profanity

Summary

Clear: *Pickering/Connick/Garcetti* Framework

Unclear: Balancing of Interests Subjectivity

Thank You

Clay Calvert

**Professor Emeritus
University of Florida**

**Nonresident Senior Fellow
American Enterprise Institute**