

Lane v. Franks **134 S. Ct. 1533 (U.S. Supreme Court, June 19, 2014)**

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Background

At the heart of the First Amendment lies speech by citizens on matters of public concern. The First Amendment was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. However, government employers need a significant degree of control over the words and actions of its employees (also citizens) for the efficient operation and delivery of public services.

The U.S. Supreme Court's two historic cases (*Pickering v. Board of Ed. Of District 205*; *Garcetti v. Ceballos*) have delineated the contours of this seeming conflict. Whether a government employee's speech is protected by the First Amendment, or may be subject to discipline without violating the First Amendment, requires a balancing of interested between the employee's desire to comment upon matters of public concern versus the government employer's desire to effectively manage the employee.

In this case, Lane was an auditor retained to conduct a comprehensive audit of a statewide program for underprivileged youth. The audit concluded that Suzanne Schmitz, an Alabama State Representative, was on the program's payroll, but never reported to the program's office and never did any work with the program. Lane ultimately fired Schmitz which resulted in the FBI conducting an investigation into Schmitz for fraud and theft. Lane was called to testify at the trial by subpoena. Lane complied with the subpoena, testified against Schmitz and Schmitz was convicted. Subsequent to the conviction, the program president fired Lane, with several other employees, citing financial difficulties. However, this termination was shortly rescinded and all but Lane and one other person was re-hired.

In response, Lane filed suit against the program alleging the program president fired him in retaliation for his testimony against Schmitz in violation of the First Amendment.

Holding

In the seminal case of *Garcetti v. Ceballos*, the U.S. Supreme Court set forth a two-step inquiry into whether a public employee's speech is entitled to First Amendment protection: 1) whether the employee spoke as a citizen on a matter of public concern (if no, no First Amendment protection); and 2) (if yes) whether the relevant governmental entity had an

adequate justification for treating the employee differently from any other member of the general public (*e.g.*, the employee’s speech interfered with the efficient operations of the governmental employer).

Addressing these questions, the Supreme Court first determined that sworn testimony speech as a citizen is different from speech made purely in the capacity as a governmental employee. Moreover, the mere fact such speech concerns information acquired by virtue of public employment does not transform that speech into speech of an employee: *i.e.*, whether the speech is itself ordinarily within the scope of duties – not whether it merely concerns those duties. Thus, the employee’s duties, as a citizen, to comply with a subpoena and provide testimony, rendered the speech non-employee speech.

Next, the Supreme Court quickly determined that this citizen speech involved a “matter of public concern.” A matter of “public concern” is that which relates to any matter of political, social or other concern to the community’ or when it is subject of legitimate news interest.” The speech at issue here, corruption in public programs and misuse of state funds, was clearly a matter of public concern.

Finally, the Supreme Court also quickly found that the program president had no adequate justification for treating Lane different from any other member of the general public based on the needs of a governmental employer. In fact, Lane never provided false testimony or divulge sensitive, confidential or privileged material (since the audit was subject to public scrutiny). Thus, the program president could not establish that Lane violated any rules or otherwise thwarted the efficient operations of the program.

Consequently, Lane was entitled to damages for his wrongful termination in violation of his First Amendment rights.

Learning Point:

School employees are governmental employees. Nevertheless, public school employees are entitled to First Amendment protection so long as they are engaging in speech as a citizen on matters of public concern. Sometimes it is difficult to determine when an employee is testifying as a citizen or pursuant to their official duties. However, this case provides a straightforward roadmap by which schools may follow when the issue of employee speech arises.