

Seventh Circuit Rules Termination Based on Political Affiliation Was Lawful

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As a result of the 2018 midterms, many public offices will be transitioning from one political party to the other. In a timely decision, the [Seventh Circuit recently reaffirmed](#) that government entities have the right to discharge employees for political reasons, including political affiliation, in certain circumstances.

The plaintiff, Nicole Bogart, worked for Vermillion County as Financial Resources Director. She reported directly to the Chairman of the County Board. In her position, she provided data to the county Finance department, developed financial plans based on revenues and project plans, and was heavily involved in the creation and control of the county budget. These duties were outlined in a written job description created by the County. Bogart had also drafted a document in which she described her primary duties. Her description matched the majority of the formal job description.

When the Chair went from blue to red, Bogart was later terminated because she was a Democrat. She filed suit and claimed that her termination was based on political reasons in violation of her First Amendment rights. The district court held that she held a high-level policy-sensitive position and could be terminated based on political affiliation. The Seventh Circuit agreed, reiterating that when a government employee is employed in a position that “entails substantial policymaking responsibility, meaningful discretion to implement the policy goals of elected officials, or a need to maintain the confidentiality essential to enabling robust deliberations entailing disagreement and incorporating political objectives,” that employee’s employment can be based on his or her political association.

The opinion is not earth shattering. However, the Court stressed the usefulness of having accurate, updated job descriptions. In fact, the Court held that as long as those job descriptions do not bear “some systematic unreliability” or have been “manipulated in some manner by officials looking to extend their political power, our examination begins and ends there.” In short, Bogart’s case was open and shut based on the accuracy of her job description and her agreement that it was.

Employers should develop job descriptions that encompass essential job functions. Like the County did here, get the employee's buy in as to the accuracy of the description. Thereafter, don't forget about them. Routinely audit the descriptions to ensure they remain complete and accurate. They may help in many situations, such as identifying essential job functions as part of the Americans with Disabilities Act interactive process, defense of an ADA or FMLA claim, or, as here, establishing whether the position was at a level where politics truly matter.

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Topics

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