SUPREME COURT OF THE UNITED STATES

Syllabus

WATERS ET AL. *v.* CHURCHILL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 92–1450. Argued December 1, 1993—Decided May 31, 1994

Petitioners fired respondent Churchill from her nursing job at a public hospital, allegedly because of statements she made to co-worker Perkins-Graham during a work break. What Churchill actually said during the conversation is in dispute. Petitioners' version was based on interviews with Perkins-Graham and one Ballew, who had overheard part of the conversation, and indicated that Churchill made disruptive statements critical of her department and of petitioners. However, in Churchill's version, which was corroborated by others who had overheard part of the conversation, her speech was largely limited to nondisruptive statements critical of the hospital's ``cross-training'' policy, which she believed threatened patient care. Churchill sued under 42 U. S. C. §1983, claiming that her speech was protected under *Connick* v. *Myers,* 461 U. S. 138, 142, in which the Court held that the First Amendment protects a government employee's speech if it is on a matter of public concern and the employee's interest in expressing herself on this matter is not outweighed by any injury the speech could cause to the government's interest, as an employer, in promoting the efficiency of the public services it performs through its employees. The District Court granted petitioners summary judgment, holding that management could fire Churchill with impunity because neither version of the conversation was protected under *Connick*. The Court of Appeals reversed, concluding that Churchill's speech, viewed in the light most favorable to her, was on a matter of public concern and was not disruptive, and that the inquiry must turn on what her speech actually was, as determined by a jury, not on what the employer thought it was.

Held: The judgment is vacated, and the case is remanded.

977 F. 2d 1114, vacated and remanded.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE, JUSTICE SOUTER, AND JUSTICE GINSBURG, concluded:

1. The *Connick* test should be applied to what the government employer reasonably thought was said, not to what the trier of fact ultimately determines to have been said. Pp. 5–17.

(a) Absent a general test for deciding when the First Amendment requires a procedural safeguard, the question must be answered on a case-by-case basis, by considering the procedure's cost and the relative magnitude and constitutional significance of the risks of erroneous punishment of protected speech and of erroneous exculpation of unprotected speech that the procedure involves. In evaluating these factors here, the key is the government employer's interest in achieving its goals as effectively and efficiently as possible. Pp. 5–12.

(b) The Court of Appeals' approach gives insufficient weight to this interest, since it would force the government employer to come to its factual conclusions through procedures that substantially mirror the evidentiary rules used in court, whereas employment decisions are frequently and properly based on hearsay, past similar conduct, personal knowledge of people's credibility, and other factors that the judicial process ignores. Pp. 13–14.

(c) On the other hand, courts must not apply the *Connick* test only to the facts as the employer thought them to be, without considering the reasonableness of the employer's conclusions. It is necessary that the decisionmaker reach its conclusion about what was said in good faith, rather than as a pretext; but it does not follow that good faith alone is sufficient under the First Amendment. *Mt. Healthy City Bd. of Ed.* v. *Doyle,* 429 U. S. 274, and *Pickering* v. *Board of Ed. of Township High School Dist.,* 391 U. S. 563, distinguished. Pp. 14–15.

(d) Thus, if an employment action is based on what an employee supposedly said, and a reasonable supervisor would recognize that there is a substantial likelihood that what was actually said was protected, the First Amendment requires that the manager proceed with the care that a reasonable manager would use before making an employment decision of the sort involved in the particular case. In situations in which reasonable employers would disagree about who is to be believed, or how much investigation needs to be done, or how much evidence is needed to come to a particular conclusion, many different courses of action will necessarily be reasonable, and only procedures outside the range of what a reasonable manager would use may be condemned as unreasonable. Pp. 15–16.

2. Applying the foregoing to this case demonstrates that petitioners must win if they really did believe Perkins-Graham's and Ballew's story, and fired Churchill because of it. That belief, based on the investigation petitioners conducted, would have

been entirely reasonable. Moreover, as a matter of law, the potential disruptiveness of Churchill's speech would have rendered it unprotected under the *Connick* test. Nonetheless, the District Court erred in granting petitioners summary judgment, since Churchill has produced enough evidence to create a material issue of disputed fact about whether she was actually fired because of disruptive statements, or because of nondisruptive statements about cross-training, or because of other statements she may have made earlier. If either of the latter is so, the court will have to determine whether the statements in question were protected speech. Pp. 17–20.

JUSTICE SCALIA, joined by JUSTICE KENNEDY and JUSTICE THOMAS, concluded that the Court should adhere to its previously stated rule that a public employer's disciplining of an employee violates the First Amendment only if it is in retaliation for the employee's speech on a matter of public concern, see, *e.g., Pickering* v. *Board of Ed. of Township High School Dist.,* 391 U. S. 563, 572, and should not add to this prohibition a requirement that the employer conduct an investigation before taking disciplinary action. The plurality's recognition of a broad new First Amendment right to an investigation before dismissal for speech is unprecedented and unpredictable in its application and consequences. In light of the requirement of a pretext inquiry, it is also superfluous to the disposition of this case and unnecessary for the protection of public-employee speech on matters of public concern. Judicial inquiry into the genuineness of a public employer's asserted permissible justification for an employment decision—be it unprotected speech, general insubordination, or laziness—is all that is necessary to avoid the targeting of ``public interest'' speech condemned in *Pickering.* See, *e.g., Mt. Healthy City Bd. of Ed.,* 429 U. S. 274, 287. Churchill's right not to be dismissed in retaliation for her expression of views on a matter of public concern was not violated, since she was dismissed for another reason, erroneous though it may have been. Pp. 1–10.

O'CONNOR, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., and SOUTER and GINSBURG, JJ., joined. SOUTER, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in the judgment, in which KENNEDY and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.