



November 30, 2017

By Mail and E-Mail

Dr. Keith Hilts
School District of Ashland
2000 Beaser Avenue
Ashland, WI 54806
khilts@sdak12.net

Dear Dr. Hilts,

I write on behalf of our client, Sandra Gokee, to express the ACLU of Wisconsin's concern about the Ashland School District's efforts to terminate her employment in response to her November 10, 2017 private Facebook post regarding the police shooting of her cousin. We understand that the district has made direct overtures to Ms. Gokee in attempt to resolve the dispute, and Ms. Gokee is open to those overtures. With that in mind, we ask that Ms. Gokee be allowed to return to her job without any conditions pertaining to her private social media accounts.

As you know, Ms. Gokee's 14-year old cousin, a member of the Bad River Band of Lake Superior Tribe of Chippewa Indians, was shot and killed by a white police officer on November 8, 2017. In response, Ms. Gokee took to her private Facebook page – on which she uses a different name - and to her online community to express clear anger and grief stemming from the death of her young family member. Ms. Gokee spoke on this very important public issue as a private citizen, after school hours, without any reference to her position as a public-school teacher.

In response to Ms. Gokee's actions, where she was acting fully within her rights as a private citizen and expressing her understandable grief and anger on a very public incident involving her family and her community, the district demanded Ms. Gokee resign or be terminated from her employment and placed her on paid administrative leave pending a final determination. The Supreme Court has long held that "[i]t is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *see also Rankin v. McPherson*, 483 U.S. 378, 383 (1987). Therefore, the actions and threatened actions by the district appear to violate the First Amendment.

Ms. Gokee's Facebook post constitutes speech by a private citizen on a matter of public concern. Ms. Gokee was clearly wearing her "hat as a private citizen" when posting on her private Facebook, under a different name, not during school time, and on an issue wholly unrelated to her work. In addition, she posted about a matter that is unquestionably of public concern in the

Ojibwe community and the community at large. *Lane v. Franks*, — U.S. —, 134 S.Ct. 2369, 2377-8 (2014); *see also Heffernan v. City of Paterson*, — U.S. —, 136 S.Ct. 1412, 1417-8 (2016); *Kristofek v. Village of Orland Hills*, 832 F.3d 785 (7th Cir. 2016).

The issue of police relations within communities of color is a pressing problem around the country, especially police shootings. While the issue has deep, historical roots for all communities of color, Ms. Gokee’s posts and subsequent comments in this case reflect the unique history of Native American interaction with European American authority.

This history includes three hundred years of ethnic cleansing, forced removal, and genocide and, importantly, the effects of that discrimination and violence persist to this day. For example, on November 13, 2017, CNN presented analysis on CDC data showing that Native American people are three times more likely to be killed by police intervention than Whites and at a rate 12% higher than African Americans.¹ For every 1 million Native Americans between the years of 1999-2015, 2.9 Native Americans died as a result of “legal intervention.” These deaths are starkly underreported due to lack of media attention in Native American communities, and these communities often bear the brunt of tragedy without any public support.

Ms. Gokee’s posts and comments about her cousin’s death included statements asking her online community to engage in open conversation about her people’s history and interaction with the government. This is protected political speech and clearly a matter of public concern. While such speech may be controversial, the “controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern. ‘[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.’” *Rankin v. McPherson*, 483 U.S. 378, 388 (1987) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, (1964)); *see also Bond v. Floyd*, 385 U.S. 116, 136, (1966) (“Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected.”)

For the reasons set forth above, we ask that Ms. Gokee be allowed to return to her position teaching the Ojibwe language to Ashland elementary school students, and that she be allowed to do so without conditions related to her constitutionally protected speech. Ms. Gokee wishes to be an active participant in community healing conversations that might help build bridges. If she could play such a role in the school district, she would be happy to contribute. We look forward to working with you and Ms. Gokee to resolve this issue, and would appreciate a reply within 5 business days.

Sincerely,

Asma Kadri
Staff Attorney*

Laurence J. Dupuis

¹ The study and data analysis are available at: <http://www.cnn.com/2017/11/10/us/native-lives-matter/index.html>.

Legal Director
ACLU of Wisconsin Foundation
207 E. Buffalo St., #325
Milwaukee, WI 53202
akadri@aclu-wi.org
ldupuis@aclu-wi.org

Stephen Pevar
Senior Staff Attorney
ACLU Racial Justice Program

cc: Chris Graff, Principal, Ashland Elementary School, cgraff@sdak12.net
Travis Powell, Principal, Ashland Elementary School, tpowell@sdak12.net
Sandra Gokee

*Admitted to practice in Virginia and the Eastern and Western Districts of Wisconsin. Not admitted to practice in Wisconsin state courts.