Rehearing en banc granted by order filed
9/16/03. Opinion filed 5/30/03 is vacated.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

MATTHEW DIXON,
    Plaintiff-Appellant,

    v.   No. 02-1266

COBURG DAIRY, INCORPORATED,
    Defendant-Appellee.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
C. Weston Houck, District Judge.
(CA-01-53-2-12)

Argued: December 4, 2002

Decided: May 30, 2003

Before GREGORY, Circuit Judge, Joseph R. GOODWIN,
United States District Judge for the Southern District of
West Virginia, sitting by designation, and
James H. MICHAEL, Jr., Senior United States District Judge
for the Western District of Virginia, sitting by designation.

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Affirmed in part and reversed in part by published opinion. Judge
Gregory wrote the opinion, in which Senior Judge Michael joined.
Judge Goodwin wrote an opinion concurring in part and dissenting in
part.

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COUNSEL

ARGUED: Samuel Wilson Howell, IV, HOWELL & LINKOUS,
L.L.C., Charleston, South Carolina, for Appellant. J. Thomas Kil-

patrick, ALSTON & BIRD, L.L.P., Atlanta, Georgia, for Appellee.
ON BRIEF: Alan B. Linkous, HOWELL & LINKOUS, L.L.C.,
Charleston, South Carolina; Mikell R. Scarborough, Charleston,
South Carolina, for Appellant. Christopher S. Enloe, ALSTON &
BIRD, L.L.P., Atlanta, Georgia, for Appellee.

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OPINION

GREGORY, Circuit Judge:

Matthew Dixon, an employee of Coburg Dairy, Inc., was asked by
his employer to remove two Confederate flag stickers from his tool
box after an African-American co-worker complained. Dixon refused
to remove the stickers, and Coburg, relying on the company's anti-
harassment policy, fired Dixon. Dixon then filed suit in South Caro-
lina state court, alleging wrongful discharge and a "Violation of Con-
stitutional Rights." Coburg removed the case to federal court on the
ground that Dixon's complaint necessarily depended on the resolution
of a substantial question of federal law. Dixon filed a motion to
remand, which the district court denied. The district court then
granted Coburg's motion for summary judgment and dismissed the
case. Dixon appeals both of the district court's rulings. For the rea-
sons discussed below, we affirm in part and reverse in part.

I.

In April 1997, in Charleston, South Carolina, Matthew Dixon,
began his employment as a mechanic with Coburg Dairy, Inc.,
("Coburg"). In April 2000, Dixon was given a copy of Coburg's pol-
icy prohibiting harassment. The policy explained that "[h]arassment
may take many forms, including . . . [v]isual conduct such as deroga-
tory posters, cartoons, drawings, or gestures." The policy also warned
employees that anyone "who behaves in a manner that is inconsistent
with this policy will be subject to discipline up to and including termi-
nation."

Dixon is an active member of the Sons of Confederate Veterans
("SCV"), an all-male organization whose members "can prove genea-

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logically that one of their ancestors served honorably in the armed forces of the Confederate States of America." *Sons of Confederate Veterans v. Comm'r of the Va. Dep't of Motor Vehicles*, 288 F.3d 610, 613 n.1 (4th Cir. 2002). Beginning in January 2000, a conflict developed among South Carolinians over whether to remove the Confederate battle flag from atop their state capitol dome. As Dixon notes, this conflict became "a burning issue in the State of South Carolina," marking a "period of intense national scrutiny and public debate." (Br. for Appellant at 4.)

It was in this context that Dixon placed two Confederate battle flag stickers on his personal tool box. One was visible on the outside of the box; the other was inside the box, but visible when the box was open. Dixon used the tool box and displayed both flag stickers while at work inside the Coburg Dairy garage. An African-American co-worker, Leroy Garner, confronted Dixon and informed him that he found the stickers racially offensive and a violation of Coburg's harassment policy. Dixon disagreed, maintaining that his display of the stickers did not violate Coburg's policies and, notwithstanding any policy to the contrary, that it was his constitutional right to display the flag. Thereafter, Dixon, Garner, and Coburg attempted to mediate a compromise. Coburg offered to buy Dixon a new, unadorned tool box, allowing him to keep his previously decorated box for home use. Dixon responded that his heritage was "not for sale." In the end, Coburg insisted that the stickers be removed, and Dixon refused. Having reached an impasse, Coburg fired Dixon on September 5, 2000, on the ground that he had violated the company's anti-harassment policy.

Dixon filed a nine-count complaint in South Carolina state court. Count I, titled a "Violation of Constitutional Rights," alleged that "Coburg violated the constitutional rights of its employee by its termination of Plaintiff." In Count III, Dixon stated a claim for "Violation of Public Policy" based on S.C. Code Ann. § 16-17-560 (2002). He alleged that he was fired for displaying the Confederate flag, and that this action "constitute[d] a violation of South Carolina criminal law and therefore a violation of the public policy of this State." Premised on these same facts, Dixon articulated a claim in Count IV for retaliatory discharge.

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Insisting that Counts I, III, and IV raised substantial questions of federal law, Coburg removed the case to federal court. Dixon filed a motion to remand, which the district court denied. The parties then filed cross-motions for summary judgment. The district court granted Coburg's motion for summary judgment and dismissed the case. This appeal followed.

II.

Whether federal subject matter jurisdiction exists is a question of law that this Court reviews *de novo*. *Mulcahey v. Organic Chemicals Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994). The grant of a motion for summary judgment is also reviewed *de novo*. *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001).

III.

A.

Coburg's removal to district court was based on 28 U.S.C. § 1331 (2001), giving federal courts original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." Count I of Dixon's complaint is titled, "Violation of Constitutional Rights," and asserts a claim based upon"[t]he First Amendment to the U.S. Constitution." Dixon maintains in this count that "Coburg violated the constitutional rights of its employee by its termination of Plaintiff," and he concludes, "Coburg's termination of Plaintiff for display of the flag constitutes a violation of his constitutional rights entitling Plaintiff to an award for damages." At its core, Count I appears to require a determination as to whether Coburg's actions amount to a violation of Dixon's free speech right under the United States Constitution. This appearance, however, is illusory, as Dixon concedes that the First Amendment protects citizens only from government or State interference with their rights to free speech, *see Rendell-Baker v. Kohn*, 457 U.S. 830, 837 (1982), and further concedes that Coburg Dairy is not a state actor.

"[F]ederal courts are without power to entertain claims otherwise within their jurisdiction if they are `so attenuated and insubstantial as

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