School Board Special Business Meeting
Monday, November 10, 2025 7:00 AM Central

District Office Board Room
Teleconference
URL:
Shakopee, MN 55379

1. CALL TO ORDER SCHOOL BOARD SPECIAL MEETING AND ROLL CALL - CHAIR SMITH
2. PLEDGE OF ALLEGIANCE
3. CONSIDERATION OF AGENDA AS PRESENTED
4. PUBLIC COMMENT
5. ACTION
   5.1. Consideration of Letter Support
6. UPCOMING MEETINGS & IMPORTANT DATES
7. ADJOURNMENT

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November 10, 2025

VIA E-MAIL ONLY
Kirk Schneidawind
Executive Director
Minnesota School Boards Association
1900 West Jefferson Avenue
St. Peter, MN 56082-3015

RE: Request for *Amici* Supporting Dr. Michael Redmond in *McNeally v. HomeTown Bank* (No. 24-1867)

Dear Mr. Schneidawind:

We write this letter on behalf of Independent School District No. 720, Shakopee Public Schools' ("District") School Board ("Board"). While the District has been dismissed from the above suit, we write to request that you provide *amicus* support to the District's Superintendent Dr. Mike Redmond in the above case, which raises the question of the application of the *Pickering* balancing test to an employee of a bank ("Bank")—Tara McNeally—who provided services to the District on behalf of the Bank. The Eighth Circuit Court of Appeals reversed the District Court's ruling that *Pickering* applied to McNeally's claims and reinstated her claims against Dr. Mike Redmond.

An *en banc* Eighth Circuit review of the Eighth Circuit panel's opinion in this case is important for Minnesota school districts. This letter supplements the letter from Dr. Redmond requesting *Amicus* support. As the facts are laid out in that letter, we will not reiterate them herein. We will also not explain the underlying *Pickering* analysis, as Dr. Redmond's counsel already did so. As a very quick reference, pursuant to the Supreme Court's decisions in *Pickering* and *Umbehr*, a school district (and other government entities) can control school district employees' and contractors' speech if the school district's interest as an employer or contractor in efficiently operating its schools outweighs the employee's or contractor's free speech interests as a citizen. In that way, *Pickering* provides a defense against potentially (extremely costly) First Amendment retaliation claims.

The majority decision by the Eighth Circuit panel in this case—with which only two of the three judges on the panel agreed—held that the *Pickering* balancing test did not apply to McNeally's speech because she worked for the Bank, which had paid the District, as opposed to a contractor relationship where the District paid the Bank. The

majority's decision is predicated primarily on an out-of-circuit case about a food truck with an offensive name that applied for permission to operate on school grounds.

The concurring opinion by the remaining judge, on the other hand, recognized the closer relationship that McNeally had with the District. Specifically, it noted that she provided educational services to the District's students and, therefore played a role in carrying out the District's "core governmental functions." The concurring opinion also noted that the District gained "significant benefit" from the agreement through which the District received McNeally's services and, therefore, had an interest in ensuring that it obtained the benefit for which it had contracted with the Bank. The concurring judge also appropriately recognized that the District had an interest in ensuring the safety of its students. The concurring opinion is grounded in Eighth Circuit case law, which found that *Pickering* applies to an independent contractor of a hospital, even though there was no direct salary employment relationship. The concurring opinion also cited out-of-circuit opinions that applied *Pickering* to police instructors for a law enforcement agency, field trip venues (that the school district paid for), and domestic abuse counselors for a probation office.

As we mentioned above, the *Pickering* framework is a critical tool in school districts' defense against First Amendment retaliation claims. Any case that limits the application of *Pickering* is bad for school districts. This case is especially so because of the broad-brush approach taken by the majority opinion. By excluding individuals who work with students, but are paid by entities that, in turn pay school districts from the *Pickering* analysis, the Eighth Circuit has negatively impacted school districts' ability to respond to inappropriate speech from: co-located service providers, community education class providers, and other organizations who may directly address district students, on district time, as part of a district-sponsored program. Likewise, by focusing on the monetary aspect of the relationship, the majority's decision calls into question the ability of school districts to respond to inappropriate speech by volunteers who address students through booster clubs and other outside organizations that give money to schools.

In short, any erosion of the application of *Pickering* is detrimental to schools. The fact that the majority found any reason not to apply *Pickering* to an individual who routinely worked with students on behalf of the District, whether through an outside agency or otherwise, is troubling to school districts (both in Minnesota and across the circuit), as it limits the ability of school districts to respond to inappropriate speech by those individuals. Likewise, the fact that the majority narrowly focused on the direction that money flowed in the Naming Rights Agreement to determine whether *Pickering* applies, is detrimental to schools as it potentially, and confusingly, excludes whole categories of individuals from the *Pickering* analysis, but not similar individuals employed by similar agencies who get paid by the similar agencies as opposed to being paid by the school district.

We (Christian and Adam) are available to write the *amicus* brief, if MSBA would like us to do so. We are highly familiar with the *Pickering* framework.

Thank you for your consideration. We are available to discuss at your convenience. Our phone number is (612) 339-0060 and our e-mails are crs@ratwiklaw.com and ajf@ratwiklaw.com.

Very truly yours,

/s/ Christian R. Shafer

Christian R. Shafer
Adam J. Frudden