TEXAS TECH UNIVERSITY SCHOOL OF LAW
BOARD OF BARRISTERS
2025 1L MOOT COURT COMPETITION

No. 25-777

Supreme Court of the United States

GLINDA UPLAND, DEAN OF THE SCHOOL OF SORCERY AT SHIZ UNIVERSITY,
Petitioner,

v.

ELPHABA THROPP,
Respondent.

ON WRIT OF CERTIORARI

THE COURT OF APPEALS FOR THE EMERALD CIRCUIT

ORDER OF THE COURT ON SUBMISSION

IT IS THEREFORE ORDERED that counsel appear before the Supreme Court to present oral argument on the following issues:

1. Whether a public university professor's choice of pronouns in the classroom is protected speech.

2. Whether paid administrative leave is an adverse employment action for the purposes of a First Amendment retaliation claim.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OZ

ELPHABA THROPP, Plaintiff, -against- GLINDA UPLAND, DEAN OF THE SCHOOL OF SORCERY AT SHIZ UNIVERSITY Defendant.	:	Docket No. 25-777 OPINION AND ORDER ON MOTION FOR SUMMARY JUDGMENT

WIZARD, J.:

INTRODUCTION

The question before this Court today concerns pronouns, and how we react to them. Are they protected speech? Furthermore, is there a claim for retaliation under the First Amendment if a university places a professor on paid administrative leave for misgendering a student? We consider these questions on a summary judgment motion. We only consider the free speech and retaliation issues today, as Plaintiff has not pled any free exercise claims.

BACKGROUND

Here, in our great state of Oz, lies the Shiz University School of Sorcery—a top-tier institution whose alumni have gone on to grace storied stages around the world from Munchkinland to the Quadlings. The School of Sorcery, affectionately dubbed "SOS" by its students, is a part of Shiz University, a public university. The broom-flying[1] program is particularly well-known and prestigious, drawing renowned international instructors, names even known to us broom-flying neophytes: Harry Potter, the Sanderson Sisters, and, of course, the Wicked Witch of the West.

From among such vaunted company comes Elphaba Thropp, whose class "Defying Gravity II" is the second in the intermediate broom-flying sequence that all broom flyers in SOS must take. Professor Elphaba has a very specific broom-flying pedagogy. She believes that a broom must be

[1] For those unfamiliar, brooms are commonly used by both witches and wizards—the skilled individuals that would be eligible to enroll in Shiz University School of Sorcery.

understood to be flown on. As such, her class encompasses a wider range of topics than a typical broom-flying course does. She encourages students to think about and discuss the motives and means behind the music that they play. This method has received mixed reception from both students and the administration. In fact, Dean Glinda Upland, Professor Elphaba's former roommate at Shiz, who oversees the School of Sorcery, has repeatedly informed Professor Elphaba that this type of teaching is not necessary. Still, up until this past year, no formal student complaints had been logged against Professor Elphaba.

Professor Elphaba is also a member of the Church of the Holy Broom, a sect of Christian fundamentalists who believe that the holy will is expressed through music and broom-flying and do not recognize any gender other than one's sex assigned at birth.

Courageous Lion, Wise Scarecrow, and Heart Tinman were all students of Professor Elphaba in the 2023–2024 school year. Courageous Lion ("Lion") is a trans man and uses he/him pronouns. Wise Scarecrow ("Scarecrow") and Heart Tinman ("Tinman") are nonbinary and use they/them pronouns. At the beginning of the semester, Lion, Scarecrow, and Tinman all informed Professor Elphaba of their pronouns. Still, throughout the course, Professor Elphaba refused to call Lion, Scarecrow, and Tinman by their names or pronouns. Instead, Professor Elphaba would only refer to Lion, Scarecrow, and Tinman using the names and pronouns given to them at birth.

After repeated attempts to solicit Professor Elphaba to refer to them in the correct manner, the students filed a Title IX complaint with the University. The report made its way up the rungs of the Title IX Office, eventually finding its way to Dean Glinda. Upon receiving the report, Dean Glinda took immediate action, placing Professor Elphaba on paid administrative leave for the pendency of the Title IX Office's investigation. Professor Elphaba (hereinafter "Plaintiff") sued Dean Glinda and the Board of Shiz University (hereinafter "Defendants").

DISCUSSION

I. Plaintiff's Speech Is Not Protected.

We turn to the Supreme Court's long line of cases determining when speech by a public employee is protected. We first must determine whether *Garcetti v. Ceballos* applies. *See generally* 547 U.S. 410 (2006).

A. *Garcetti* Applies to This Case and Nullifies Plaintiff's Protected Speech Claim.

In 2006, the Supreme Court upset the balance of public employee free speech precedent when it issued *Garcetti v. Ceballos*, ruling that public employees may be fired from their position for speech made "pursuant to official responsibilities." 547 U.S. at 424. As such, if this was a

routine public employee free speech case, we would start with the question of whether this speech was made pursuant to Plaintiff's official responsibilities, which in this case is clear. Addressing students is one of the official duties of a professor. *See, e.g.*, *Wozniak v. Adesida*, 932 F.3d 1008, 1010 (7th Cir. 2019) ("how faculty members relate to students is part of their jobs"). Plaintiff was addressing students. Therefore, per *Garcetti*, the speech is not protected. 547 U.S. at 424.

Plaintiff argued that the semi-recognized concept of academic freedom should bar *all* extensions of *Garcetti* to university professors, but this Court disagrees. Ideas similar to what the Plaintiff terms "academic freedom" have existed in the United States for many years. *See, e.g.*, *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (mentioning "academic freedom" as an "area[] in which government should be extremely reticent to tread."). There was even some angst in *Garcetti* itself surrounding this. *Compare Garcetti*, 547 U.S. at 425, *with id.* at 438–39 (Souter, J., dissenting). Nevertheless, courts have applied *Garcetti* to university professors where speech is "so clearly not related" to scholarship or teaching. *See Gorum v. Sessoms*, 561 F.3d 179, 186 (3d Cir. 2009). This speech is clearly not related to any substantive classroom material that could be taught by Plaintiff. Per the Dean's specific entreaties, there is very little overlap between gender and brooms. This is not a political philosophy class, where the subject of gender identity could reasonably come up. *See Meriwether v. Hartop*, 992 F.3d 492, 499, 506 (6th Cir. 2021). Instead, this speech is more like a roll call, something which even those decisions which recognize academic freedom see as ministerial. *Id*. at 507. There is no academic freedom exception, and *Garcetti* applies.

II. Plaintiff's Speech is Not Protected Under The *Connick-Pickering* Framework.

While we recognize that *Garcetti* applies, and therefore Dean Glinda is entirely within her rights to discipline Plaintiff, this Court will nonetheless move on and analyze Plaintiff's claims under the *Connick-Pickering* framework. We do this because we are worried about the insidious effects of misgendering and know that elements within our country will not rest until they have exploited every angle of free speech. Therefore, it is the duty of this Court as a member of the judiciary to explain why this type of misgendering deserves no safe harbor under any conception of free speech, and indeed, why doing so would be a perversion of that amendment of our great Constitution.

As such, we move on to an analysis of *Connick-Pickering*. Plaintiff's claim of protected speech would fail under the *Connick-Pickering* framework. According to the Supreme Court's decision in *Connick*, there are two steps to the inquiry that a court must conduct once it determines that *Garcetti* does not bar a free speech claim. *Connick v. Myers*, 461 U.S. 138, 147–48, 150–51 (1983). First, a court must determine whether the speech is on a matter of public concern by weighing the "content, form, and context of a given statement." *Id.*, at 147–48. Then, if the speech is on a matter of public concern, the inquiry moves to whether the government's interest in

promoting the efficiency of its public services outweighs the speaker's interest in making the speech. *Pickering v. Board of Ed. of Twnshp. High Sch.*, 391 U.S. 563, 568 (1968).

1. The Plaintiff's speech is not on a matter of public concern.

This speech does not fall under a "matter of public concern" as defined by *Connick*. 461 U.S. at 145–46. *Connick* defined a matter of public concern as something relating "to any matter of political, social, or other concern to the community." *Id*. The Second Circuit has further refined this description, ruling that "speech that, although touching on a topic of general importance, primarily concerns an issue that is 'personal in nature and generally related to the speaker's own situation' such as [their] assignment, promotion, or salary, does not address matters of public concern." *Jackler v. Byrne*, 658 F.3d 225, 236 (2d Cir. 2011) (*quoting Ezekwo v. NYC Health & Hosps. Corp.*, 940 F.2d 775, 781 (2d Cir. 1991), *cert. denied*, 502 U.S. 1013 (1991)); *See also Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 839 (S.D. Ind. 2020). The speech here is clearly such speech. There is nothing more personal than what one decides to call oneself. Despite what Plaintiff argues, her speech is not some grand comment on gender identity, but rather a refusal to respect a student. She was not attempting to start a discussion, to continue a conversation, or to engender thought in anyone. A student's pronouns are not everyone's business. In other words, the fact that there *is* public debate on the issue of gender identity does not mean that Courageous Lion's pronouns are a matter of public concern. Therefore, Plaintiff's actions would fail to meet the definition of "a matter of public concern."

2. The government's interest in efficiency outweighs the speaker's interest in expressing her views.

Even if this were speech on a matter of public concern, the government's interest in efficiency outweighs the Plaintiff's interest in making the speech. The *Pickering* test weighs the interest of the speaker in speaking on a matter of public concern with the interest of the government in providing efficient public services through its employees. 391 U.S. at 568. Efficiency can look different in many situations–in *Connick*, the supervisor's interest in maintaining workplace harmony was found to outweigh the employee's interest in speaking. *See* 461 U.S. at 154. Here, Defendant argues that Plaintiff was similarly interfering with the efficiency of a public service–the efficiency interest of Shiz University School of Sorcery to provide a comprehensive, harassment-and-discrimination-free broom-flying education to its students.

Discrimination on the basis of transgender status is sex discrimination. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020). Extending the same reasoning to harassment, it stands to reason that if someone is harassed because of their transgender or nonbinary identity, that is sexual harassment. Thus, Plaintiff's conduct is arguably sexual harassment. The government's interest in preventing sexual harassment has been found to outweigh someone's interest in contributing to a

public debate. *See Starling v. Board of Cty. Comm'rs*, 602 F.3d 1257, 1262 (11th Cir. 2010). Here, the school's efficiency interest in providing an education free from discrimination and harassment outweighs whatever interest the Plaintiff might have in weighing in on the gender identities of her students. This result is supported by the Seventh Circuit decision in *Piggee v. Carl Sandburg Community College*, where the panel found that an instructor's speech interest was outweighed by a college's interest in providing students harassment-free education when a hairdresser instructor was handing out homophobic pamphlets at a teaching salon. 464 F.3d 667, 672 (7th Cir. 2006). *See also Kluge*, 548 F. Supp. 3d at 833–835.

Because *Garcetti* applies, the speech is not on a matter of public concern, and the government's interests in efficiency and preventing discrimination outweigh the speaker's interest in expressing her views, the speech is not protected.

III. Paid Administrative Leave is Not an "Adverse Employment Action."

We next turn to Plaintiff's claim of retaliation under the First Amendment. Plaintiff has claimed that the actions of Defendant constituted an "adverse employment action" against her.

The definition of "adverse employment action" under the First Amendment has changed over the years. In *Burlington Northern & Santa Fe Railway Company v. White*, the Supreme Court clarified that adverse employment action for the purposes of Title VII retaliation claims could be extended to decisions that were more than just "ultimate employment decisions." 548 U.S. 53, 67 (2006). In other words, decisions that did not necessarily have a tangible, material impact on the claimant (e.g., hiring or firing) could still be adverse employment action for the purposes of retaliation. *Id.*

The Court has yet to provide similar clarity to what constitutes adverse employment action for the purpose of a First Amendment retaliation claim. Instead, the circuits have congealed into a split. On one side, the Eighth Circuit has hewed closer to a pre-*Burlington Northern* definition, defining adverse action as "one that produces a material employment disadvantage." *In re Kemp*, 894 F.3d 900, 906 (8th Cir. 2018). On the other side, the Ninth Circuit has adopted a broader view of what constitutes adverse employment action, holding that the "proper inquiry is whether the action is reasonably likely to deter the employees from engaging in protected activity." *Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013) (internal quotation marks omitted).

The correct way to analyze paid administrative leave is to adopt the stricter rulings of a plurality of circuits. The Eighth Circuit, for example, has ruled in *In re Kemp* that, in First Amendment cases, an adverse employment action has to produce "a material employment disadvantage, such as termination, cuts in pay or benefits, and changes that affect an employee's future career prospects, or circumstances amounting to a constructive discharge." 894 F.3d at 906

(*quoting Kerns v. Capital Graphics, Inc.*, 178 F.3d 1011, 1016 (8th Cir. 1999)) (internal quotation marks omitted). Similarly, per the Fifth Circuit, "[a]dverse employment actions are discharges, demotions, refusals to hire, refusals to promote, and reprimands." *Breaux v. City of Garland*, 205 F.3d 150, 157 (5th Cir. 2000) (quoting *Pierce v. Tex. Dep't of Crim. Just., Institutional Div.*, 37 F.3d 1146, 1149 (5th Cir. 1994)).

What harm did Professor Elphaba suffer here? She may have been at the center of a media circus, but public exposure should not factor into this analysis. She is still gainfully employed at Shiz[2], she was not demoted, her pay is the same, and her future career prospects remain intact.

"Minor changes in duties" are not adverse employment actions. *In re Kemp*, 894 F.3d at 906. Being placed on paid administrative leave, while undoubtedly stressful and harmful to the psychic wellbeing of a professor, is such a minor change. Stress does not an adverse employment action make. The Fifth Circuit specifically contemplated this; in *Breaux v. City of Garland*, they noted that investigations and mere accusations are not adverse employment actions. 205 F.3d at 157–58. Furthermore, the Sixth Circuit has specifically stated that paid administrative leave is not an adverse administrative action. *Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019). Even the Eleventh Circuit, which has refused to adopt the Eighth Circuit standard, has found paid administrative leave not to be an adverse employment action. *See Bell v. Sheriff of Broward Cty.*, 6 F.4th 1374, 1379 (11th Cir. 2021).

This is paid administrative leave. It is not an adverse employment action.

CONCLUSION

Plaintiff's speech is not protected, and, even if it were, Defendant's actions against her were not sufficient to constitute an adverse employment action. As such, Defendant's Motion for Summary Judgment is **GRANTED**; and Plaintiff's Motion for Summary Judgment is **DENIED.**

SO ORDERED.

Boq

Hon. Boq
United States District Judge

Dated: January 26, 2024.
Emerald City, Oz

[2] Shiz University ("Shiz") and Shiz University School of Sorcery are the same legal entity.

IN THE UNITED STATES COURT OF APPEALS
FOR THE EMERALD CIRCUIT

March Term 2025
No. 25-777

ELPHABA THROPP,

Plaintiff-Appellant,

v.

GLINDA UPLAND, DEAN OF THE SCHOOL OF SORCERY AT SHIZ UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Oz.

Argued: June 13, 2024
Decided: August 30, 2024

Before: PANZER, SUTTON AND ENDSLEY, *Circuit Judges*.

Plaintiff-Appellant Elphaba Thropp is a broom-flying professor at a public university who was placed on paid administrative leave for refusing to refer to some of her students by their correct pronouns and names, instead referring to them by the names and pronouns given to them at birth. The plaintiff sought declaratory and injunctive relief to gain her full reinstatement. The district court granted summary judgment to the defendant.

We hold that the professor's use of pronouns in this context was protected speech under the First Amendment. We also hold that the placement of the appellant on paid administrative leave constituted an adverse employment action for the purposes of a First Amendment retaliation claim. We therefore conclude that the district court erred in granting summary judgment to Dean Glinda on the plaintiff's claims. The decision of the district court is reversed**,** the order of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion.

REVERSED, VACATED, AND REMANDED.

PANZER, *Circuit Judge*:

Before our Court today are two cross-motions for summary judgment. We review these motions *de novo.*

BACKGROUND

The problem started, as so many problems do these days, on a university campus. At the end of this year, Elphaba Thropp, a renowned broom-flyer and generous witch-instructor who has appeared onstage in the company of luminaries such as Harry Potter, the Sanderson Sisters, and the Wicked Witch of the West, was a longtime broom-flying professor at the School of Sorcery at Shiz University. Professor Elphaba, a member of the Church of the Holy Broom, refused to call some of her students by their correct pronouns. She would only use the names and pronouns given to them at birth. Said students filed a Title IX complaint to Shiz University. Upon receiving the complaint, Dean Glinda Upland placed Professor Elphaba on paid administrative leave, pending the investigation. Outraged, Professor Elphaba sued.

Quickly, both parties agreed to resolve the case on competing motions for summary judgment. The District Court for the District of Oz reviewed these complaints and issued a decision for Appellee Glinda. On review, we overturn both decisions of the District Court and find for Appellant Elphaba.

DISCUSSION

I. Appellant's Speech is Protected.

Considering the precedent, and analyzing the law, we find that Appellant's choice of pronouns when referring to her students is protected speech.

A. *Garcetti* Provides a Right to Academic Freedom, a Right Which Should Apply to Professor Elphaba.

The first injustice that the lower court opinion did to the Supreme Court precedent is in its treatment of *Garcetti*. *See Brunhilde v. Wolfgang*, 481 F. Supp. 4th 516, 518–19. (D. Fig., 2022); *See generally Garcetti v. Ceballos*, 547 U.S. 410 (2006). The lower court arrived at the decision through a straightforward application of *Garcetti*, saying that the classroom speech counted as "on the job," and therefore Elphaba's claim should be disallowed under that analysis. *See Elphaba*, 481 F. Supp. 4th at 519. It dismissed the concept of academic freedom out of hand, chipperly referring to it as "semi-recognized" before writing it off altogether. *Id.*

This does a great discredit to the notion of academic freedom. Academic freedom has been around in some form or another for a long time. *See, e.g.*, *United States v. One Book Called "Ulysses"*, 5 F. Supp. 182 (S.D.N.Y. 1933) (a notable libel case defending James Joyce's *Ulysses*' publication in the United States); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). The Court even contemplated it when they were deciding *Garcetti*. The decision of the Court questions its application to "scholarship or teaching." *See Garcetti*, 547 U.S. at 425 (2006). Moreover, Justice Souter mentions the possible academic freedom ramifications of *Garcetti* in a dissenting opinion. *See id.*, at 438 ("I have to hope that [the Court's opinion in *Garcetti*] does not mean to imperil the First Amendment protection of academic freedom in public universities, whose teachers necessarily speak and write pursuant to official duties.") (internal citations and quotations omitted). In fact, this "semi-recognized" concept has been acknowledged as fact by no less than three federal circuits. In *Demers v. Austin*, the Ninth Circuit found that *Garcetti* did not apply to a Washington teacher's First Amendment claim that his rights had been violated when a university issued a letter of discipline over chapters of his book. 746 F.3d 402, 412 (9th Cir. 2014). In *Adams v. Trustees of the University of North Carolina-Wilmington*, the Fourth Circuit found that *Garcetti* did not apply when a conservative professor was denied a promotion based in part on his academic work. 640 F.3d 550, 562 (4th Cir. 2011). Last, but perhaps most significantly, the Sixth Circuit has even ruled that *Garcetti* did not apply to a university professor's use of pronouns within the classroom. *Meriwether v. Hartop*, 992 F.3d 492, 504–07 (6th Cir. 2021). Clearly, the district court is aware of such decisions—it even cites *Meriwether* in its opinion. Yet it refuses to apply the slightest suggestion of academic freedom, calling it instead a "ministerial task," something that *Meriwether* explicitly denied that pronoun use was. *Id.* at 507.

Applying academic freedom, as the facts and law urge us to do, this case looks very different. As Professor Elphaba is a professor, and her speech is related to teaching, the academic freedom doctrine bars the application of *Garcetti*. As such, the inquiry would skip the *Garcetti* step and move onto the *Connick-Pickering* analysis. *See Connick v. Myers*, 461 U.S. 147–48; 149–52 (1983) (*citing Pickering v. Board of Educ.*, 391 U.S. 563, 568 (1968)).

B. This is Speech on a Matter of Public Concern

After its mangling of *Garcetti*, the district court continues by making the dubious claim that the professor's speech is not speech on a matter of public concern. *Elphaba*, 481 F. Supp. 4th at 520. While certainly a person's choice of what to call themselves is personal, it has been ruled that a mode of address can constitute an implicit endorsement of that name, and all it might entail. *See Meriwether*, 992 F.3d at 508. In other words, by choosing to call a student by their pronouns, the teacher is forced to implicitly say that they think this student should be addressed by those pronouns. One only need look at the furor surrounding this case in the news media to see that there is some sort of public interest in this. Peter Pfeiffer, *Free Speech Under Attack: Leftist Students Blow the Kazoo at Professor Who Refuses To Use Pronouns*, Wolf News (Oct. 15, 2021); s*ee also*

Meriwether, 992 F.3d at 508 (citing the political debate surrounding transgender rights). As such, this is properly considered a matter of public concern.

C. The *Pickering* Balancing Test Weighs in Favor of Professor Elphaba.

Given that Professor Elphaba was speaking on a matter of public concern, her interest in speaking is increased. As *Meriwether* determined, a professor has a large interest in contributing to the debate on the campus of which they are a part. *Meriwether*, 992 F.3d at 508–510 ("Teachers and students must always remain free to inquire, to study and to evaluate, [and] to gain new maturity and understanding.") (quoting *Sweezy*, 354 U.S. at 250). Although Professor Elphaba is a sorcery and broom-flying professor, rather than a political philosophy professor, similar rules apply. Any campus is a free marketplace of ideas, even an orchestra school. Therefore, her interest is great and outweighs the government's interest.

Moreover, the opinion fails to address the issue of compelled speech. We are reminded of Justice Jackson's famous words in *West Virginia v. Barnette*: "if there is any fixed star in our constitutional constellation, it shall be that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." 319 U.S. 624, 642 (1943). Unfortunately, Shiz University has fallen into this same trap. They are trying to force their employees to say certain words, a compelled speech case that is almost textbook. Surely, there are accommodations that could have been made, solutions that might have been explored that could satisfy the wants and needs of all parties involved. Through not taking on this burden, the Appellee suggests that they don't have a legitimate interest at all but are rather more concerned with prescribing a certain orthodoxy on their campus.

Because (1) *Garcetti* does not apply, (2) this is speech on a matter of public concern, and (3) the speaker's interest in making the speech outweighs the government's interest in efficiency in its public services, this speech should be protected.

II. Appellant Suffered an Adverse Employment Action.

We once again find ourselves disagreeing with the district court. Where they applied the Eighth Circuit's test in *In re Kemp*, we believe that the Ninth Circuit's inquiry in *Dahlia v. Rodriguez* is more proper in this situation. *See Elphaba*, 481 F. Supp. 4th at 522; *In re Kemp*, 894 F.3d 900, 904–05 (8th Cir. 2018); *Dahlia v. Rodriguez*, 735 F.3d 1030, 1075 (9th Cir. 2013). It is imperative that government employees not use the cudgel of paid administrative leave in order to chill the unwanted speech of its employees. Here, like in *Dahlia*, there was a significant stigma resulting from Appellant's "placement on administrative leave." *See id.* at 1079. Here, there was

specific speech in mind, and Appellant's placement on administrative leave was meant to chill that speech. This places it firmly in the zone of impermissible retaliation.

This is particularly important in the modern age, where hair-trigger Twitter fingers can govern bodies, lives, and careers. When anyone can be disciplined for saying anything, we, the judiciary, must position ourselves where we should be—the stalwart protectors of unpopular speech. As such, we find that there are policy reasons to favor a more lenient standard of adverse employment action.

CONCLUSION

For the forgoing reasons, the decision of the district court in this case is REVERSED**.** The district court's order for summary judgment in favor of Appellee Glinda Upland is VACATED. The case is REMANDED to the district court for further proceedings consistent with this opinion.

(ORDER LIST: 595 U.S.)

CERTIORARI GRANTED

25-777 Glinda Upland v. Elphaba Thropp

The petition for a writ of certiorari is granted.* The parties will address the following questions:

Whether a public university professor's choice of pronouns in the classroom is protected speech.

Whether paid administrative leave is an adverse employment action for the purposes of a First Amendment retaliation claim.

* The petition for certiorari was submitted but omitted from the record.

[Excerpted from EMERALD CITY NEWS]

OPINION SECTION

FREE SPEECH UNDER ATTACK: Leftist Students FLY THE BROOM at Professor Who Refuses to Use Pronouns

By NESSA ROSE

EMERALD CITY, Oz—Elphaba Thropp, a sorcery and broom-flying professor at the prestigious Shiz University School of Sorcery, was placed on paid administrative leave after refusing to use some of her students' pronouns. This decision is yet another strike in a long line of leftist universities cracking down on free speech that they disagree with.

Professor Elphaba, a world-class witch and broom-flying aficionado, taught her class as she did every year. This year, though, she was confronted by angry students who attempted to force her into calling them by certain pronouns. Sadly, this type of incident seems to be all too common in today's society, although this reporter cannot think of any other specific examples.

"It's my speech they're messing with," said the broom-flying professor, who is also a member of the highly litigious Church of the Holy Broom. "What about the Constitution? What about the First Amendment? They will definitely be hearing from my lawyers."

Gregory MaGuire, a high-ranking member of Professor Elphaba's church, agreed, explaining more about the Church's beliefs: "Gender is immutable and sacred. The True Flyer is infallible—He makes no revisions or mistakes. To try to change one's gender is equivalent to adding Discord into His Eternal Threads."

We reached out to Dean Glinda for comment, and got some jargon from a low-level flunky. "It is the policy of Shiz not to comment on ongoing investigations," the mouthpiece said, "and we urge all parties involved in this investigation to keep it confidential. This is a private matter, and we'd like to keep it between the involved parties." At press time, a large crowd of people identifying themselves as members of the Church of the Holy Broom had gathered outside of the Shiz administrative building and were loudly sing-chanting in protest. We can only hope that someone here regains some sense and comes to a decision restoring free speech rights.

SCHOOL OF SORCERY, SHIZ UNIVERSITY (SHIZ)
INTAKE FORM
TITLE IX REPORT INFORMATION

NOTICE:
You have the right to (1) make a report to university police or campus security, local law enforcement, and/or state police, or choose not to report, (2) to report the incident to the School of Sorcery, Shiz University, (3) to be protected by School of Sorcery, Shiz University from retaliation for reporting an incident, and (4) to receive assistance and resources from School of Sorcery, Shiz University.

incident information	
Reporting Individual Name: Courageous Lion	**Reporting Individual's Status**: ☒ Student ☐ Employee ☐ Other
Reporting Individual Local Address: 444 Yellow Brick Road, Emerald City, Oz, 05943	**Telephone**: (203) 555-0493
Date of Incident: Various	**Date University Was Notified:** October 5, 2024
Name of Accused: Elphaba Thropp	**Accused Individual's Status:** ☐ Student ☒ Employee ☐ Other
Location of Incident: Wizard of Oz Memorial Broom Classroom	**Have Criminal Charges Been Filed?** ☐ Yes ☒ No
Today's Date and Time: October 7, 2024; 8:15 AM.	**University Official Name:** Doctor Dillamond (DD)

TYPE OF ALLEGED HARASSMENT

Description of Alleged Harassment (including information on any witnesses):

Students Courageous Lion, Wise Scarecrow, and Heart Tinman claim to have been harassed by Professor Elphaba Thropp on multiple occasions throughout the 2023-2024 school year. It began in the Fall Semester, when Professor Elphaba announced that she would not be calling anyone by "anything but his or her correct pronouns." Shortly after this, Courageous Lion sent an email to Professor Elphaba (with Scarecrow and Tinman copied), requesting that she use her pronouns. Professor Elphaba refused. Throughout the year, whenever there was a situation requiring the use of pronouns or gendered titles, Professor Elphaba would use pronouns that did not match the gender of the students. The students reported that this was very hard on them. Scarecrow and Tinman, in particular, had just come out as nonbinary, and they said that they felt as if their whole experience was being invalidated by Professor Elphaba. The students also claimed that their class performance suffered. Wise Scarecrow came into the class as the top broom-flying student in their year, but is performing only averagely under Professor Elphaba.

Recommend escalating the complaint for further investigation and possible action. Send to Dean Glinda for possible investigation.

– DD

End of Record