Wantagh Union Free Sch. Dist. v. N.Y. State Bd. of Regents

Docket No.: 25-1136

Full decision: Click here to view the decision

Case Information

Court: U.S. Court of Appeals for the Second Circuit

Date Decided: October 1, 2026

Judges: Circuit Judge Walker, Circuit Judge Park, Circuit Judge Lee

Lower Court: U.S. District Court for the Eastern District of New York (Chief Judge Brodie)

Parties and Attorneys

Plaintiffs-Appellants: Wantagh Union Free School District, Wantagh Union Free School District Board of Education, Anthony Greco, in his capacity as a Wantagh Board of Education member and a resident of the school community; Represented By: Steven C. Stern

Defendants-Appellees: New York State Board of Regents, Lester W. Young, Jr., in his official capacity as Chancellor, Josephine Victoria Finn, in her official capacity as Vice Chancellor, All members of the New York State Board of Regents, in their official capacities; Represented By: Daniel S. Magy

Overview

Issue: Whether restrictions on a school board member's wearing of Indigenous-themed school apparel plausibly violated the First Amendment.

Lower Court Held: The district court dismissed the municipal plaintiffs for lack of capacity and rejected the constitutional claims.

What Was Overturned: The Second Circuit vacated dismissal of Greco's free speech claim and overbreadth challenge to 8 N.Y.C.R.R. § 123.5 [restricting school officers' and employees' use or promotion of Indigenous names, logos, and mascots], affirmed in all other respects, and remanded.

Why: The complaint plausibly encompassed opposition to the restriction, and the district court had not addressed whether the public-employee speech framework applied to a volunteer elected official.

Background

New York's Part 123 restricted Indigenous names, logos, and mascots in public schools. Wantagh proposed retiring its Native American logo while retaining the "Warriors" name, but the State Education Department rejected that plan. The district, its board, and board member Anthony Greco sued; Greco alleged that the restrictions prevented him from wearing Warriors apparel at school events.

Lower Court Decision

The district court held that the district, board, and Greco in his official capacity lacked capacity to challenge the State. It dismissed Greco's constitutional claims, reasoning in part that he had not alleged expression on a matter of public concern under the Pickering public-employee speech framework.

Second Circuit Reversal

Reviewing dismissal de novo, the Second Circuit held that the complaint's community-support allegations and litigation context sufficiently encompassed opposition to the ban. It remanded for consideration of Pickering's applicability to Greco and renewed overbreadth analysis covering the regulation's full range of applications. Greco had pre-enforcement standing to challenge § 123.5 and its definitions and exceptions, but not provisions regulating districts. His vagueness challenge failed because he understood the restriction and the tribal-approval exception supplied objective criteria. The municipal plaintiffs lacked capacity: a risk of chilling speech did not establish compelled constitutional violations in every conceivable application.

Legal Significance

This nonprecedential summary order emphasized context when assessing expressive conduct at the pleading stage. It left unresolved both Pickering's applicability to volunteer elected school officials and the ultimate constitutionality of the restriction.

Key Takeaway

Plead the surrounding controversy and community context supporting an apparel-based speech claim, and address whether the public-employee framework governs the speaker.

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