

THE RUTHERFORD INSTITUTE

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INTERNATIONAL OFFICE
CENTRAL AND EASTERN EUROPE
Budapest, Hungary

March 27, 2012

Via Certified Mail

Dr. John E. Deasy, Superintendent of Schools
Los Angeles Unified School District
Office of the Superintendent
333 S. Beaudry Ave., 24th Floor
Los Angeles, CA 90017

Re: Patricia McAllister / Violation of First Amendment Rights

Dear Dr. Deasy:

The Rutherford Institute has been contacted by Patricia McAllister, who until October 19, 2011, was employed as a substitute teacher by the Los Angeles Unified School District (LAUSD). On that date, she was terminated for no reason related to her performance as a teacher. Instead, public comments made by you and reported in the media demonstrate that Ms. McAllister was terminated because of comments she made on a political matter while off-duty and away from school district property. Punishing Ms. McAllister because of her speech constitutes a gross violation of her rights to free speech under the United States and California Constitutions and on her behalf we demand that LAUSD promptly restore her to her position as a substitute teacher and compensate her for the wages she lost as a result of the improper retaliatory action.

According to Ms. McAllister, she attended an "Occupy Los Angeles" rally on October 12 of last year when she made comments decrying the influence of "Zionists" over large banks and the Federal Reserve as the cause of the nation's economic troubles. These comments were reported in a video posted by ReasonTV and received significant attention over the internet. In letters dated October 18 and 19, 2011, from the Los Angeles County Office of Education and LAUSD, respectively, Ms. McAllister was informed that her employment as a substitute teacher was terminated. Statements made by you and reported by the media make clear that the sole reason for the termination of Ms. McAllister was the comment she made on October 12. Moreover, the statements attributed to you indicate your clear understanding that Ms. McAllister's comments were made while she was off-duty and were not represented by her to be the position of or on behalf of the LAUSD.

It is well-established that citizens do not forfeit their right to freedom of speech by accepting employment with the government. *Pickering v. Bd. of Education*, 391 U.S. 563, 568 (1968). Although the First Amendment rights of public employees like Ms. McAllister are somewhat qualified, public employees are entitled to engage in expression on matters of public concern and are not subject to retaliation from their employer unless the speech is contrary to the legitimate administrative interests of their employer. *Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1106-07 (9th Cir. 2011).

There can be little doubt that the comments Ms. McAllister made and which were the basis for her discharge constituted speech on a matter of public concern. The national financial crisis and the causes thereof are clearly matters of political and social concern to the Los Angeles and national communities and so were topics Ms. McAllister was entitled to speak out upon under the First Amendment to the United States Constitution and Article 1, § 2 of the California Constitution. More to the point, her comments did not relate to an individual personnel grievance or internal LAUSD operations, and so were not outside of the protection provided by the Constitution. *Brownfield v. City of Yakima*, 612 F.3d 1140, 1147 (9th Cir. 2010). Like other citizens, LAUSD employees have the fundamental right to speak out on matters of public concern without facing the prospect that their livelihoods will be taken away from them because those views are unpopular or politically incorrect.

Discharging Ms. McAllister also was not necessary to protect the legitimate administrative interests of LAUSD. These interests include promoting efficiency and integrity in the discharge of official duties and maintaining proper discipline in the public service, as well as rectifying any disruption caused by the employee's speech. *Clairmont*, 632 F.3d at 1107. While Ms. McAllister's comments may have created a controversy on the internet, there is no indication that it created a disruption within LAUSD schools or offices, nor is there any basis for believing that her comments would impair the ability of Ms. McAllister or others to discharge their duties with integrity and efficiency. Unsubstantiated fears of workplace disruption are no justification for punishing a public employee because of her speech, and certainly not a faithful employee like Ms. McAllister who speaks on a matter of public interest outside the workplace on her own time.

It is certainly the prerogative of you and the LAUSD to express disagreement with the views expressed by Ms. McAllister and to distance the District from the opinions she expressed. However, the constitutional right to free speech guaranteed by the First Amendment and California Constitution forbid the kind of retaliation that was taken against her for speaking out, not as an LAUSD employee, but as a citizen. That the views she expressed are unpopular is no justification for the punishment she received; public employees do not hold their positions on the condition that their speech remains politically correct.

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On Ms. McAllister's behalf, we ask that she be reinstated to her position as a substitute teacher with the LAUSD and that she recover from the District the amount of wages she lost as a result of her separation, which she estimates to be \$19,000.00. We will need a response to this letter by the close of business April 6, 2012, so that we may advise Ms. McAllister of her legal options.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas R. McKusick". The signature is fluid and cursive, with a large initial "D" and "M".

Douglas R. McKusick
Staff Attorney

cc: Patricia McAllister
Julie A. Esposito, Esq.