

Supreme Court of the State of Idaho

Docket No. 37563-2010

Determining whether a public employer infringed upon its employee's constitutionally protected interest in freedom of expression requires the following analysis:

- (a) Did the plaintiff make the statements at issue pursuant to his or her official duties as a public employee? *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). If so, the speech is not protected from employer discipline. *Id.*
- (b) If not, does the court conclude, as a matter of law, that any of the plaintiff's speech addressed a matter of public concern, considering the content, form, and context of the statement(s) as revealed by the whole record? *Connick v. Myers*, 461 U.S. 138, 147-48 & n.7 (1983). If none of the speech at issue addressed a matter of public concern, the speech was not protected from employer discipline. *Id.*
- (c) If any of the speech did address a matter of public concern, has the plaintiff produced evidence from which the trier of fact could reasonably find that such speech was a substantial or motivating factor in adverse employment action? *Id.* at 149; *Brown v. City of Pocatello*, 148 Idaho 802, 806, 229 P.3d 1164, 1168 (2010). If not, the plaintiff has no First Amendment cause of action based upon his or her employer's reaction to the speech. *Connick*, 461 U.S. at 146.
- (d) If so, does the court conclude that the employer has shown adequate justification for the action taken because its interest in the effective and efficient fulfillment of its responsibilities to the public, including promoting efficiency and integrity in the discharge of official duties and in maintaining proper discipline in public service, outweighed the employee's First Amendment right, considering factors such as how substantially the speech involved matters of public concern; the manner, time, and place where the speech occurred; and the context in which it arose, giving a wide degree of deference to the employer's judgment? *Id.* at 150-54. If the court so concludes, then the employer's action did not offend the First Amendment. *Id.* at 154.
- (e) If the court cannot so conclude, has the employer shown by a preponderance of the evidence that it would have taken the same adverse employment action even in the absence of the protected speech? *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 286 (1977).