

Perception is Everything: Supreme Court Expands First Amendment Protections for Public Employees

2 min read

Apr 27, 2016



In a decision that may expand the “zone of interest” protected by the First Amendment via 42 U.S.C. §1983, the Supreme Court in [Heffernan v. City of Paterson](#), strengthened free speech rights for public employees by holding a public employee may bring a suit premised on his engagement in protected political activities, even when the employee did not engage in those activities, and the employer was mistaken in its belief that he had.

The Case

The city demoted a police officer (Heffernan) after it believed Heffernan was holding a campaign sign supporting a mayoral candidate and speaking to the candidate’s campaign staff. The demotion was intended as

punishment for Heffernan’s “overt involvement” in the campaign. However, the city was mistaken about his political activity, because Heffernan was only transporting the challenger’s sign to his sick mother, at her request.

As background, subject to a few exceptions not addressed by this case, the First Amendment generally protects the rights of public employees to engage in protected political activities, such as supporting a particular political candidate. However, the trial court and Third Circuit Court of Appeals both held that, because Heffernan had not *actually* engaged in any conduct protected by the First Amendment, he was not deprived of a constitutionally protected right when the city demoted him.

The Supreme Court reversed. In its holding, the Court held the officer is entitled to challenge the city’s action as unlawful under the First Amendment when the action was taken out of a desire to prevent an employee from

engaging in protected political activity, *even when* the employer is factually mistaken about the employee actually engaging in that political activity.

The Court held that the city's reason for its action against Heffernan is what matters, rather than what Heffernan was actually doing: "[w]hen 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 employee's behavior."

The Court added that the jurisprudence in this area of the law is designed to protect against employees being coerced into changing their political allegiance or from refraining from engaging in politics. The Court stated that whether the public employer was mistaken about such activities did not alter the rights the law seeks to protect: "[t]he Government acted upon a constitutionally harmful policy whether Heffernan did or did not in fact engage in political activity."

Justices Thomas and Alito dissented. The dissent can be fairly boiled down to this line: "Nothing in the text of § 1983 provides a remedy against public officials who attempt but fail to violate someone's constitutional rights."

Moving Forward

It must be noted that this case does not affect Court precedent regarding when a public employer may restrict its employees' speech. The Court has permitted exceptions previously, such as a neutral and limited policy that prohibits public employees from engaging in partisan activities. For the sake of its *Heffernan* decision, the Court assumed these exceptions did not apply and, therefore, the city could not lawfully restrict the political activity it thought occurred.

However, by expanding the scope of constitutional injury to cover the perception of engaging in protected speech, *Heffernan* removes a public employer's potential defense against a free speech claim and simultaneously has the potential to create a whole new category of injury for those who are perceived to have engaged in protected political activity.

As always, if you have questions, please contact your regular Hinshaw attorney.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

First Amendment, Third Circuit Court Of Appeals, Freedom Of Speech, Supreme Court Of The United States