

Dean Has No Right to Criticize Administration

Everyone knows that all citizens enjoy the right to freedom of speech under the First Amendment. However, sometimes public employees go too far and fail to appreciate the right of their public employer to efficiently run the institution in the manner the ranking administrators think most appropriate. A good example of this is the recent case of *Faghri v. University of Connecticut.*, 621 F.3d. 92 (2nd. Cir. 2010). This case involved a second-term dean, Amir Faghri, of the College of Engineering at the University of Connecticut who was removed from that position after criticizing the university administration.

Dean Faghri had publicly opposed the university administration on a number of issues. He spoke out against a proposed new campus in Dubai and against the closure of certain academic programs. He accused the administration of mismanaging funds. He attacked the university's position on the establishment of an independent research center to research fuel cell technology and communicated his opposition to state and federal lawmakers. He openly disagreed with the university's position regarding the audit of federal funds received by the institution, arguing that the university had not defended itself properly. And he criticized the university for creating an unsupportive research environment. His criticism was expressed in meetings of university officials, in e-mails sent to university officials, and in general conversations.

The President and the Provost received complaints about Faghri and were required to mediate disputes involving him and other university officials. His college was split, with about a fourth of the faculty petitioning for his removal, while others expressed continued support for him. The Provost finally decided to ask Faghri to resign. When Faghri refused, the Provost removed him as Dean the next day, though he was allowed to retain his tenured faculty position with the university. Faghri sued the university, its President, and its Provost, asserting a violation of his First Amendment speech rights, unlawful retaliation, and denial of due process. The federal trial court denied the defendants' motion for summary judgment, and they appealed.

The Second Circuit Court of Appeals reversed the ruling of the trial court and directed that the case be dismissed. With respect to Faghri's due process claim, the Court noted that he lost an administrative position but, significantly, not his job. In such an instance, the extent of due process to be afforded was minimal, and the Court concluded that he was given sufficient process when he was told why he was being demoted and given an opportunity to contest it in his meeting with the Provost. With regard to the free speech claim, the Court focused again on the fact that Faghri lost only his position on the university's management team, not his employment. While the university would not have been within its rights to fire him, it could lawfully remove him from a leadership position:

Because the deanship of the School of Engineering is an executive, policymaking position, the management of the university was entitled to have such a position occupied by one who voiced support for, or at least did not voice opposition to, the university's policies. It was therefore entitled to remove Faghri from that position for publicly opposing the university policies. To be sure, the First Amendment protects Faghri's right to speak in opposition to university policies. . . . But the management of a public

institution, such as a university, is not required to retain in a management or policymaking position a person who publicly opposes its policies. Such an institution is entitled, for the sake of effective implementation of its policies, to have in management positions, especially high-ranking executive positions, persons who will support its policies, rather than persons who will undermine its goals by voicing public opposition to them.

The *Faghri* case, and others like it, present public employees in upper-level management positions with the challenge of maintaining a delicate balance. They have some latitude in expressing their views as participants in the development of institutional policies and positions. However, once those policies/positions have been formulated and adopted the expression of opposition by such employees in public ways and venues may jeopardize their management positions.