
IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 2005

LIBERTYVILLE BOARD OF EDUCATION,

Petitioner

v.

AHMED RAHIM,

Respondent

On Writ of Certiorari to the
United States Court of Appeals
For the Moot Circuit

BRIEF OF RESPONDENT

Applicant ID:

QUESTIONS PRESENTED

- I. UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, IS A PUBLIC HIGH SCHOOL PRINCIPAL'S SPEECH PROTECTED WHEN HE CRITICIZED THE SCHOOL BOARD OVER A MATTER OF PUBLIC CONCERN AND HIS SPEECH DID NOT DISRUPT THE SCHOOL'S REGULAR FUNCTIONS?**
- II. UNDER THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, CAN A HIGH SCHOOL PRINCIPAL ADD AN ARABIC SEGMENT TO A HIGH SCHOOL'S SEPTEMBER 11th REMEMBRANCE MURAL WHEN THE MURAL IS INTENDED TO REFLECT THE DIVERSITY OF THE COMMUNITY AND ALREADY INCLUDE FLAGS AND MESSAGES FROM OTHER NON-ARABIC COUNTRIES?**

TABLE OF CONTENTS

| | Page |
|---|----------|
| QUESTIONS PRESENTED..... | i |
| TABLE OF AUTHORITIES..... | v |
| STATEMENT OF JURISDICTION..... | 1 |
| STATEMENT OF THE CASE..... | 1 |
| Statement of Facts..... | 1 |
| Procedural Background..... | 3 |
| SUMMARY OF THE ARGUMENT..... | 4 |
| ARGUMENT..... | 7 |
| I. PRINCIPAL RAHIM’S SPEECH WAS CONSTITUTIONALLY PROTECTED SPEECH BECAUSE THE STATEMENTS HE MADE RELATED TO MATTERS OF PUBLIC CONCERN AND HIS INTEREST IN MAKING THE STATEMENTS OUTWEIGHED THE SCHOOL’S INTEREST IN SUPPRESSING THE SPEECH..... | 7 |
| A. Principal Rahim’s statements at the meeting were related to matters of public concern..... | 8 |
| 1. Considering the context of the situation, Principal Rahim’s criticisms of the school board were not statements of personal interests because his criticisms were in regards to the school’s handling of a matter of public concern..... | 8 |
| 2. Considering the context under which the speech was made, the private setting of the meeting does not change the fact that Principal Rahim’s criticisms were based on matters of public concern because the meeting itself was based upon a matter of public concern..... | 13 |
| B. Principal Rahim’s interest in maintaining his right to free speech outweighed the school’s interest in maintaining its operational efficiency..... | 15 |

TABLE OF CONTENTS continued

| | | |
|-----|--|----|
| 1. | Principal Rahim’s speech was unlikely to have a detrimental impact on any close working relationships that require personal loyalty and confidence..... | 16 |
| 2. | Principal Rahim’s speech was unlikely to disrupt his professional duties or the daily functions of the school..... | 17 |
| II. | PRINCIPAL RAHIM DID NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT WHEN HE ADDED AN ARABIC SEGMENT TO THE SEPTEMBER 11 TH MEMORIAL BECAUSE THE SEGMENT DOES NOT HAVE THE PURPOSE OR EFFECT OF ADVANCING ISLAM, IT DOES NOT FOSTER EXCESSIVE GOVERNMENT ENTANGLEMENT WITH ISLAM, AND IT IS NOT AN ENDORSEMENT OF ISLAM..... | 19 |
| A. | The Arabic segment of the mural does not violate the Establishment Clause because it has a secular purpose, it does not have the effect of advancing Islam, and it does not foster excessive government entanglement with Islamic institutions..... | 19 |
| 1. | The Arabic segment of the mural has the secular purpose of recognizing the diversity of Liberty and acknowledging the many students of Libertyville High School who come from Arabic origins and heritage.... | 20 |
| 2. | The Arabic segment of the mural does not have the effect of advancing Islam because it is within a larger secular display and its effect only incidentally benefits Islam..... | 22 |
| 3. | The Arabic segment does not foster an excessive government entanglement with Islam because no government supervision of the mural is needed and no relationship with Islamic institutions has resulted..... | 24 |
| B. | The Arabic segment of the mural does not violate the Establishment Clause of the First Amendment because Principal Rahim did not have the intent to endorse Islam and an objective person would not view the segment as sending a message of endorsing Islam..... | 25 |
| 1. | Principal Rahim’s intentions for adding the Arabic segment were to celebrate diversity and acknowledge the Arabic students attending Libertyville High School..... | 26 |

TABLE OF CONTENTS continued

2. An objective person, who is aware of the diversity in Liberty and the context of the crescent moon and star, would not believe the Arabic segment of the mural is sending a message that endorses Islam.....27

CONCLUSION.....30

TABLE OF AUTHORITIES

Pages(s)

UNITED STATES SUPREME COURT CASES:

| | |
|--|--------------------|
| <i>City of San Diego v. Roe</i> , 125 S. Ct. 521 (2004)..... | 10 |
| <i>Connick v. Myers</i> , 461 U.S. 138 (1983)..... | 7, 8, 9, 10 |
| <i>County of Allegheny v. ACLU</i> , 492 U.S. 573 (1989)..... | 19, 27, 28 |
| <i>Givhan v. W. Line Consol. Sch. Dist.</i> , 439 U.S. 410 (1979)..... | 13, 14 |
| <i>Lee v. Weisman</i> , 505 U.S. 577 (1992)..... | 19 |
| <i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971)..... | 19, 20, 24 |
| <i>Lynch v. Donnelly</i> , 465 U.S. 668 (1984)..... | 22, 23, 25, 26, 27 |
| <i>McCreary County v. ACLU of Ky.</i> , 125 S. Ct 2722 (2005)..... | 20, 21 |
| <i>McGowan v. Maryland</i> , 366 U.S. 420 (1961)..... | 22 |
| <i>Pickering v. Bd. of Educ. of Twp. High Sch. Dist.</i> , 391 U.S. 563 (1968)..... | 7, 15, 16 |
| <i>Rankin v. McPherson</i> , 483 U.S. 378 (1987)..... | 17, 18 |
| <i>Stone v. Graham</i> , 449 U.S. 39, (1980)..... | 20 |
| <i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985)..... | 20, 26, 27 |

TABLE OF AUTHORITIES continued

| | |
|--|----|
| <i>Waters v. Churchill</i> , 511 U.S. 661 (1994)..... | 13 |
|--|----|

| | |
|--|----|
| <i>Zorach v. Clauson</i> , 343 U.S. 306 (1952)..... | 19 |
|--|----|

UNITED STATES COURT OF APPEALS CASES:

| | |
|---|----|
| <i>Brooks v. City of Oak Ridge</i> , 222 F.3d 259 (6th Cir. 2000)..... | 28 |
|---|----|

| | |
|---|------------|
| <i>Cox v. Dardanelle Pub. Sch. Dist.</i> , 790 F.2d 668 (8th Cir. 1986)..... | 10, 11, 16 |
|---|------------|

| | |
|---|----|
| <i>Lamberth v. Bd. of Comm'rs of Davidson County</i> , 407 F.3d 266 (4th Cir. 2005)..... | 21 |
|---|----|

| | |
|--|----|
| <i>Lewis v. Harrison Sch. Dist.</i> , 805 F.2d 310 (8th Cir. 1986)..... | 11 |
|--|----|

UNITED STATES DISTRICT COURT CASES:

| | |
|--|--------|
| <i>Clever v. Cherry Hill Twp. Bd. of Educ.</i> , 838 F.Supp 929 (D. N.J. 1993)..... | 24, 25 |
|--|--------|

| | |
|---|----|
| <i>Demmon v. Loudoun County Pub. Sch.</i> , 342 F. Supp. 2d 474 (E.D. Va. 2004)..... | 23 |
|---|----|

CONSTITUTIONAL PROVISIONS:

| | |
|------------------------------|---|
| U.S. CONST. amend. I..... | A |
|------------------------------|---|

STATEMENT OF JURISDICTION

A Formal Statement of Jurisdiction has been omitted in accordance with the rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

Statement of Facts

The Respondent, Ahmed Rahim, is challenging his recent termination as Principal of Libertyville High School (LHS). (J.A. at 1). He was discharged for refusing to remove an Arabic segment on a mural at the school and for critical comments he made about the School Board. (J.A. at 4, 5). Rahim claims that the Arabic segment of the mural does not violate the Establishment clause because it does not unlawfully advance Islam and that his speech was protected because it involved matters of public concern and was otherwise non-disruptive. (J.A. at 5).

The Petitioner, Libertyville Board of Education, asserts that Rahim supported an unlawful endorsement of Islam and that his speech was a private concern, disruptive, and thus unprotected. (J.A. at 5).

The City of Liberty was deeply affected by the tragic events of September 11, 2001. (J.A. at 2). As a remembrance to those who lost their lives, the students and parents of LHS petitioned school administrators to establish the September 11th

Memorial. (J.A. at 2). To properly reflect the diversity of the school and community of Liberty, the Memorial includes a mural on the façade of the school building with a large American flag in the center surrounded by several smaller flags of various nations, including Japan, Israel, and Great Britain. (J.A. at 2).

In large letters across the center of the mural is the phrase: "To those lost on 9/11...We will always remember you." (J.A. at 2,3). The mural also includes messages of memoriam and peace in different languages. (J.A. at 3) An example is the Spanish phrase "que dios los tenga en su Gloria" ("may God keep you all within his glory"). (J.A. at 22). There was no recognition of any Middle Eastern or Arab nations in the Memorial. (J.A. at 3).

LHS has the highest percentage of students with Arabic origins and heritage in the city, and Rahim felt that the memorial should adequately reflect their presence as well. (J.A. at 3). Amongst the various flags, he added a crescent moon and star with the words "shahadah," the Muslim declaration of faith, and "jihad," which means "struggle" in Arabic. (J.A. at 3). However, the Petitioner did not approve of the addition because some people may find it offensive and ordered him to remove it from the mural. (J.A. at 3, 4).

The faculty and staff of the high school were also divided over the Arabic segment, so Principal Rahim set up an informal meeting at his home to allow people to discuss their feelings in the hopes of restoring unity within the school. (J.A. at 4). The teachers and parents at the meeting discussed opinions of the memorial and school policies that led to a lack of office morale and confidence in supervisors. (J.A. at 4). Rahim stated that the purpose of the addition to the mural was to embrace the Arab community of Liberty, and he felt like the members of the School Board were "turning their backs" on him. (J.A. at 4).

Informed of the meeting, the Superintendent delivered Rahim an ultimatum. (J.A. at 4) He either had to remove the Arabic segment from the mural or risk losing his job. (J.A. at 5). Rahim refused to remove the Arabic segment, and was discharged by the Superintendent, who claimed Rahim unlawfully endorsed Islam and undermined the efficiency of the School Board through his statements made at the meeting. (J.A. at 5).

Procedural Background

Respondent filed the instant action against Petitioner, challenging his discharge because his statements were protected speech and the Arabic segment of the mural did not violate the Establishment Clause. (J.A. at 1). Both parties moved for summary judgment, and the District Court for the Eastern

District of Moot found that the speech was of a private nature and not protected, and the Arabic addition to the mural violated the Establishment Clause. (J.A. at 9, 13). The Court granted summary judgment for the Petitioner. (J.A. at 14).

On appeal, the Court of Appeals for the Moot Circuit reversed the District Court's opinion. (J.A. at 24). Because this case concerns First Amendment issues, this Court should grant no deference to the Moot Circuit's decision and review this case de novo.

SUMMARY OF THE ARGUMENT

This Court should affirm the Moot Circuit Court of Appeals' decision that Principal Rahim's speech warranted First Amendment protection because the speech addressed matters of public concern and it did not threaten the efficiency of the school's operations. Additionally, this Court should affirm the decision that Principal Rahim's additions to the Memorial did not violate the Establishment Clause of the First Amendment because the Arabic segment did not have the purpose or effect of advancing Islam, nor did it convey an illegal endorsement of Islam.

When analyzing the free speech issue in this case, the threshold question is whether Principal Rahim's statements about the School Board were matters of public concern. Principal Rahim's statements were related to issues of public concern. He made the statements at the meeting in defense of his actions to

represent the Arabic community's remembrance of the lives lost to the September 11th attacks. The events of September 11, 2001, are the catalyst for perhaps the most rigorously debated issues among the public today. Clearly, statements arising from such tragic events are related to public concern.

If this Court finds that Principal Rahim's statements were related to matters of public concern, the next step is to determine whether Rahim's interests in making the statements outweighed the school's interests in hindering the speech. Principal Rahim's interests indeed outweighed the school's interests. This Court has held that a public school employee's interests in public speech are protected unless the speech interferes with the daily operation of the school. Principal Rahim's statements were made at a venue outside of the school and did not interfere with his daily activities as principal nor interfere with the daily operations of the school.

Furthermore, Principal Rahim's addition of the Arabic segment to the mural is not an unlawful violation of the Establishment Clause of the First Amendment. Under the *Lemon* test, Principal Rahim did not violate the Establishment Clause because he had a legitimate, secular purpose for adding the Arabic segment. He included the Arabic segment to recognize the many students of Arabic heritage that attend LHS and not to advance the Islamic faith. The Arabic segment did not have the

effect of advancing Islam either. When viewed in the context of the entire mural, the crescent moon and star are only a small fraction of the multi-cultural Memorial. Finally, no government entanglement with Islamic institutions was caused by the addition of the segment.

Under the endorsement test, the Arabic segment does not violate the Establishment Clause. Principal Rahim's intention was to recognize his many Arabic students and make them feel included as part of the community. There is no indication he was motivated by a desire to endorse Islam. Additionally, the objective observer, who is familiar with the history of the Memorial and the diversity of Liberty, would not find that the crescent moon and star with the words "shahadah" and "jihad" is an endorsement of Islam. The objective observer would take into account that many cultural and geographical parts of the world are represented in the mural, and the Arabic segment is only one small section in a large, secular display.

For these reasons, Ahmed Rahim respectfully request that this Court affirm the Moot Circuit Court of Appeals' decision that held the Principal's speech was protected by the First Amendment and that the Arabic addition to the mural did not violate the Establishment Clause of the First Amendment.

ARGUMENT

I. PRINCIPAL RAHIM'S SPEECH WAS CONSTITUTIONALLY PROTECTED SPEECH BECAUSE THE STATEMENTS HE MADE RELATED TO MATTERS OF PUBLIC CONCERN AND HIS INTEREST IN MAKING THE STATEMENTS OUTWEIGHED THE SCHOOL'S INTEREST IN SUPPRESSING THE SPEECH.

Under the First Amendment, Congress cannot make any law interfering with the freedom of speech. U.S. Const. amend I. Among the essential rights that represent the core values the United States was founded upon, freedom of speech has been afforded great protection since this country's infancy. As such, there are only a few circumstances in which speech can be curtailed, including the government's limited ability to restrict the speech of public employees. *Pickering v. Bd. of Educ. of Twp. High Sch. Dist.*, 391 U.S. 563, 568 (1968).

Recognizing the need to ensure workplace efficiency, this Court devised the *Pickering* balancing test. When determining whether employee speech deserves the protection of the First Amendment, "the interests of the employee, as a citizen, in commenting upon matters of public concern" must be balanced against "the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* Additionally, this Court has supplemented the *Pickering* balancing test with a preliminary threshold analysis of whether the public employee speech at

issue is related to matters of public concern. *Connick v. Myers*, 461 U.S. 138, 146 (1983).

Thus, as a threshold issue, this Court must first decide whether Principal Rahim's statements were related to a matter of public concern. Secondly, this Court must decide whether Principal Rahim's interest in free speech outweighed the school's interest in maintaining an efficiently run school.

A. Principal Rahim's speech at the meeting was related to matters of public concern.

The Petitioner incorrectly asserts that Principal Rahim engaged in unprotected speech because he commented on matters of personal interest and his speech took place in a private forum. As discussed below, the Petitioner failed to consider the context in which Principal Rahim delivered his statements while at the meeting.

1. Considering the context of the situation, Principal Rahim's criticisms of the school board were not statements of personal interests because his criticisms were in regards to the school's handling of a matter of public concern.

When determining whether speech relates to a public concern, the matter must be determined by the content, form, and context of the speech, as revealed by the entire record. *Connick*, 461 U.S. at 147-48. In *Connick*, a former assistant district attorney, Myers, filed suit claiming that she was fired for exercising her rights to free speech. *Id.* at 140-41. Myers

was opposed to being reassigned within the district attorney's office and voiced her concerns to a number of her superiors. *Id.* at 141.

Additionally, Myers drafted a questionnaire directed towards her colleagues in order to determine if others shared her concerns over a number of matters, including office policies, office morale, the lack of a grievance committee, employee confidences in supervisors, and whether employees were under pressure to work in political campaigns. *Id.* Meyers was subsequently fired for insubordination based on her questionnaire and her refusal to accept the transfer. *Id.*

The *Connick* Court held that in order for an employee's speech to satisfy the public concern threshold, it must be related to "a matter of political, social, or other concern to the community." *Id.* at 147. In contrast to matters of public concern, an employee's speech on matters only of personal interest, such as internal office affairs, is usually considered unprotected speech. *Id.* at 146.

Upon review of Myers' questionnaire, this Court found only one portion to be related to a matter of public concern, the portion contemplating pressures on employees to work for political campaigns. *Id.* at 149. Although all operations of the district attorney's office could be considered a public concern, this Court decided that the context of Myers'

questionnaire was clouded with her frustrations over her transfer. *Id.* Thus, this Court held that Myers' speech was personal considering the context of the questionnaire. *Id.* at 149-50. The lower court's decision was reversed and judgment was entered in favor of the district attorney's office. *Id.* at 154.

Recently, this Court analyzed a public concern issue in a case where a police officer challenged his termination after he repeatedly marketed homemade videotapes of himself masturbating in a police uniform. *City of San Diego v. Roe*, 125 S. Ct. 521, 525-26 (2004). This Court interpreted a public concern as "a matter of legitimate news interest; that is, a subject of general interest and of value and concern to the public at the time of publication." *Id.* at 525-26. Considering the context of the officer's speech, this Court found that the activity was widely marketed and designed to exploit the police department's image. *Id.* at 526. The officer's activities certainly did not involve a legitimate news interest and the speech was held to be unprotected *Id.*

In another relevant case, a teacher was sanctioned after she repeatedly criticized the school principal's personnel policies. *Cox v. Dardanelle Pub. Sch. Dist.*, 790 F.2d 668, 671 (8th Cir. 1986). Given the context of the teacher's speech, her criticisms amounted to more than speech of personal interests.

Id. at 673. The environment in which children are taught is certainly an issue of public concern. *Id.*; see also *Lewis v. Harrison Sch. Dist.*, 805 F.2d 310, 314 (8th Cir. 1986) (teachers in a school district impact children's lives so school personnel assignments are legitimate concerns to the children, parents, and other members of the community.) The Court found that a significant portion the speech was of public concern and held the speech to be protected under the First Amendment. *Id.*

Therefore, considering the context of the situation, an employee's speech is related to a matter of public concern when a substantial portion of the speech derives from the employee's desire to inform others about a legitimate matter of news.

The context of Principal Rahim's statements was the meeting where the issue of the school's September 11th Memorial was to be discussed. Clearly, the Memorial was an interest to the public and a matter of legitimate news. The attacks of September 11th deeply affected this nation and Americans have a great interest in sharing in the remembrance of those who perished in the attacks.

In *Connick*, Myers' speech consisted of her disapproval of the office's internal policies. Clearly, Myers constructed the questionnaire out of resentment for her pending transfer. Myers' reassignment and the daily inter office policies were not pertinent issues to the community. Likewise, in *City of San*

Diego, the officer's speech was directed towards personal interests. The speech was certainly not based on a matter of public interest or a matter of legitimate news.

On the other hand, Principal Rahim's speech was triggered by his possible discharge over the Memorial. Rahim's addition to the Memorial was not an ordinary matter such as an internal school board issue. Thus, the context of Principal Rahim's speech is distinguishable from the context of Myers' speech in that Rahim's statements were based on important public events.

In *Cox*, the teacher's speech met the public concern threshold. On the surface, the content of the teacher's speech appeared to be private in nature because she criticized the principal's personnel policies. The Court recognized the special environment in schools and held that even issues such as personnel assignments were important matters to the community. Thus, the teacher's speech, although in the form of private concerns, was considered a public concern because the school's environment was a matter of public concern.

Similarly, Principal Rahim's speech, on the surface, appears to have been a private criticism of the School Board's handling of the Memorial. However, as in *Cox*, the School Board's handling of the Memorial was a matter that affected the school's environment, thus a matter of public concern. The *Cox* Court realized that the teacher was engaging in her speech out

of concern for the school's environment, faculty, and students. Likewise, Principal Rahim's speech was based on his actions taken in concern for the school's environment, faculty, and students. He was defending his addition to the mural; an addition he believed better represented the students of LHS and the community as a whole. Without question, given the context of the situation, Principal Rahim's criticisms of the School Board were related to matters of public concern.

2. Considering the context under which the speech was made, the private setting of the meeting does not mean that Principal Rahim's criticisms lose the status of public concern because the meeting itself was based upon a matter of public concern.

This Court has affirmed that an employee's right to speech on matters of public concern is not forfeited simply because the employee chooses a private forum for the speech. *Connick*, 461 U.S. at 148; see also *Waters v. Churchill*, 511 U.S. 661 (1994) (employees conversing amongst themselves found to be protected speech).

For example, in *Givhan v. W. Line Consol. Sch. Dist.*, a teacher was discharged because she had on several occasions privately complained to the principal unveiling her criticisms and dissatisfaction with the school district's handling of desegregation. 439 U.S. 410, 412-13 (1979). Acknowledging that desegregation was inherently a matter of public concern, this Court held that the teacher's speech did not lose its

constitutional protection because she chose to communicate her statements privately. *Id.* at 415-16.

This Court differentiated *Connick* with *Givhan*. *Connick*, 461 U.S. at 148. Unlike *Givhan*, "a questionnaire not otherwise of public concern does not attain that status because its subject matter could, in different circumstances, have been the topic of a communication to the public that might be of general interest." *Id.*

Therefore, an employee's speech made in private communications should not lose protection if the speech relates to matter of public concern and the matter of public concern is such a topic that a public forum is not essential to its public importance.

In *Givhan*, the teacher's criticisms were related to issues of desegregation, an inherent matter of public concern. A topic like desegregation is a matter of public concern regardless the context of the situation and her criticisms were clearly related to desegregation. Expressing her criticisms privately to the school's principal did not negate the fact that her speech was protected.

Likewise, Principal Rahim's criticisms were related to his actions regarding the Memorial. Without question, September 11th issues are inherent matters of public concern. Thus, under *Givhan*, Principal Rahim's choice of a private meeting with

selected guests should not preclude his speech from being considered related to matters of public concern.

In *Connick*, this Court noted that the personal nature of Myers' questionnaire was indicative that she did not intend the speech to be a public concern. Although he arranged the meeting at his house with certain invitees, Principal Rahim clearly intended to inform at least some members of the public about the pertinent events taking place at the school. Namely, he wanted to explain the School Board's lack of support for his attempts to include Middle Eastern representation in the Memorial.

Thus, considering the context of the speech, this Court should find that Principal Rahim's criticisms addressed matters of public concern and legitimate news.

B. Principal Rahim's interest in maintaining his right to free speech outweighed the school's interest in maintaining its operational efficiency under the *Pickering* balancing test.

Among the factors this Court considers when applying the *Pickering* balancing test, the two most important factors applicable to the matter at hand are: (1) whether the speech has a substantially negative impact on close working relationships that require personal loyalty and confidence; and (2) whether the speech interferes with the employee's job performance or the regular operations of the employer. *Id.* at 570-73.

1. Principal Rahim's speech was unlikely to have a detrimental impact on his close working relationships that require personal loyalty and confidence.

The nature of the working relationship between Principal Rahim and the School Board is not a relationship dependent on personal loyalty and confidence. For example, in *Pickering*, a teacher was discharged after he submitted to a local newspaper a letter in which he criticized the school board's handling of proposed tax increases and the school's allocation of funds. *Id.* at 567. The letter allegedly contained several false statements. *Id.* at 566. Defending the decision to fire the teacher, the school board claimed that the letter threatened the efficient operation of the school. *Id.* at 564.

This Court disagreed and found that, absent proof of false statements knowingly made by him, the teacher had engaged in speech addressing matters of public concern and that the speech did not substantially interfere with the efficient operations of the school. *Id.* at 574. The teacher's professional relationship with the board was not the type of relationship where personal loyalty and confidence are necessary. *Id.*; see also *Cox*, 790 F.2d at 674 (teacher's professional relationship with principal does not require loyalty or confidence).

Therefore, when a principal criticizes a superior in relation to a matter of public concern, there is unlikely to be a detrimental impact to the working relationship between the

principal and his superior because the relationship is not dependent loyalty or confidence.

In *Pickering*, this Court found that the teacher's interest in maintaining free speech outweighed the school's interest in maintaining efficient operations. This Court placed significant emphasis on the fact that the teacher's criticisms were not detrimental to his working relationships with the school board. Simply put, his relationship to the board did not require loyalty or confidence to ensure a properly functioning school.

Likewise, Principal Rahim's speech was unlikely to disrupt his working relationship with the school board because loyalty and confidences were not important aspects of that type of relationship.

2. Principal Rahim's speech was unlikely to disrupt his professional duties or the daily functions of the school.

Interference with work performance or the office's performance is a significant employer interest when applying the *Pickering* balancing test. *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). In *Rankin*, a deputy constable was discharged for commenting about an assassination attempt on the president. *Id.* at 389. Because her speech addressed a matter of public concern and did not disrupt the daily functions of the office, and the employer failed to show any evidence to the contrary, this Court held that the speech was protected under the *Pickering* balancing

test. *Id.* Likewise, the *Pickering* Court found that the teacher's speech would not hinder his job performance or threaten the daily functions of the school.

Therefore, and in the absence of evidence to the contrary, it is unlikely that a principal's criticisms of a school board would impair his job performance or the school's operational efficiency.

Again, Principal Rahim's speech is similar to the teacher's speech in *Pickering*. Both employees criticized their respective school boards regarding matters of public concern. The *Pickering* Court found that the teacher's remarks were not detrimental to the school's functions, although he publicly criticized the board in a local paper. Seemingly, a public criticism is much more likely to disrupt a business's operations than a criticism delivered at a private meeting. Additionally, like *Rankin*, there are no facts that show Principal Rahim's statements affected or would have affected the school's daily operations.

Thus, under the *Pickering* analysis, it is unlikely that Principal Rahim's statements would have affected his working relationship with the School Board, his job performance, or the school's daily operations.

II. PRINCIPAL RAHIM DID NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT WHEN HE ADDED AN ARABIC SEGMENT TO THE SEPTEMBER 11th MEMORIAL BECAUSE THE SEGMENT DOES NOT HAVE THE PURPOSE OR EFFECT OF ADVANCING ISLAM, IT DOES NOT FOSTER EXCESSIVE GOVERNMENT ENTANGLEMENT WITH ISLAM, AND IT IS NOT AN ENDORSEMENT OF ISLAM.

The First Amendment of the United States Constitution prohibits the government from making any law "respecting an establishment of religion." U.S. Const. amend. I. However, the First Amendment "does not say that in every and all respects there shall be a separation of Church and State." *Zorach v. Clauson*, 343 U.S. 306, 312 (1952). There are heightened concerns, though, when religious practices or symbols are in the context of elementary and secondary public schools. *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

Two different Establishment Clause analyses can be applied to the facts at hand. The *Lemon* test was first established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and since then an endorsement test has also been recognized by this Court. See *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

A. The Arabic segment of the mural does not violate the Establishment Clause because it has a secular purpose, it does not have the effect of advancing Islam, and it does not foster excessive government entanglement with Islamic institutions.

Under the *Lemon* analysis, the Court will find the government's use of a religious symbol is in violation of the Establishment Clause: (1) if it has no secular purpose; (2) if

its principal effect advances religion; or (3) if it fosters an excessive government entanglement with religion. 403 U.S. at 612-13. If the government action fails any one of these three tests, it will be struck down under the Establishment Clause. *Stone v. Graham*, 449 U.S. 39, 40-41 (1980).

1. The Arabic segment of the mural has the secular purpose of recognizing the diversity of Liberty and acknowledging the many students of Libertyville High School who come from Arabic origins and heritage.

In *Wallace v. Jaffree*, this Court implicated only the purpose prong of the *Lemon* test. 472 U.S. 38, 56 (1985). After reviewing the legislative history, the Court held that the purpose of a statute that authorized prayer in public school was to promote religion, which was inconsistent with the Establishment Clause. *Id.* at 59-60. A statute motivated in part by religion may still have a secular purpose that satisfies the first prong of *Lemon*, but "a statute must be invalidated if it is entirely motivated by a purpose to advance religion." *Id.* at 56.

Recently, this Court held that framed copies of the Ten Commandments placed in courthouses violated the Establishment Clause because of their predominantly religious purpose. *McCreary County v. ACLU of Ky.*, 125 S. Ct 2722, 2745 (2005). While courts will generally give deference to the legislature's stated reason for a statute, "the secular purpose required has

to be genuine...and not merely secondary to a religious objective." *Id.* at 2735. The purpose of government action also "needs to be understood in light of context." *Id.* at 2741.

In contrast, a county government had a legitimate purpose of wanting to display the national motto when it inscribed "In God We Trust" onto the façade of a government building. *Lamberth v. Bd. of Comm'rs of Davidson County*, 407 F.3d 266, 270 (4th Cir. 2005). The purpose prong is only contravened when the government action is entirely motivated by a purpose to advance religion, so the purpose of the display of the motto was found to be legitimate. *Id.*

A statute or policy will offend the Establishment Clause when the purpose of the government action is wholly motivated by the desire to promote religion. Courts can look to the context of the government action to help determine if the purpose is legitimate. A legitimate secular purpose will be enough to pass the first prong of the *Lemon* test, unless the alleged purpose is only a pretext for religious motivations.

Like the motto "In God We Trust," the Arabic segment featuring the words "shahadah" and "jihad" were placed on the façade of the High School for a legitimate purpose. The purpose of the Arabic segment is to recognize the Arabic students attending LHS and the Arabic members of the community. While the Arabic words may have some religious significance in Islam,

like the national motto has in Christianity, the Petitioner has presented no evidence that Principal Rahim was motivated solely by the desire to promote Islam.

Many flags from nations all over the world are represented on the mural. The crescent moon and star are associated both with Arab culture and with Islam, similar to how the Star of David represents both Israel and Judaism. Principal Rahim's purpose for adding the segment is to make sure the Arabic students feel included in the Memorial, just as students of Israeli heritage are included. The mural was intended to reflect the diversity of the community, and making sure all members of the community are adequately represented gives further legitimacy to Principal Rahim's act. Thus, the first prong of the *Lemon* test is satisfied.

2. The Arabic segment of the mural does not have the effect of advancing Islam because it is within a larger secular display and its effect only incidentally benefits Islam.

A religious symbol in a public display does not violate the Establishment Clause when it has an effect that happens to coincide "with tenets of some...religions." *McGowan v. Maryland*, 366 U.S. 420, 442 (1961). In *Lynch v. Donnelly*, this Court found a crèche did not have the effect of advancing Christianity. 465 U.S. 668, 682 (1984). The crèche was part of a display that contained many Christmas figures and decorations, including a Santa Clause house, reindeer, a Christmas tree, and a teddy

bear. *Id.* at 671. Even if the crèche advanced Christianity, the Court noted that some advancement of religion may inevitably result from government action, but that advancement will not automatically make the action invalid. *Id.* at 683.

When a court assessed a challenge to bricks with Latin crosses on them, which were part of a school's larger "walk of fame," it stated that the effects prong of the *Lemon* test has been used objectively to measure if the government action has the effect of advancing religion. *Demmon v. Loudoun County Pub. Sch.*, 342 F. Supp. 2d 474, 491 (E.D. Va. 2004). Each brick in the walkway included a name of a student or faculty member, and a variety of symbols were on the bricks to represent the individuals who participated in different sports or clubs. *Id.* at 493. Even though the bricks with the Latin crosses were located in a prominent area, they were part of a much larger secular display and had no effect of advancing religion. *Id.*

It is crucial to consider the nature and context of the religious symbol in determining if it has the effect of advancing religion. Important factors include the location of the symbol and if it is part of a larger secular display. Even if the symbol does advance religion in some incidental way, it does not render the governmental action unconstitutional.

Similar to the crèche in *Lynch* and the bricks in *Demmon*, the Arabic segment of the Memorial is part of a large secular

display. The crescent moon and star is only one symbol amongst a number of flags, which represent a different cultural or geographical part of the world. The focus of the mural is the large American flag and World Trade Center. The Arabic segment appears in the top left corner of the mural and it does not distract the viewer from secular message of the Memorial.

Any benefit to Islam is incidental at best. The crescent moon and star is a well known symbol of Islam, but it has to be viewed within the context of the entire mural. The Arabic segment benefits Islam no more than the crèche benefited Christianity in the Christmas display, and some incidental benefit to religion will not automatically violate the Establishment Clause. Thus, the Arabic segment passes the second prong of the *Lemon* test.

3. The Arabic segment does not foster an excessive government entanglement with Islam because no government supervision of the mural is needed and no relationship with Islamic institutions has resulted.

In order to determine if government entanglement with religion is excessive, courts must examine the "character and purpose of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." *Lemon*, 403 U.S. at 615. An example of excessive entanglement is when "the state must engage in continuing administrative supervision of

religious activity." *Clever v. Cherry Hill Twp. Bd. of Educ.*, 838 F.Supp 929, 941 (D. N.J. 1993).

Excessive entanglement may occur when the state has to continually monitor the religious activity in question. Courts will have to look at the character and purpose of the religious institutions that are believed to be benefited and the resulting relationship between the state and religious authority.

No administrative supervision of religious activity is needed by the City or the School Board in maintaining the mural. Also, no relationship has developed between Islamic institutions and Libertyville High School. Therefore, the inclusion of the Arabic segment to the Memorial poses no violation of the Establishment Clause under the *Lemon* test.

B. The Arabic segment of the mural does not violate the Establishment Clause of the First Amendment because Principal Rahim did not have the intent to endorse Islam and an objective person would not view the segment as sending a message that endorses Islam.

Justice O'Connor modified the purpose and effect prongs of *Lemon* when she developed the endorsement test. *Lynch*, 465 U.S. at 690 (O'Connor, J., concurring). The proper inquiry to the legality of religious symbols in public areas under the endorsement test is whether the government intended to convey a message of endorsement of religion, and whether the government had the effect of communicating a message of endorsement of religion. *Id.* at 692.

1. Principal Rahim's intentions for adding the Arabic segment were to celebrate diversity and acknowledge the Arabic students attending Libertyville High School.

When analyzing the intent of government officials courts should be "deferential and limited." *Wallace*, 472 U.S. at 74 (O'Connor, J., concurring). The intent of the speaker can be judged by the context of the statement or by asking questions of the speaker. *Lynch*, 465 U.S. at 690 (O'Connor, J., concurring). The Establishment Clause will be violated if the government speaker intends to send a message of endorsement of religion. *Id.* at 690-91. In *Lynch*, Justice O'Connor found a city's display of a crèche as part of a larger holiday exhibit was not an intention by the city to endorse Christianity. *Id.* The purpose of the display was not promotion of its religious content "but celebration of the public holiday through its traditional symbols." *Id.*

Likewise, when Principal Rahim added the crescent moon and star with the words "shahadah" and "jihad" to the Memorial, he did not seek to endorse Islam. He sought to celebrate the diversity of the community and recognize the Arabic population at LHS. Liberty has a growing immigrant population from all sectors of the globe and LHS has the highest percentage of students from Arabic origins and heritage in the City. Given this context, Principal Rahim had an appropriate, non-sectarian reason for the addition of the Arabic segment. This Court

should give deference to Principal Rahim's decision because he had no religious motivations for adding the Arabic segment.

2. An objective person, who is aware of the diversity in Liberty and the context of the crescent moon and star, would not believe the Arabic segment of the mural is sending a message that endorses Islam.

The meaning of a government's use of religious symbols depends on the objective meaning of the religious symbols in the community. *Lynch*, 465 U.S. at 690 (O'Connor, J., concurring). "The relevant issue is whether an objective observer acquainted with the history, language and administration" of the practice at issue would perceive the practice as an endorsement of religion. *Wallace*, 472 U.S. at 76 (O'Connor, J., concurring).

In *County of Allegheny v. ACLU*, this Court stated that governmental use of religious symbols will be unconstitutional if they have the effect of endorsing religious beliefs, and "the effect of the government's use of religious symbolism depends upon its context." 492 U.S. at 597. The Court analyzed two different religious symbols in their respective settings to determine if they endorsed religious beliefs. *Id.* A crèche displayed on its own in the "main" and "most beautiful" part of a government building was found to be in violation of the Establishment Clause because in that setting it unmistakably sent a message that the County supported Christianity. *Id.* at 599-600. However, a Chanukah menorah, which was part of a

larger holiday display in front of the government building, was held not to be an endorsement of religion because it was alongside secular holiday symbols. *Id.* at 616.

A lower court held that a "Friendship Bell" erected in a public park did not have the effect of endorsing Buddhism in violation of the Establishment Clause. *Brooks v. City of Oak Ridge*, 222 F.3d 259, 262 (6th Cir. 2000). The purpose for displaying the bell was to celebrate the city's friendly relationship with Japan and to express a commitment to peace and freedom. *Id.* at 265. In adopting an expansive definition of an objective observer, the Court held that the objective observer would know about the history of the bell's adoption, the city's connection to Japan, and the desire for international peace and friendship. *Id.* at 266.

In order for the government to use a religious symbol, the symbol must not have the effect of endorsing religion. It has that effect if the reasonable observer, who is familiar with community norms and history, believes that the government is endorsing religion by allowing the use of the symbol. Also, the effect of the religious symbol heavily depends on the overall context in which it is placed.

When an objective observer views the crescent moon and star in the mural, he would not view the segment as an endorsement of Islam. Like *Brooks*, this Court should adopt an expansive view of

what an objective observer in Liberty constitutes. An objective observer in Liberty would be aware of the City's loss from the September 11, 2001 attacks, the desire on behalf of the students and parents of LHS to create a memorial that reflected the community's diversity, the rising population of immigrants within Liberty, and the fact that LHS has the highest percentage of students from Arabic descent in the city.

The context of the Arabic segment to the objective observer is very important in determining whether it endorses Islam. The segment is one small part of a large, secular memorial. The highlight of the mural is the center, which is a large American flag and picture of the World Trade Center. Across the center in bold letters is the phrase, "To those lost on 9/11...We will always remember you." Along the border, different flags represent different geographical and cultural parts of the world and messages in various languages are located next to the nation where the language is spoken.

The Arabic segment fills up a small space in the top left corner of the mural. The crescent moon and star is a symbol of the many flags of Arabic nations, which were not originally represented in the Memorial. This is similar to how the flag of Israel represents both a geographic area and the dominant faith of the region with the Star of David. Likewise, the words "shahadah" and "jihad" may have religious overtones but do not

convey a message of endorsement to the objective observer. The Spanish phrase "Que Dios los tenga en su Gloria" ("may God keep you all within his glory") is not interpreted as an endorsement of Christianity, and these familiar Arabic words would not be considered a promotion of Islam.

The inclusion of the Arabic segment would not be seen as an illegal endorsement of Islam because Principal Rahim's intent for the segment was only to recognize the Arabic students at Libertyville High School. In addition, the objective observer in Liberty would not view the crescent moon and star or Arabic words to be endorsing Islam because they would be aware of the history of the Memorial and the diversity in the community.

CONCLUSION

This Court should affirm the finding of the Moot Circuit Court of Appeals that Principal Rahim's speech constituted protected speech. In addition, this Court should affirm the Moot Circuit Court of Appeals finding that Principal Rahim did not violate the Establishment Clause. The Arabic segment does not have the purpose or effect of advancing Islam nor does it unlawfully endorse Islam.