

CLIENT ALERT: The First Circuit Court of Appeals Finds A Public School Teacher's Social Media Posts Are Not Constitutionally-Protected Speech

On June 28, 2024, the U.S. Court of Appeals for the First Circuit issued *MacRae v. Mattos*, a case involving a public school teacher's First Amendment speech rights.

Shortly before being hired as a teacher at Hanover High School, Kari MacRae posted a series of memes to her private TikTok account disparaging transgenderism, critical race theory, and illegal immigration. When Hanover High School's administration learned of Ms. MacRae's social media posts, they promptly placed her on paid administrative leave, pending an investigation. She was terminated nine days later. Ms. MacRae challenged her termination in Massachusetts federal court, alleging retaliation against her exercise of First Amendment speech rights. The federal district court issued summary judgment in favor of the Hanover Public Schools, which she appealed to the First Circuit Court of Appeals.

The First Circuit determined that the Supreme Court's *Garcetti* test¹ for assessing First Amendment retaliation claims by government employees applied to Ms. MacRae's conduct because her social media posts shortly predated her employment. Additionally, the court considered that the public backlash to Ms. MacRae's social media posts was ongoing during her employment.

The Supreme Court's *Garcetti* framework considers: (1) whether the public employee spoke on a matter of public concern, (2) whether the government's interest in efficient public service outweighs the employee's interest as a citizen, (3) and whether the employee's protected speech motivated the adverse employment action. The *Garcetti* Court recognized that a public employee's First Amendment rights are not absolute and are subject to a balancing test in which the speech may be restricted if it adversely affects the public employer's ability to operate effectively and efficiently.

The First Circuit also ruled that, although Ms. MacRae's social media posts constituted speech on public issues that is ordinarily granted the highest level of First Amendment protection, Ms. MacRae's posts were "mocking, derogatory, and disparaging," which are entitled to less weight.

Ms. MacRae claimed that there was a lack of evidence her social media posts actually disrupted operations at Hanover High School. However, the First Circuit cited precedent that an employer's reasonable prediction of disruption is sufficient, which was satisfied in this case because of significant media coverage of her social media posts, concerns raised by some students and staff, and the posts arguably violated the Hanover school district's stated goal of "ensuring a safe learning environment based on respecting human differences." As a result, the First Circuit dismissed her appeal, affirming the district court's summary judgment in favor of the Hanover Public Schools.

¹ *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

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