

First Amendment Does Not Protect Public Employees Who Petition The Government Regarding Private Concerns

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In a case that makes it more difficult for public employees to assert First Amendment claims, the Supreme Court recently ruled that public employees who sue under §1983 claiming retaliation in violation of the "Petition Clause" of the First Amendment must demonstrate that their petition addresses a matter of public concern. In *Borough of Duryea v Guarnieri*, a public employee alleged that his union grievance was protected by the Petition Clause of the First Amendment, which provides citizens with the right "to petition the Government for a redress of grievances." He sued alleging that he was retaliated against for exercising his First Amendment rights.

The Supreme Court confirmed that, as with claims arising under the Speech Clause, Petition Clause claims must involve "a matter a public concern." Thus, "If a public employee petitions as an employee on a matter of purely private concern, the employee's First Amendment interest must give way, as it does in speech cases." On the other hand, if the employee petitions as a citizen on a matter of public concern, then their First Amendment rights are balanced against the government's interest in managing its internal affairs. Notably, the Court acknowledged that in many cases, petitions using internal grievance procedures will not involve a matter of public concern.

What does this case mean for public employers?

The Supreme Court's decision narrows the scope of a public employer's potential liability for claims alleging violation of First Amendment rights. It confirms that commonplace employment disputes will not automatically give rise to Constitutional claims. Employers, however, must be cognizant of their responsibilities under existing employment statutes, including statutes with whistleblower protection and anti-retaliation provisions.