

## School Administrator's Free Speech Retaliation Claim Fails

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In its recent decision in *Thompson v. Central Valley School District No. 365* (9th Cir. 2025) 163 F.4<sup>th</sup> 654, the Ninth Circuit affirmed a U.S. District Court ruling that Central Valley School District (CVSD) had demonstrated that a former middle school assistant principal's speech would reasonably cause disruption in the workplace and undermine CVSD's interest in creating a safe and inclusive school environment, thereby, outweighing the assistant principal's interests in protected speech.

### Background

In August 2020, Randey Thompson, a CVSD assistant principal, posted a comment on his private Facebook page after watching the Democratic National Convention. Thompson's post sparked outrage because of his use of epithets, slurs, the word "demtard," and violent language such as taking individuals "to the woodshed for a proper education." A CVSD employee saw and shared the post with other administrators, which eventually caught the Superintendent's attention. Two days later, Thompson was placed on paid administrative leave, and he immediately deleted the Facebook post.

An independent investigator determined that employees found the use of the term "demtard" highly offensive and potentially harmful to students, families, and community members. The investigation also revealed a pattern of unprofessional behavior by Thompson, including referring to students as "Tide Pod Challenge Kids," "snowflakes," "short bus" when describing special education students, and asked a Black student if he felt teachers treated him differently than "normal" students. After a notice-and-opportunity meeting, Thompson denied interfering with CVSD's investigation, deleting personal emails, or refusing to cooperate with the forensic examiner. He claimed his Facebook was hacked and that the post was written by someone else.

Shortly thereafter, Thompson was transferred to a subordinate position based upon his behavior as an administrator causing workplace disruption, his insensitive comments undermining CVSD's mission, his lack of inclusiveness creating a loss in confidence and unwillingness to promote CVSD's ideals, alleged interference in CVSD's investigation, and the determination that his move to a non-administrative teaching position was in the District's best interest.

## Court Analysis

Thompson sued CVSD alleging his First Amendment rights had been violated. The trial court granted summary judgment for CVSD, concluding that, even though Thompson had sufficiently alleged a First Amendment retaliation claim, his free speech interests were outweighed by CVSD's interest in creating a safe and inclusive school environment. Upon review, the Ninth Circuit analyzed Thompson's claim under the long-standing two-step framework established in *Pickering v. Board of Education*.

### Step One

Step One of the *Pickering* framework requires the plaintiff to show that: (1) he spoke on a matter of public concern; (2) he suffered an adverse employment action; and (3) his protected expression was a substantial motivating factor for the adverse action. If Step One is satisfied, a *prima facie* claim for First Amendment retaliation is established—which Thompson did. In his private capacity, Thompson's Facebook post criticized the Democratic National Convention which is a matter of public concern. As a result, CVSD placed Thompson on paid administrative leave, prohibiting him from entering CVSD property and contacting other staff, thereby suffering a “general stigma” constituting an adverse employment action. The court concluded that Thompson's Facebook post was a substantial or motivating factor for placing Thompson on administrative leave given the proximity between his protected speech and his placement on administrative leave.

### Step Two

Having established a First Amendment retaliation claim, the court then turned to the employer's burden in justifying their actions under Step Two of the *Pickering* framework. Step Two requires the employer to show either: (1) that its legitimate administrative interests in promoting an efficient workplace and avoiding workplace disruption outweighs the plaintiff's First Amendment interests; or (2) the government would have taken the same actions absent plaintiff's expressive conduct.

First Amendment speech on matters of public concern often occupies the highest rung in protection of First Amendment values. However, this protection is lessened where speech is derogatory in nature. Racially charged comments bearing no connection to a government employee's workplace arguably receives less First Amendment protection under the *Pickering* balancing test. Although Thompson's post broadly addressed a matter of public concern, his use of disability-related slurs and violent language was not entitled to the highest constitutional protection and held little weight under *Pickering*'s Step Two analysis.

Finally, the government employer must demonstrate actual material and substantial disruption, or reasonable predictions of disruption, in the workplace. This is assessed by whether the statement impairs the ability to conduct discipline, leads to disharmony among co-workers, is detrimental to working relationships, or impedes performance of duties. CVSD reasonably predicted that Thompson's post would cause disruption because of his public-facing supervisory role.

Administrators and staff expressed concern about their ability to work with Thompson and questioned his leadership, noting that his speech did not reflect CVSD's core values and could undermine its commitment to a safe and supportive educational environment. In the total, Thompson's statements were viewed as creating workplace disharmony and detrimentally impacted working relationships, therefore supporting the government's interest in preventing disruption.

## **Holding**

The Ninth Circuit gave little weight to Thompson's speech under the *Pickering* balancing test against CVSD's interest in creating a safe and inclusive school environment, and affirmed the district court's ruling in favor of CVSD.

## **Takeaways**

The court cautioned that the *Pickering* balancing test is particular to each case and should not be construed to permit the government interest to automatically prevail every time an employee's speech contains slurs or violent language. When considering whether to discipline an employee based on offensive and disruptive speech, government employers should carefully document how and why the speech causes disruption and undermines the agency's mission.

If you have any questions about this case, employee free speech rights, or labor and employment matters in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#), or download our [mobile app](#).

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