

22-1135-cv
Heim v. Daniel

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2022

Argued: June 30, 2023 Decided: August 30, 2023

Docket No. 22-1135-cv

JOHN J. HEIM,

Plaintiff-Appellant,

— v. —

BETTY DANIEL, ADRIAN MASTERS,

*Defendants-Appellees.**

Before:

LYNCH, BIANCO, and PÉREZ, *Circuit Judges.*

This appeal concerns a First Amendment retaliation claim brought in the

* The Clerk is respectfully directed to amend the caption to conform to the above.

Northern District of New York by Plaintiff-Appellant John Heim, an adjunct professor of economics at SUNY Albany, who attributes his failure to advance within his department to his colleagues' unfavorable view of the methodology he employs in his scholarship. The district court (Hurd, J.) granted summary judgment to Defendants, two of Heim's colleagues who were involved in the hiring decisions at issue. Although we disagree with much of the district court's reasoning, we nonetheless agree with its ultimate disposition. We hold that *Garcetti v. Ceballos*, 547 U.S. 410 (2006), does not apply to speech related to academic scholarship or teaching, and that Heim's speech addressed matters of public concern, but that Heim's First Amendment claim nonetheless fails because under *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), a public university's interest in deciding for itself what skills, expertise, and academic perspectives it wishes to prioritize in its hiring and staffing decisions outweighs Heim's asserted interest in competing for academic positions unencumbered by university decision-makers' assessment of his academic speech. We therefore **AFFIRM** the judgment of the district court.

PHILLIP G. STECK, Cooper Erving & Savage LLP, Albany, NY,
for Plaintiff-Appellant.

SARAH L. ROSENBLUTH, Assistant Solicitor General, Buffalo, NY
(Letitia James, Attorney General; Barbara D.
Underwood, Solicitor General; Andrea Oser, Deputy
Solicitor General, *on the brief*), *for Defendants-Appellees.*

DARPANA M. SHETH, Washington, DC, *for Amicus Curiae*
Foundation for Individual Rights and Expression.

GERARD E. LYNCH, *Circuit Judge*:

Plaintiff-Appellant John Heim, an adjunct professor of economics, appeals from a judgment of the United States District Court for the Northern District of New York (David N. Hurd, *J.*) granting summary judgment to his colleagues Betty Daniel and Adrian Masters (together, “Defendants”) who, as the relevant decision-makers in the Economics Department at the State University of New York at Albany (“SUNY Albany”¹), declined to interview Heim for more desirable positions he believes he was qualified for. Heim’s challenge is premised on the allegation that Defendants rejected his candidacy in substantial part because he is a proponent of traditional Keynesian economics, an approach that Defendants consider to be outdated.

Although we accept that factual premise underlying Heim’s appeal, we disagree with the legal theory it supports: that, under the First Amendment, a public university’s hiring decisions cannot be informed by methodological preference. Rather, applying the employer/employee interest-balancing framework first set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), we hold

¹ The institution is also referred to in the record as “The University at Albany” and, simply, “Albany.”

that a public university's interest in deciding for itself what skills, expertise, and academic perspectives it wishes to prioritize in its hiring and staffing decisions outweighs Heim's asserted interest in competing for academic positions unencumbered by university decision-makers' assessment of the approach or methodology underlying his academic speech. We therefore **AFFIRM** the judgment of the district court.

BACKGROUND

I. Factual Background

The following facts, which are largely drawn from Heim's own testimony, are undisputed except where otherwise indicated, and are those that a reasonable factfinder could find, construing all ambiguities in Heim's favor. *See Cugini v. City of New York*, 941 F.3d 604, 608 (2d Cir. 2019).

A. *The Parties*

Heim, an adjunct professor² at SUNY Albany, initially brought this lawsuit against the entire SUNY system, SUNY Albany, its president Havidan Rodriguez,

² In his deposition, Heim explained that although his title was technically "visiting professor," for "payroll purposes" he was "known as an adjunct professor or lecturer." App'x 142, 151. All parties refer to him as an "adjunct."

and two members of the SUNY Albany Economics Department (the “Department”): Professors Betty Daniel and Adrian Masters. Masters has chaired the Department since 2015, and was a member of its hiring committee at all relevant times. In addition to leading the Department prior to Masters, Daniel also chaired its hiring committee at all relevant times.

B. Heim’s Professional Path

Heim was a relative latecomer to academia. After receiving his Ph.D. in Political Economy from SUNY Albany in 1972, he worked in government as an econometrician (and in other similar capacities) for many years, interrupted only by his time in the mid-1980s obtaining a Master’s degree in Public Administration from Harvard. He began his teaching career in 1997, accepting a non-tenured position at Rensselaer Polytechnic Institute (“RPI”) where he eventually achieved the rank of (non-tenured) “full clinical professor.” App’x 126.³ Heim’s duties at RPI “were limited to teaching and administration,” including teaching “Master[’s] and Ph.D.-level Advanced Macroeconomics I & II and Master’s level Econometrics” and supervising both undergraduate- and

³ Because “[t]enure in that position was not available,” RPI never made any “decision on granting or denying [Heim] tenure.” App’x 528.

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