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SPECIAL UPDATE

LAW ENFORCEMENT AND PUBLIC EMPLOYERS

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U.S. Supreme Court Allows Employee To Bring Lawsuit Over Free Speech, Even Though He Was Not Actually Engaged In A Constitutionally Protected Activity

The U.S. Supreme Court held that when an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment, even if the employer's actions are based upon a factual mistake about the employee's behavior.

Here, Jeffrey Heffernan, a police officer, as a favor to his bedridden mother, agreed to pick up and deliver a campaign yard sign for a candidate running for mayor named Spagnola. The Chief of Police and Heffernan's supervisor had both been appointed by the incumbent mayor, Torres, who was running for re-election against Spagnola. Torres's security detail and other officers saw Heffernan, who was not involved with Spagnola's campaign in any capacity, speaking to staff at a Spagnola distribution point when he went to pick up the sign. The next day Heffernan's supervisor demoted him from detective to patrol officer as punishment for his "overt involvement" in Spagnola's campaign. Heffernan filed a lawsuit claiming that he had been demoted because he had engaged in conduct that (on their mistaken view of the facts) constituted protected speech. Heffernan contended his employer had thereby "depriv[ed]" him of a "right ... secured by the Constitution." (Rev. Stat. §1979, 42 U.S.C. §1983.)

U.S. District Court for the District of New Jersey

The District Court found that Heffernan had not engaged in any First Amendment conduct and, for that reason, had not been deprived of any constitutionally protected right.

United States Court of Appeals for the Third Circuit

The Third Circuit affirmed the ruling of the District Court concluding that Heffernan's claim was actionable under §1983 *only* if his employer's action was prompted by Heffernan's *actual*, rather than his perceived, exercise of his free-speech rights.

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United States Supreme Court

The U.S. Supreme Court reversed and held that when an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment, even if the employer's actions are based upon a factual mistake about the employee's behavior.

The U.S. Supreme Court was tasked with determining whether the Constitutional right that Heffernan may have been deprived of is a "right that primarily focuses upon (the employee's) actual activity or a right that primarily focuses upon (the supervisor's) motive, insofar as that motive turns on what the supervisor believes that activity to be." Neither the statute itself nor precedential case law could answer the question.

In arriving at its decision, the Court concluded that the government's reason for demoting Heffernan is what counts here. "When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action under the First Amendment and 42 U.S.C. §1983 – even if, as here, the employer makes a factual mistake about the employer's behavior."

The Court stated, "a discharge or demotion based upon an employer's belief that the employee has engaged in protected activity can cause the same kind, and degree, of constitutional harm whether that belief does or does not rest upon a factual mistake."

Finally, after having answered the question posed of them and reversing the Third Circuit's holding, the U.S. Supreme Court pointed out that on remand the District Court would need to revisit whether or not Heffernan's employers may have dismissed him pursuant to a different and neutral policy prohibiting officers from overt involvement in any political campaign. The Court stated, "Whether that policy existed, whether Heffernan's supervisors were indeed following it, and whether it complies with constitutional standards, are all matters for the lower courts to decide in the first instance."