

U.S. Supreme Court Rules that Sworn Testimony by Employee is Protected by the First Amendment

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Providing truthful, sworn testimony outside the course of ordinary job duties is First Amendment speech for the purposes of retaliation lawsuits, the U.S. Supreme Court ruled on June 19, 2014. The ruling prohibits a public employer from retaliating against an employee who testifies pursuant to a subpoena based on information the employee knows about because of his or her public employment.

In *Lane v. Franks*, a former director of a community college's program for underprivileged youth filed suit alleging that his termination was in retaliation for providing testimony at a criminal proceeding involving a former employee.

First, the court ruled that truthful testimony under oath by a public employee was citizen speech. According to the court, it was irrelevant that the testimony related to public employment or concerned information learned during employment. Instead, the critical inquiry was whether the speech at issue was ordinarily within the scope of the employee's job duties (and, thus, would not be protected). Because the director testified about information he learned during the course of his employment but that was outside the scope of his ordinary job duties, his testimony was protected by the First Amendment.

Next, the court concluded that the speech was on a matter of public concern because it involved testimony regarding corruption in a public program. Applying a balancing test, the court found no governmental interest that outweighed the employee's First Amendment interest.

What does this case mean for employers?

Lane addresses First Amendment rights of public employers and does not apply to private sector employers. However, private sector employees may be protected from providing testimony in a legal proceeding by other anti-retaliation provisions. Employers should consult counsel with questions when taking adverse employment actions, including terminations, against their employees.

Brian Schwartz
+1.313.496.7551