

SAMPLE BRIEF

***Connick v. Myers*, 461 U.S. 138 (1983)**
[page numbers]

Comment: Title and citation

Facts

Sheila Myers worked for 5½ years as an admittedly competent assistant district attorney. She, upon being informed that she would be transferred to another area of responsibility within the office, protested to her boss (D.A. Connick) and other employees. After conversations with some of her co-workers, she drew up and circulated a questionnaire addressing office operations and policies. When this was brought to Connick’s attention, he fired her. Myers then sued under 42 U.S.C. § 1983, claiming that her termination violated her First Amendment expression rights. A federal district court and court of appeals held for Myers.

Comment: Who did what to whom

Comment: Prior history in the courts

Legal Issues:

- 1) Does termination of a public employee, based in part on speech addressing matters of public concern, raise issues amenable to judicial review under the First Amendment?
- 2) Did Myers’ termination infringe on her First Amendment rights?

Comment: Yes/No question about whether the case can be reviewed

Comment: Yes/No question about the Court’s substantive decision

Held:

- 1) Yes (9-0)
- 2) No (5-4)

Comment: Note the order of these questions. If the Court had answered No to the first question, there would have been no need to proceed to the next.

Reasoning: White (joined by Burger, Powell, Rehnquist, and O’Connor)

If a public employee’s speech does not touch on matters of “public concern,” a termination decision, based in part on that speech, is not reviewable by federal courts. Whether speech is of “public concern” is “determined by the content, form, and context of a given statement, as revealed by the whole record” (at 316). For the most part, Myers’ expression was on matters internal to office management. However, question 11 on her questionnaire “touches” on a matter of public concern – did employees feel pressure to work on political campaigns as a condition of employment?

Comment: One holding for each question listed above; note the different vote counts for the different questions raised in the case. All 9 justices agree that the case is reviewable; 4 justices dissent from the holding that the termination didn’t infringe on Myers’ First Amendment rights.

Comment: Author of the majority opinion (White), other justices who signed on to the opinion.

Comment: Paragraph 1 answers the first question from the legal issues – is the case reviewable -- and explains why the Court says that it is.

The Court employed a “balancing” approach to resolve this issue, weighing Myers’ First Amendment interest in speech against the state’s interest in “efficient and successful” office operation. In an office context, a great deal of deference is due to an employer’s judgment on personnel matters. Although Connick did not show that the questionnaire had the effect of impeding the state’s interests, “we do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action” (at 317). The limited nature of the “public concern” tapped by the questionnaire, especially in light of the context of expression – at the office about matters of personnel transfer-- supports the contention that the functioning of the office was threatened by Myers’ expression. The latter outweighs the protection afforded to Myers’ speech.

Comment: Paragraph 2 answers the second legal question and explains why the majority does not see a First Amendment violation here.

Decision: Reversed.

Comment: The Court’s decision *reverses* the decisions of the federal district court and the appellate court.

No Concurrences

Dissenting Opinion: Brennan (joined by Marshall, Blackmun, and Stevens)

The fact that Myers' expression concerned "the manner in which government is operated or should be operated" (at 318) – it addressed the operation of the office of an elected public official – requires a showing that the speech *actually had* the effect of disrupting the office environment (cites to *Mills v. Alabama*, 1966; *Pickering v. Board*, 1968; *Tinker v. Des Moines*, 1969). Here, there was no such showing; "disruptive potential" is an insufficient ground on which to chill the exercise of First Amendment rights.

Comment: Author of the dissent and the justices who joined in the dissenting opinion.

Significance: The Court affords public employers broad latitude in terminating public employees for potentially disruptive speech in their offices even though said speech has not had a clear impact on effective office operation. In so doing, it discounts the "effect" test employed in other areas of First Amendment law.

Comment: Brennan dissents from the majority opinion based on his reading of the relevant precedents and the standard they require.

Comment: Notes the effect of the decision within the broader field of First Amendment law.