

INTOLERABLE CRUELTIES: RETALIATORY ACTIONS IN FIRST AMENDMENT PUBLIC EMPLOYMENT CASES

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ABSTRACT

The First Amendment affords public employees limited protection against retaliation by their public employers for the exercise of their free speech rights. Circuits are split over what sort of retaliatory act is actionable under the First Amendment. Circuits often look to their Title VII jurisprudence covering that act's anti-retaliation provision to define retaliation in the First Amendment context.

This Note addresses the appropriate definition of retaliation under First Amendment *Connick-Pickering* questions of public employee free speech rights. As other commentators have noted, Title VII standards for retaliation are poor substitutes in the First Amendment area, since such standards threaten to artificially limit the scope of retaliatory acts. This Note also asserts, however, that Title VII standards can be too broad for First Amendment purposes. In particular, the recognition of co-worker retaliation under Title VII does not comport with the First Amendment's concern about the acts of public employers. Ultimately, Title VII and the First Amendment serve very different concerns.

This Note concludes by advocating a definition of retaliatory actions for First Amendment public employee cases that is not limited by any discrete list of acts and is rooted clearly in the role of the public employer. Such a standard best serves the goals of the First Amendment as stated in the Court's *Connick-Pickering* line of cases.

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