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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BOROUGH OF DURYEA, PENNSYLVANIA, ET AL. *v.* GUARNIERI

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

No. 09–1476. Argued March 22, 2011—Decided June 20, 2011

After petitioner borough fired respondent Guarnieri as its police chief, he filed a union grievance that led to his reinstatement. When the borough council later issued directives instructing Guarnieri how to perform his duties, he filed a second grievance, and an arbitrator ordered that some of the directives be modified or withdrawn. Guarnieri then filed this suit under 42 U. S. C. §1983, alleging that the directives were issued in retaliation for the filing of his first grievance, thereby violating his First Amendment "right . . . to petition the Government for a redress of grievances"; he later amended his complaint to allege that the council also violated the Petition Clause by denying his request for overtime pay in retaliation for his having filed the §1983 suit. The District Court instructed the jury, *inter alia,* that the suit and the grievances were constitutionally protected activity, and the jury found for Guarnieri. Affirming the compensatory damages award, the Third Circuit held that a public employee who has petitioned the government through a formal mechanism such as the filing of a lawsuit or grievance is protected under the Petition Clause from retaliation for that activity, even if the petition concerns a matter of solely private concern. In so ruling, the court rejected the view of every other Circuit to have considered the issue that, to be protected, the petition must address a matter of public concern.

Held: A government employer's allegedly retaliatory actions against an employee do not give rise to liability under the Petition Clause unless the employee's petition relates to a matter of public concern. The Third Circuit's conclusion that the public concern test does not limit public employees' Petition Clause claims is incorrect. Pp. 4–19.

(a) A public employee suing his employer under the First Amend-

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ment's Speech Clause must show that he spoke as a citizen on a matter of public concern. *Connick* v. *Myers*, 461 U. S. 138, 147. Even where the employee makes that showing, however, courts balance his employee's right to engage in speech against the government's interest in promoting the efficiency and effectiveness of the public services it performs through its employees. *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568. Although cases might arise in which special Petition Clause concerns would require a distinct analysis, public employees' retaliation claims do not call for this divergence. The close connection between the rights of speech and petition has led Courts of Appeals other than the Third Circuit to apply the public concern test to public employees' Petition Clause claims. This approach is justified by the substantial common ground in the definition and delineation of these rights. Pp. 4–8.

(b) The substantial government interests that justify a cautious and restrained approach to protecting public employees' speech are just as relevant in Petition Clause cases. A petition, no less than speech, can interfere with government's efficient and effective operation by, *e.g.,* seeking results that "contravene governmental policies or impair the proper performance of governmental functions," *Garcetti* v. *Ceballos,* 547 U. S. 410, 419. A petition taking the form of a lawsuit against the government employer may be particularly disruptive, consuming public officials' time and attention, burdening their exercise of legitimate authority, and blurring the lines of accountability between them and the public. Here, for example, Guarnieri's attorney invited the jury to review myriad details of government decisionmaking. It is precisely to avoid this sort of intrusion into internal governmental affairs that this Court has held that, "while the First Amendment invests public employees with certain rights, it does not empower them to 'constitutionalize the employee grievance.' " *Id.,* at 420. Interpreting the Petition Clause to apply even where matters of public concern are not involved would be unnecessary, or even disruptive, when there is already protection for the public employees' rights to file grievances and litigate. Adopting a different rule for Petition Clause claims would provide a ready means for public employees to circumvent the public concern test's protections and aggravate potential harm to the government's interests by compounding the costs of complying with the Constitution. Pp. 8–13.

(c) Guarnieri's claim that applying the public concern test to the Petition Clause would be inappropriate in light of the private nature of many petitions for redress lacks merit. Although the Clause undoubtedly has force and application in the context of a personal grievance addressed to the government, petitions to the government

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assume an added dimension when they seek to advance political, social, or other ideas of interest to the community as a whole. The Clause's history reveals the frequent use of petitions to address a wide range of political, social, and other matters of great public import and interest. Pp. 13–17.

(d) The framework used to govern public employees' Speech Clause claims, when applied to the Petition Clause, will protect both the government's interests and the employee's First Amendment right. If a public employee petitions as an employee on a matter of purely private concern, his First Amendment interest must give way, as it does in speech cases. *San Diego* v. *Roe*, 543 U. S. 77, 82–83. If he petitions as a citizen on a matter of public concern, his First Amendment interest must be balanced against the government's countervailing interest in the effective and efficient management of its internal affairs. *Pickering, supra*, at 568. If that balance favors the public employee, the First Amendment claim will be sustained. If the balance favors the employer, the employee's First Amendment claim will fail even though the petition is on a matter of public concern. As under the Speech Clause, whether a petition relates to a matter of public concern will depend on its "content, form, and context . . . , as revealed by the whole record." *Connick, supra*, at 147–148, n. 7. The forum in which a petition is lodged will also be relevant. See *Snyder* v. *Phelps*, 562 U. S. ___, ___. A petition filed with a government employer using an internal grievance procedure in many cases will not seek to communicate to the public or to advance a political or social point of view beyond the employment context. Pp. 17–18.

(e) Absent full briefs by the parties, the Court need not consider how the foregoing framework would apply to this case. P. 19.

364 Fed. Appx. 749, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. SCALIA, J., filed an opinion concurring in the judgment in part and dissenting in part.