
Supreme Court Opinion Issued In Public Employee Free Speech Case

To what degree is a memo protected by the First Amendment (freedom of speech), if that memo is written by a public employee as a purely job related function? The Supreme Court issued an opinion in a public employee free speech case in May that may address that question.

Richard Ceballos worked as a supervising district attorney in the district attorney's office. The defense attorney told Ceballos that he believed one of the arresting deputy sheriffs may have lied to obtain a search warrant in a case that his office was prosecuting. After reviewing court documents and revisiting the crime scene, Ceballos determined that the sheriff had significantly misrepresented the facts on a search warrant affidavit. Ceballos prepared an office memo on the flawed warrant and gave it to his supervisors; they decided to proceed with the prosecution anyway.

Ceballos later informed the defense counsel about his findings, and was subpoenaed by the defense to testify at a hearing on a motion to dismiss the case. The judge denied the motion by the Defense. Later, Ceballos was removed from the prosecution's team, denied a promotion, demoted and transferred after this series of events. Ceballos sued, and claimed that it was unlawful for his supervisors to punish him for engaging in speech that is protected by the First Amendment.

What is the scope of First Amendment protection given to public officials? It is well established that public employees do not surrender all their First Amendment rights by reason of their employment. Rather, those rights are protected under certain limited circumstances. The trial court found that the memo which he wrote was written specifically under his employment duties, and a part of his employment duties, and not as a matter of his free exercise of speech.

“A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that has some potential to affect the entity's operations.” [Citation omitted, cf. *Treasury employees*, 513 U.S. at 470], Slip Opinion, page 8.

The Court concluded: “The controlling factor in Ceballos' case is that his expressions were made pursuant to his duties as a calendar deputy [deputy DA]. That consideration—the fact that Ceballos spoke as a prosecutor fulfilling a responsibility to advise his supervisor about how best to proceed with a pending criminal case—distinguishes Ceballos' case from those in which the First Amendment provides protection against discipline.

What This Case Means for Counties

Under Colorado law, many duties assigned to criminal investigators are protected from public disclosure until the case is resolved. A county job description may not categorically preclude an employee from expressing their opinion or exercising free speech rights under any circumstances. Speech may still be protected so long as it did not use information that was confidential or privileged to the DA's office and his job duties.

However, a job duty or series of assignments may require an employee to keep confidential categories of information gained as a result of assigned job duties, if that information would not otherwise be available to the public. In the Ceballos case, Ceballos went beyond his authority and that independent action created an issue with the Sheriff, the DA, and the court, thus affecting their work. His work related speech rights did not go that far, according to the Supreme Court.

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