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MUNICIPAL LAW ALERT

Supreme Court Holds Public Employee's Testimony is Protected by First Amendment

In a unanimous decision authored by Justice Sotomayor, the United States Supreme Court held that the First Amendment protects a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities. *Lane v. Franks*, No. 13-483, 2014 WL 2765285 (2014).

Central Alabama Community College (CACC) operated a program for underprivileged youth called Community Intensive Training for Youth (CITY). As the newly appointed director of a financially struggling program, Petitioner Edward Lane conducted an audit of the program's expenses and discovered that Suzanne Schmitz, a State legislator on CITY's payroll, had not been reporting for work. After Lane was warned by CACC's president and attorney that firing Schmitz could have negative repercussions, Lane nevertheless terminated Schmitz' employment.

Schmitz was subsequently indicted on fraud charges for collecting federal funds for a no-show job with CITY. At her trial, Lane testified under subpoena regarding the events that led to his termination of Schmitz. Meanwhile, CITY was continuing to experience financial difficulties, and Lane recommended that Respondent Steven Franks, then CACC's president, consider layoffs. Franks terminated Lane along with twenty-eight (28) other employees in a claimed effort to address CITY's financial difficulties. However, a few days later, Franks rescinded all but two of those terminations, with Lane being one of the unfortunate individuals.

Lane then sued Franks in his individual and official capacities under 42 U.S.C. § 1983, alleging that Franks violated the First Amendment by firing him in retaliation for testifying against Schmitz. The District Court granted Franks' motion for summary judgment, holding that the individual-capacity claims were barred by qualified immunity and the official-capacity claims were barred by the Eleventh Amendment. The Eleventh Circuit affirmed, holding that Lane's testimony was not entitled to First Amendment protection, and reasoning that Lane spoke as an employee and not as a citizen because he acted pursuant to his official duties when he investigated and terminated Schmitz' employment.

The Supreme Court partially reversed the Eleventh Circuit by determining that Lane's sworn testimony was outside the scope of his ordinary job duties. The Court followed its landmark decision in *Pickering v. Board of Education of Township High School District 205*, Will County., 391 U.S. 563 (1968), requiring a balancing of the employee's interests as a citizen in commenting on matters of public concern with the interests of the State—as an employer—in promoting the services it performs through its employees. For the first step of the *Pickering* analysis, the Court looked to *Garcetti v. Caballos*, 574 U.S. 410 (2006), where the critical question was whether the speech at issue was made pursuant to the employee's ordinary job duties, and not whether it merely concerned those duties. If in fact the speech is made pursuant to the employee's ordinary job duties, then the employee is not speaking as a citizen for First Amendment purposes, and the inquiry must end. However, if the employee

"spoke as a citizen on a matter of public concern," the inquiry turns to "whether the relevant government entity has an adequate justification for treating the employee differently from any other member of the general public."

The Court reasoned that Lane's speech, which was made pursuant to a subpoena, was made as a citizen commenting on a matter of public concern. The Court noted that sworn testimony in a judicial proceeding is a "quintessential example of speech as a citizen for a simple reason: Anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth." According to the Court, the Eleventh Circuit read *Garcetti* far too broadly in holding that Lane was not speaking as a citizen by simply testifying as to what he learned during the course of his employment. *Garcetti* was concerned only with whether the speech at issue itself was ordinarily within the scope of an employee's duties, not whether it merely concerned those duties. Unlike police officers, crime scene technicians, or laboratory analysts, Lane's position did not subject him to testifying on a routine basis that would make giving testimony an ordinary job duty. The Court also noted that public employees are uniquely qualified to comment on matters of public concern because their employment allows them to gain knowledge of governmental matters. The speech was especially important here because public corruption is a large public concern, and exposing corruption will likely require that employees provide information regarding their employment.

The Court then turned to whether Lane's testimony was a matter of public concern. The Court found that Lane's testimony on corruption within a public program and misuse of state funds was a matter of significant public concern, and therefore, Lane's testimony at Schmitz' trial was speech made as a citizen on a matter of public concern. However, the Court noted that under *Pickering*, if an employee speaks as a citizen on a matter of public concern, the next question is whether the government had an adequate justification to treat the employee differently from other members of the public based on the government's needs as an employer. The government lacked any interest justifying the allegedly retaliatory termination of a director that would have tipped the balance in his favor. There was no evidence that Lane's testimony was false or erroneous or that Lane disclosed any sensitive, confidential, or privileged information that could harm governmental interests. The Court concluded that, under these circumstances, Lane's speech was entitled to First Amendment protection.

While the Court concluded that the Eleventh Circuit incorrectly held that Lane's testimony was not entitled to First Amendment protection, it nonetheless held that Franks was entitled to qualified immunity as to the claims against him in his individual capacity. The Court determined that Franks could have reasonably believed that a government employer could fire an employee on account of an employee's sworn testimony outside the scope of his ordinary duties. At the relevant time, the Eleventh Circuit precedent did not preclude, or clearly cast significant doubt as to whether Franks could believe that it was lawful to fire Lane under such circumstances.

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