

No. 2021-1

In the
Supreme Court of Sicily

PAULINA,

Petitioner,

v.

KING LEONTES AND QUEEN HERMIONE,

Respondents.

**On Writ of Certiorari to the
Appellate Court of Sicily**

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

King Leontes of Sicily and his beloved wife, Queen Hermione, had been separated for sixteen years. This separation was caused by Queen Hermione's former lady-in-waiting, Paulina. Paulina had kept Queen Hermione as a prisoner for these sixteen years and falsely had told King Leontes that she had died. Moreover, Paulina for sixteen years failed to tell Queen Hermione the truth that her beloved husband, King Leontes had atoned and repented for his actions in mistrusting Queen Hermione. Paulina also had sent the King and Queen's precious daughter, Perdita, to be abandoned in the wilderness.

Believing that Paulina's lies and cruelty caused them to be deprived of the ability to be together, King Leontes and Queen Hermione sued Paulina for damages for loss of consortium and emotional distress caused by keeping them apart. A jury of their peers found for the King & Queen.

Notwithstanding that the intentional infliction of emotional distress claim is primarily founded on Paulina's having kept the queen as an enchanted statue for a decade and a half, Paulina contends on appeal that the claims for their emotional distress must be overturned because her speech is constitutionally protected under the free speech clause of the Constitution of Sicily.

The questions presented are:

- (1) Whether the lower court erred in refusing Paulina's motion to dismiss the emotional distress claim because her speech and actions involved matters

of public concern shielded by Sicily's constitutional guarantee of freedom of speech; and

(2) Whether there was sufficient evidence to support the verdict that Paulina had intentionally inflicted emotional distress on King Leontes and Queen Hermione under the "actual malice" standard required in the law.

PARTIES TO THE PROCEEDING

Respondents are Leontes, by the grace of God King of Sicily, and Queen Hermione, his consort. Petitioner is Paulina, formerly a lady-in-waiting at the court of Sicily.

CORPORATE DISCLOSURE STATEMENT

While both King Leontes and Queen Hermione have generations of illustrious parents, neither has a parent corporation.

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INTRODUCTION

For God's sake, let us sit upon the ground
And tell sad stories of the marital woes of kings;
How some have been divorced; some long at war,
Some haunted by the grooms they have displaced;
Some cheated by their wives: some sleeping
 'round;
All unhappy: for within the hollow crown
That rounds the mortal temples of a king
Keeps Strife her court and there the antic sits,
Scoffing his state and grinning at his pomp.

Though all this is true, nevertheless, that does not give the queen's lady-in-waiting permission to imprison the queen in an enchanted statue for sixteen years, especially when the King had repented of the cause of such strife for all but a few seconds of that decade-and-a-half plus. The jury rightly found for the respondents, and this Court should affirm.

King Leontes of Sicily and his beloved wife, Queen Hermione, had an unfortunate dispute, one may say an argument of the Royal kind. King Leontes believed, falsely, that his wife was carrying on a clandestine dalliance with Leontes's best friend, King Polixenes of Bohemia. This unfortunate understanding led to a series of deeds and misdeeds by Queen Hermione's lady-in-waiting and long-time friend, Paulina, which resulted in the king and queen being separated for sixteen years. Paulina had kept Queen Hermione as a prisoner, a frozen statue, nonetheless, for these sixteen years and she falsely had told King Leontes that the Queen had died. She

also had failed to tell Queen Hermione during these sixteen years that her husband had atoned for his earlier mistrust of the good Queen.

While Queen Hermione was estranged from King Leontes, and whose parting was such sorrow with no sweetness whatsoever, she gave birth to the King's child, a girl, Perdita. Paulina, with the assistance of her husband, Lord Antigonus, abandoned the baby, the King's only daughter, in the wilderness on the coast of Bohemia. Unfortunately, this baby became estranged from both of her parents for years. Paulina's husband never returned to tell her and others what happened to the baby girl, as he was pursued and likely eaten by a very content bear. As the jury would later hear, Paulina secretly resented King Leontes for the loss of her husband. King Leontes mourned in despair and suffered for years until he was reunited by happy coincidences with his statuesque wife and his long-lost daughter.

The King and Queen brought suit against Paulina for damages for loss of consortium and emotional distress.

The district court appropriately denied Paulina's motions to dismiss the emotional distress claims and with it her baseless contention that her actions were protected by Sicily's constitutionally guaranteed freedom of speech. The case was tried to a jury. At trial Paulina argued, incredibly, that her actions to freeze and imprison Hermione and keep King Leontes in a remorseful state and in despair were required to fulfill the dictates of a fanciful god, Apollo. The jury correctly found in favor of King Leontes and Queen

Hermione and awarded them damages. The court of appeals affirmed.

“Gold ... [w]hat can it not do and undo?” *Cymbeline*, II.iii.77-80. Nothing can give the King, Queen and their daughter their sixteen years back—but 10,000 gold florins “can ... undo” a lot of the damage. This Court should affirm the judgment below and not allow Paulina’s selfish and vindictive conduct to masquerade as constitutionally protected speech.

STATEMENT OF THE CASE

A. Factual History

Leontes, King of Sicily, and Polixenes, King of Bohemia, have been best friends since childhood. King Polixenes visited his old friend in the kingdom of Sicily, catching up and enjoying each other for over nine months. When Polixenes insisted it was time for him to return home to Bohemian and visit his son, the ever-loving King Leontes unsuccessfully tried to urge him to stay longer. He then asked his wife, Queen Hermione, to persuade Polixenes to stay. Wishing her beloved husband to be happy and knowing his joy of spending time with his friends, Hermione agreed to this task, and after three speeches she succeeded. At that point Leontes was puzzled as to why Polixenes agreed to Hermione’s pleas and not to his own. Having spent the previous nine months binging on back-to-back streamed plays of *The Real Housewives of Athens*, he irrationally suspected that his pregnant wife, Hermione, and Polixenes were carrying on a dalliance.

Overcome with jealous rage, Leontes ordered his courtier Camillo to poison Polixenes, but instead Camillo warned Polixenes, and they both fled to Bohemia. Upon learning that they had fled, Leontes became even more convinced that his wife had been unfaithful. He also became paranoid and believed Polixenes and Camillo had been plotting his murder. He furthermore became certain in his mind that the child Hermione was carrying had been fathered by Polixenes and not by him. A true tragedy was at hand, since Lord Maurius Povich had been traveling in Asia Minor and thus was unable to offer his DNA paternity test, which would have saved the king and us from much grief. As it was, King Leontes ordered Hermione to be put in prison, and their young son Mamillius to be taken from her.

Hermione soon gave birth. Her attendant and close confidant, Paulina, who knew the King still was in an irrational frenzy, took the baby from her and flaunted it before Leontes, later testifying that she hoped he would recognize the baby as his own and soften his heart. In his irrational and jealous state, Leontes instead rejected the baby and ordered Lord Antigonus, Paulina's husband, to kill the child, but being the merciful king that he was, he then amended his order and told Antigonus to take the baby and abandon it in a desolate place. Antigonus, Paulina's husband, never returned from that unbearable mission, and thus no one knew what became of Perdita.

Meanwhile, King Leontes had consulted the oracle of Apollo to be certain he was right about Polixenes and Hermione. The message from Apollo

instead declared that Hermione was chaste and Polixenes blameless. Blinded, understandably, by his rage, Leontes refused to believe the oracle. Just then, Leontes was told that Mamillius had died. At that moment, Leontes saw—and publicly declared—the error of his ways. But at the same time, understandably, Hermione fell into a swoon of deep despair at the news. Paulina took Queen Hermione into seclusion and falsely reported to King Leontes and others that Hermione had died. Leontes *immediately* acknowledged his errors in how he had treated his wife, repented, and said he would conduct daily vigils at the grave of his son and wife. He did so for the next sixteen years, all the while Paulina failing to let either the King or the Queen know the truth.

The Lords of Sicily, believing Leontes had suffered long enough, eventually urged him to marry again to assure there would be an heir to the throne. Paulina, continuing to perpetuate her unconscionable lies of sixteen year, reminded Leontes of his perfidy and insisted that he neither should nor could find a wife that can compare with Hermione. She persuaded him to remain alone, even though she saw him suffering from his separation from his beloved Queen, reminding him that the oracle said he would have no heir until what was lost was found.

The abandoned baby, Perdita, meanwhile, had been rescued in the Bohemian seaside and raised by shepherds, and had fallen in love with Florizel, the son of Polixenes. After a series of events not here relevant, all traveled to Sicilia where it was revealed that Perdita was Leontes's child and the union of Florizel and Perdita was joyously embraced by both fathers.

At this point, Paulina led the assembled guests into a secluded chamber in her home, where she had kept an aged statue of Hermione, which came to life and was reunited with her daughter and husband. When Hermione began to ask her daughter to tell her about her life in Bohemia, Paulina, fearing her lies of sixteen years would be revealed, interceded and said that would only lead to Queen Hermione being asked to tell her story, a veiled threat to the Queen to keep her mouth shut.

B. Procedural History

King Leontes and Queen Hermione sued Paulina in the district court of Sicily for damages for loss of consortium and emotional distress. As the complaint below explained, Paulina's cruel acts of keeping them apart for sixteen years and keeping them estranged from their precious daughter led to serious distress for both the King and the Queen. Those sixteen years are long lost, and the scars, pain, and even lines on Queen Hermione's face remain.

Paulina, believing that All's Well That Ends Well, moved to dismiss the emotional distress claims on the baseless ground that her speech and related actions were protected by the constitution's guaranteed freedom of speech. The district court denied her motion and claimed that it was *Much Ado About Nothing*. The court held that Paulina's machinations in lying about Queen Hermione's death and keeping her apart from Leontes did not constitute protected speech. The King and Queen's claims were tried to a jury.

Paulina asserted several defenses. First, that Queen Hermione was not imprisoned against her will, because she had agreed to her confinement. She further argued that the conditions of Queen Hermione's confinement, as a statue, were gracious and refined, and as a result she had not suffered at all during her seclusion, and therefore her conduct could not have led to any damages that the Queen claims.

Paulina also argued at trial that King Leontes's claims for emotional distress did not result from her conduct. She, incredibly, had the chutzpah to argue that she had to keep him in a remorseful state, had to prevent his marriage to anyone else, and had to keep Hermione in seclusion to fulfill the dictates of the god Apollo. Moreover, she assured that the King's emotional distress suffered as a result of his estrangement from his one and only daughter, Perdita, was not her fault because she was in no position to find Perdita.

The jury found more than ample evidence in the record from the testimony of many witnesses and from the King and Queen supporting the claims for emotional distress. The jury found that, as the monarchs had learned to their sorrow after sixteen years, there was "no more faith in [Paulina] than in a stewed prune, nor no more truth in [her] than in a drawn fox[.]" *1 Henry IV*, III.iii.119-21. The jury found it unconscionable that Paulina was perpetuating lies about Queen Hermion's existence for sixteen years. Indeed they found her conduct to be both outrageous and shocking and award 10,000 florins for her cruel and malicious conduct. The jury also found well-supported King Leontes' testimony

that Paulina hated him and sought revenge for her loss of her husband, Lord Antigonus, who had acted on King Leontes's orders, but was actually eaten by a hungry bear.

Paulina appealed, and the appellate court found her arguments to be either total Malarkey or in the words of another great Judge Leon of Athens, total Poppycock! This Court granted Paulina's petition for certiorari.

SUMMARY OF ARGUMENT

In the first instance, Paulina's actions, not words, are at the heart of the jury verdict against her. Therefore, her two questions presented, which both sound in the First Amendment's free-speech clause, miss the mark. Moreover, insofar as the *Falwell* standard is relevant, the record shows abundantly that Paulina knew what she was doing was false—the classic definition of actual malice—when she told Leontes that Hermione was dead, and then concealed the truth about his repentance from Hermione for sixteen years, causing him to “suffer the slings and arrows of outrageous fortune.” *Hamlet*, III.i.65-66. See *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988). Finally, the firing of a “personal and intimate” public employee such as a lady-in-waiting has always fallen outside of the *Pickering* test. *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty., Illinois*, 391 U.S. 563, 570 n.3 (1968). Paulina ought not, therefore, be able to assert a standard borrowed from that test as her defense.

ARGUMENT

- I. **As A Threshold Matter, Paulina’s Actions At The Heart Of This Case Are Not Speech At All.**
 - A. **Paulina’s Thrusting Baby Perdita Before King Leontes When He Was in a Visibly Disturbed State, Faking Queen Hermione’s Death and Funeral, and *Turning Her Into a Statue and Keeping Her That Way for Sixteen Years Were Actions, Not Speech.***

A jury of their peers awarded King Leontes and Queen Hermione a 10,000-florin verdict. It did so primarily because Paulina behaved outrageously in turning Queen Hermione into a statue and keeping her that way for sixteen years. Paulina pointedly did *not* tell Hermione of her husband’s near-instantaneous repentance. And though the record does not say so explicitly, it is clear from it that Paulina must have staged some sort of ghastly mock-funeral with Hermione’s supposed corpse. See R.III.ii.260-65¹ (LEONTES: “Prithee, bring me/To the dead bodies of my queen and son./One grave shall be for both. ... / Once a day I’ll visit/The chapel where they lie[.]”) There is no indication in the record that Leontes did not, in fact, visit the body of his queen and see her—supposedly—interred. Furthermore, as the jury heard, Paulina flaunted the king’s baby in front

¹ All citations to the record (R.[Act.scene.line.]) refer to William Shakespeare, *The Winter’s Tale* (B. Mowat & P. Werstine., eds.) (1998).

of him when he was in a jealous and irrational fit, as was well known to her.²

This conduct is outrageous by any standard. And most importantly, it is *not* speech. *See, e.g., United States v. O'Brien*, 391 U.S. 367, 376, (1968). (“We cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”).

Neither is other conduct which, while not outrageous in the sense required for intentional infliction of emotional distress (IIED), nevertheless is independently sufficient to fire a lady-in-waiting and thus vitiates Paulina’s *Pickering*-based affirmative defense. (*See infra.*) Namely, Paulina’s entering into the King’s chamber without permission and in defiance of the gentlemen-in-waiting and her refusing to leave when ordered are each *actions*, and, given her position, fireable offenses.

² Indeed, at least one expert has opined that Leontes was obviously in the grips of paranoid schizophrenia. 3 A. L. Rowse, *The Annotated Shakespeare* 797 (1978) (Leontes exhibits “the whole nature of schizophrenia, in its modern diagnosis[.]”).

B. The *Pickering* Doctrine, on Which Paulina Seeks to Build Her First Question Presented, Applies Only to Speech. It Therefore is Not a Ground to Dismiss an IIED Claim That Stems From Actions.

Paulina makes the novel argument that the tort claim against her ought to be dismissed on the grounds that her “speech and actions involved matters of public concern shielded by the constitutional guarantee of freedom of speech.” “The lady doth protest too much, methinks.” *Hamlet*, III.ii.254.

Her argument appears to be borrowed from the doctrine, developed in *Pickering*, 391 U.S. 563, and subsequent cases, that governs the dismissal of public employees for First-Amendment-protected speech. But even assuming that this standard could, under certain circumstances, be imported into tort law as a defense (something that is far from established³), it still must fail. My mistress’ eyes are nothing like the sun, and Paulina’s argument is nothing like a proper *Pickering* case.

³ At best, it is established that “[t]he Free Speech Clause of the First Amendment ... can serve as a defense in state tort suits.” *Snyder v. Phelps*, 562 U.S. 443, 451 (2011).

There are, to be sure, examples of a *plaintiff* bringing an IIED claim as a plaintiff, founded upon a firing which he or she claims was for *Pickering*-protected speech. See *Washington v. Normandy Fire Prot. Dist.*, 328 F.3d 400 (8th Cir. 2003). But that is a very different proposition than a *defendant* using *Pickering* as a shield against IIED liability that would otherwise lie.

“*Pickering*, its antecedents and progeny, lead us to conclude that if [what the employee in question did] cannot be fairly characterized as *constituting speech* on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge.” *Connick v. Myers*, 461 U.S. 138, 146 (1983) (emphasis added). *A fortiori*, therefore, the discharged employee’s actions must be speech to begin with, or the doctrine is simply inapplicable. See *Local 491, Int’l Bhd. of Police Officers v. Gwinnett Cty., GA*, 510 F.Supp.2d 1271, 1281-82 (N.D. Ga. 2007) (*Pickering* doctrine does not apply in case involving “a policy which regulates primarily non-communicative conduct.”)

Where *Pickering*’s protections do not obtain, “government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment.” *Id.* Were we in a proper *Pickering* setting, Paulina would be challenging her discharge on the grounds of protected speech on a matter of public concern. But she committed at least two acts that *separately* would qualify a lady-in-waiting for dismissal: intruding into the King’s chambers against his express orders, and refusing to leave. (Plus the aforementioned outrageous actions culminating in her imprisoning her boss for over a decade and a half.) Thus, Paulina could not properly maintain a *Pickering* action. In light of that, it is hard to see why she ought to be able to import the *Pickering* standard and rely on it as a (novel) defense.⁴

⁴ If this were a proper *Pickering* case, a remand arguably might be required to determine if Paulina would have been fired on the basis of her words alone and not her actions (or vice versa). See

C. Similarly, *Falwell's* Actual-Malice Requirement Only Applies to IIED Claims Founded on Speech. As This Tort Consisted Primarily of Conduct, Therefore, That Standard Is Inapplicable.

Paulina's second Question Presented sounds in the actual-malice requirement to maintain IIED actions against public figures announced in *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988). But *Falwell* only applies to IIED torts that consist of speech: In it, this Court "conclude[d] that public figures and public officials may not recover for the tort of intentional infliction of emotional distress *by reason of publications* ... without showing in addition that *the publication contains* a false statement of fact which was made with 'actual malice'" *Id.* at 56 (emphasis added). Thus, the actual-malice standard it requires simply does not apply to the case now before the Court. Imprisoning Queen Hermione for sixteen years, thus keeping her from her husband and daughter, is not a publication, nor any other kind of speech.

Givhan v. W. Line Consol. Sch. Dist., 439 U.S. 410, 417 (1979). But in light of her outrageous conduct the fact that this has been raised as a (novel) defense rather than a cause of action, and that there was a jury verdict, this Court can and should should decide reject the argument outright.

II. Insofar As *Falwell's* Actual-Malice Standard Does Apply, Paulina Had Actual Knowledge And Thus Actual Malice.

Though the tortious action on which the case against Paulina is mainly founded is the sixteen years of imprisonment she imposed on Hermione, and thus sixteen years of separation on her family, there is one action Paulina took which was speech and was a classic instance of IIED: falsely telling Leontes that his wife was dead. Intentionally falsely telling someone that a close family member has died is a classic instance of IIED. *Cf.* Restatement (Second) of Torts § 46 (1965) (discussing false reports of injury or death to a loved one). However, even assuming that the actual-malice test thus applies, there is more than enough evidence to show that Paulina clears that bar.

Under *Falwell*, a plaintiff can recover for IIED even if he is a public figure,⁵ provided he can “show[] ... that the publication contains a false statement of fact which was made with ‘actual malice,’ *i.e.*, with *knowledge that the statement was false* or with reckless disregard as to whether or not it was true.” *Hustler*, 485 U.S. at 56; *see New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). Actual malice is a “a term of art denoting deliberate or reckless falsification.” *Masson v. New Yorker Mag., Inc.*, 501 US 496, 499 (1991). This “standard is not satisfied merely through a showing of ill will or ‘malice’ in the ordinary sense of the term.” *Harte-*

⁵ There is no doubt that, as King and Queen of Sicily, plaintiffs are public figures. *See generally, e.g., Macbeth, Henry V.*

Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 666 (1989). Therefore, Paulina's protestations that she was trying to carry out the will of Apollo by lying repeatedly for sixteen years are beside the point.⁶

There can be no doubt that, having been the one to imprison Hermione alive in the statue, Paulina had actual knowledge that she was not dead. *Cf.* R.V.iii.120-1 (In awakening the statue, Paulina emphasizes that doing so is "business [that] *I* am about." (emphasis added))

That alone is enough to resolve the case. But Paulina's actual knowledge goes much deeper than this. Namely, she knew that, literally within seconds of her false report of Paulina's death, the supposed reason she gave for such an outrageous action—Leontes' jealous fury—no longer existed. Leontes repented. Indeed, his repentance actually *preceded* the false reports of the Queen's death, since, when told (truthfully) of his son's death, the King exclaimed, "[T]he heavens themselves/Do strike at my injustice." R.III.ii.160-1. But any doubt at all evaporated after Paulina informed him, falsely, of his wife's death, and the king professed his "shame perpetual" at having wronged her and that he would visit her grave every day for the rest of his life. *Id.* at 264; *see id.* at 260-69. Thus, during every minute of those sixteen years, except for the few minutes it took Paulina to falsely

⁶ Even were this not beside the point, the jury heard testimony from King Leontes that Paulina's actual motive was revenge for the loss of Antigonus. "Heat not a furnace for your foe so hot/That it do singe yourself." *Henry VIII*, I.i.140-1. Paulina has no one but herself to blame that she eventually got burned.

tell Leontes his spouse was dead, *see id.* at 190-235, Paulina actually knew that her reasons for lying as she had no longer obtained.

For the next sixteen years, knowing this, she nevertheless kept the truth from Hermione and Leontes alike, through repeated lies and ongoing wizardry. The record contains shocking instances of Paulina repeatedly reinforcing her lie to the king: referring to Paulina sixteen years into her captivity as “she you killed,” berating him for his fault in her supposed death, and ultimately showing him the statue in which his wife was imprisoned while insisting that it was “her *dead* likeness.” R.V.i.17, V.iii.17; *see* V.i. So too does the record contain extensive evidence of the extreme toll this took on Hermione and her loved ones, from the “wrinkle[s]” that developed on Hermione’s brows, R.V.iii.32,⁷ to the description of a witness that Perdita looked like she could “bleed tears” when her father confessed to his role in (as Paulina had led him to believe) killing her mother. R.V.ii.91-95. At the very least, then, this Court should uphold all sixteen years’ worth of damages less those first few minutes.

⁷ The high cost of this has been recognized by a high authority. As has been written:

When forty winters shall beseige thy brow,
And dig deep trenches in thy beauty’s field,
Thy youth’s proud livery, so gazed on now,
Will be a tatter’d weed, of small worth held[.]

W. Shakespeare, Sonnet 2.

III. Insofar As *Pickering* Is Relevant, That Doctrine Does Not Cover Paulina, As She Was A Lady-in-Waiting.

Pickering explicitly foresaw—and excluded—claims by the sort of state employee that Paulina was. The office of lady-in-waiting is a “position[] in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal.” *Pickering*, 391 U.S. at 570 n.3. Moreover, it is a “position[] in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them” *Id.* See also *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (discharge for actions taken in course of duty fall outside *Pickering*).

The position of lady-in-waiting (or gentleman-in-waiting) is one of the most confidential in all government. Examples of what happens if this confidentiality is ruptured are well-known and dire. See, e.g., *Othello*, V.ii (testimony of Emilia); G. Donizetti, *Anna Bolena* (testimony of Jane Seymour). For an account of the personal and intimate role of gentlemen- and ladies-in waiting, see the Memoirs of Thomas Cromwell, published in three volumes as *Wolf Hall* (2009), *Bring Up the Bodies* (2012), & *The Mirror and The Light* (2020). The bond between the monarch (or his consort) and those who are literally closest to them at all hours of the day is “confidential[]” and “personal and intimate,” *Pickering*, 391 U.S. at 570

n.3, if any is. Nor are ladies-in-waiting subject to regulation by a professional body. *See Garcetti*, 547 U.S. at 446 (2006) (Breyer, J., dissenting). Thus, Paulina’s speech is not protected by *Pickering* at all, and so her purported defense must fail.

Certain cases have asked, instead of whether the employee falls outside of *Pickering* at all, “whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.” *Garcetti*, 547 U.S. at 418.⁸ If the inquiry is framed this way, the arguments above are equally suited to demonstrate why a courtier in such an intimate position as lady-in-waiting should be treated differently than the public at large. *Pickering* would not protect her employment, and neither should it protect her from liability for her outrageous conduct.

⁸ This is the second step of the *Pickering* inquiry, as presented in *Garcetti*. The first is “whether the employee spoke as a citizen on a matter of public concern.” *Garcetti*, 547 U.S. at 418. The legitimacy of the king’s children is admittedly a question of public concern, *see R. v. Boleyn* (1536), as is the chastity of the queen, *see id.*; *R. v. Howard* (1542). *But see Richard II* IV.i.200 (“My crown I am, but still my griefs are mine.”). *See generally* E. H. Kantorowicz, *The King’s Two Bodies* (1957).

CONCLUSION

For the foregoing reasons, this Court should AFFIRM the decision below.

Respectfully submitted,

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