

Community College Director Protected Against Retaliation

In a case originating in North Alabama, the United States Supreme Court has extended protection against retaliation to a former director of a federally funded program known as the Community Intensive Training for Youth (CITY). CITY is a program for underprivileged youth operated by the Central Alabama Community College (CACC).

Edward Lane testified against former Madison County State Representative Sue Schmitz in her federal criminal trial. Ms. Schmitz was alleged to have used her political influence to get a job with CITY in which she did no actual work. She was found guilty of mail fraud and making false claims in a program receiving federal funds and was sentenced to three years in prison.

Shortly after testifying against Schmitz, Lane was terminated from his position with CITY by Steve Franks, the CACC President. Later, the entire CITY program was closed. Lane sued Franks in the federal district court, under 42 U.S.C. § 1983, for retaliating against him in violation of his free speech rights under the First Amendment to the U.S. Constitution. The District Court and then the Eleventh Circuit Court of Appeals dismissed Lane's claims against Franks on the basis of *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951 (2006). In *Garcetti*, the Supreme Court held that statements made by public employees are not entitled to First Amendment protection when they are made as part of the public employee's job, rather than as a citizen on a matter of public concern.

Lane appealed to the Supreme Court. It held that *Garcetti*, properly understood, did not require a ruling adverse to Lane. *Lane v. Franks*, 2014 WL 2765285 (U.S. Sup. Ct. June 19, 2014). The Court noted that testifying in a judicial proceeding was not a part of Lane's regular job duties. Furthermore, the case against Ms. Schmitz was a matter of public concern since it was part of a larger corruption scandal in Alabama's two-year community college system. According to the Court, providing sworn testimony in a judicial proceeding is a "quintessential example" of citizen speech, since anyone who testifies in court bears an obligation, both to the court and the community at large, to be truthful. That obligation is separate from any obligation a testifying public employee might have to his/her employer.

The Supreme Court win for Lane was somewhat bittersweet, because the Court also held that Franks was entitled to qualified immunity from Lane's claims for damages against him. Franks could have reasonably believed, because the legal issue was not sufficiently clear when he fired Lane, that his action was lawful. In these circumstances, qualified immunity applies to protect a government official sued under 42 U.S.C. § 1983.

Though he prevailed in the case, Lane's quest for justice will continue. The CITY program has been eliminated, foreclosing the possibility of reinstating Lane to his former position, as he had sought. And Franks' qualified immunity meant that Lane could not recover a damages judgment against him. The case was returned to the Eleventh Circuit Court of Appeal for further proceedings and consideration of Lane's claims against Susan Burrow, in her official capacity as CACC's current Acting President.