

Case Brief

Emily Lane

Name of Case: *David K. DEMERS v. Erica AUSTIN; Erich Lear; Warwick M. Bayly; Frances McSweeney*

Who are the parties: David K. Demers is the plaintiff - appellant. Erica Austin, Erich Lear, Warwick M. Bayly and Frances McSweeney are the Defendants - Appellees.

What Court/Procedural History: United States Court of Appeals, Ninth Circuit

Facts: David Demers, a tenured associate professor at Washington State University (WSU), filed a suit against several university administrators claiming they retaliated against him for distributing a short pamphlet and drafts from an in-progress book (the Plan). The Plan is critical of the academy and some events at WSU, but it also proposes seven steps to restore the critical connection between the real world and the Communications School that is now lacking. In short, the Plan is a proposal that, if implemented, would substantially alter the nature of what is taught in the school as well as the composition of the faculty that would teach it.

The district court granted summary judgement for the defendants regarding Demers's employment duties, but held that the pamphlet was not protected under the First Amendment because it did not address a matter of public concern. Further proceedings were recommended and Demers appealed making two arguments: 1. His speech was pursuant to official duties. 2. His speech was academic and therefore should be protected under the First Amendment. To determine these two things, Demers's case was compared to *Garcetti* which leaves the possibility of an exception to the district court's holding as applied to "speech related to scholarship or teaching".

Issues: Did Demers's teachings and academic writings qualify under *Garcetti* as non-protected speech by the First Amendment because he is a public employee? Did Demers prepare and circulate his Plan pursuant to official duties? Is Demers's Plan a matter of public concern?

Holding: The Court holds that there is an exception to *Garcetti* for teaching and academic writing and affirms the district court's determination that Demers prepared and circulated his Plan pursuant to official duties. Finally, the Court determined that the Plan does address matters of public concern within the meaning of *Pickering*.

Analysis/Reasoning: First, Demers's Plan proposed actions that would affect the School of Communication financially independent, meaning that it did not focus on a personnel issue or internal dispute of interest to only him. The Plan proposed broad changes to influence the direction and focus of the school. Therefore, it was an academic matter that should be protected under the First Amendment. Second, Demers distributed his plan to the President and the Provost of WSU, as well as to the Communication School's Professional Advisory Board, other faculty members, alumni, friends, newspapers, and on his website so it was available to the public. Finally, Demers's plan contained suggestions about the future course of an important department at WSU at a time where the Communication School was debating those same issues. Therefore, Demers's Plan contained matters of public concern within the meaning of *Pickering*.

Other Opinions: No concurring or dissenting opinions.

Personal Views/Opinions: The courts seemed to rule in favor of the correct party in this case. Demers's plan was clearly one that addressed matters of public concern. Demers also took every chance he could to spread the information to people in power. His Plan was made to respond to concerns about his department and the Communications School as a whole, so he was acting with the institutional mission in mind. One of the reasons tenure positions have protections is so those with tenure can be critical of their institution or its programs in an effort to better the institution. Therefore, I believe Demers was acting in the best interest for the institution and his speech should be protected.