MILLER CANFIELD

Supreme Court Expands First Amendment Protections For Public Employees

April 28, 2016

On April 26, 2016, the United States Supreme Court ruled that when a public employer demotes an employee out of a desire to prevent that employee from engaging in First Amendment protected activity, the employee can challenge the action even if the employer is mistaken about the employee's behavior. In *Heffernan v. City of Paterson*, a police officer was demoted after he was seen by the mayor's security team talking to the campaign manager of the mayor's political opponent in an upcoming election. The police officer filed a lawsuit arguing that his demotion violated his First Amendment rights. The employee admitted in discovery that he was only picking up a campaign sign for his mother. Consequently, the city argued that because the police officer was not engaging in constitutionally protected activity, he did not have a First Amendment claim.

The Supreme Court disagreed, stating that "[w]hen an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment … even if, as here, the employer's actions are based on a factual mistake about the employee's behavior." The Court assumed that the supervisor thought the police offer was engaging in constitutionally protected conduct and stated that the government's motive mattered where it demoted the police officer on the "mistaken belief that he *had* engaged in protected speech." Ultimately, the Court directed lower courts to decide whether the city acted pursuant to a neutral policy prohibiting police officers from overt involvement in a political campaign and whether such a policy complies with constitutional standards.

What does this case mean for public employers?

When disciplining an employee for activities that may fall under the gambit of protected activity under the First Amendment, it is critical to conduct investigation before taking any adverse employment actions. Additionally, public employers should be aware that taking an adverse employment action when an employee engages in protected First Amendment activity may give rise to a viable lawsuit, even if the employee did not actually engage in protected activity.

Brian Schwartz
+1.313.496.7551
schwartzb@millercanfield.com