

Political Speech by Public Employees

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As employees of the local school system, educators are directly affected by the actions of the local school board. The PAGE legal department frequently responds to questions about what can and cannot be said about board actions and about when and where speech can take place. Members also ask us about sharing their political viewpoints. The ever-increasing use of social media results in information being spread faster, with less effort, and often with less consideration. To determine the rules governing speech of educators, we look both to the Supreme Court and to the Georgia Code of Ethics for Educators.

SUPREME COURT CONCERNS

The Supreme Court, through a series of cases, carved out the parameters of free speech for government employees. The two main cases are *Pickering v. Board of Education* (1968) and *Garcetti v. Ceballos* (2006).

Prior to those cases, the speech of government employees was just as limited as that of private employees. The general consensus amongst state courts was that no employee had a right to a government job and his or her speech could be limited with that understanding.

Pickering v. Board of Education marked a shift in this thinking; it increased the rights of government employees to express their political views. In the *Pickering* case, a teacher was terminated for submitting to the local paper a letter that was critical of

the school board's handling of a local bond issue. The teacher felt he had the right to comment; the school system felt it had the right to terminate because the teacher spoke negatively about the system and, in the school system's opinion, interfered with the district's ability to function. The court recognized that the state, as a public employer, had a duty as an employer to run its system efficiently but as a government agency had a duty to ensure the First Amendment rights of its employees. It also recognized that government employees have a right to free speech, more so than private employees, and also recognized that government employees have access to information about the role and function of government that might be useful to the general citizenry. The primary challenge to the court was, "... to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." To answer this question, the court came up with a test that balanced these needs against each other. The court looked to determine if the speech in question was a matter of public concern or interest. If the speech is not a matter of public concern, it is not protected speech. If the speech deals with a matter of public concern, the court weighs the interests of the state employer against the interests of the employee in his or her role as a citizen.

Ceballos v. Garcetti rolled back the free speech rights granted by the *Pickering* court. In the 2006 *Ceballos* case, a district attorney wrote a memo critical of an affidavit used by police to obtain a search warrant. He then claimed his employer retaliated against him for the content of his memo. He felt this retaliation was barred by the First Amendment. The *Ceballos* court answered the question of whether this speech was protected by the First Amendment by looking to the role *Ceballos* performed when he made the

speech. The court determined he was instructed to write the memo as part of his job duties. In that regard, he was acting as an employee and not a public citizen, so his speech was not protected.

The reshaping of the free speech rules from *Ceballos* requires the court to first determine if the speech in question is a matter of public or private concern. If it is a matter of private concern, it is not protected by the First Amendment. If the speech is a matter of public concern, then the court must determine if the speech was made while the employee was acting in the scope of his or her duties or acting as a private citizen. If the employee acted within the scope of his or her duties, the speech is not protected.

PROPER USE OF SCHOOL PROPERTY

Standard 5 of the Georgia Code of Ethics, Public Funds and Property governs the use of school property. To avoid ethics violations, educators should refrain from using school email addresses, school computers or other school resources to share opinions as private citizens on matters of public concern.

In summary, public employment does not require blind loyalty to your employer. Nor does public employment entitle employees to say whatever they wish without fear of consequences. In order for speech to be protected it must be a matter of public concern, made in your role as private citizen and not required by your employment, and must pass the court's balancing of your interest in making comments about a public concern and the employer's interest in maintaining and running public services. Common issues, such as educators discussing on Facebook classroom events, the culture of the school and their duties and responsibilities, do not qualify for free speech protection. At no time should you use school resources to complain publicly about issues you see in your public sector work. ■



Social media postings about events in your classroom, school culture or your work responsibilities do not qualify for free speech protection. Never use school resources to complain publicly about issues you see in your public sector work.