



Iowa General Assembly

2006 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

WHISTLEBLOWER PROTECTION - PUBLIC EMPLOYEES

Filed by the United States Supreme Court

May 30, 2006

GARCETTI v. CEBALLOS

No. 04-473

<http://www.supremecourtus.gov/opinions/05pdf/04-473.pdf>

Factual Background. Richard Ceballos was employed as a deputy district attorney in the Los Angeles County District Attorney's Office. In 2000, a defense attorney contacted Mr. Ceballos claiming inaccuracies in an affidavit used to obtain a search warrant in a pending criminal case. Mr. Ceballos reviewed the affidavit and submitted a memo to his supervisors critical of the affidavit and recommended dismissal of the case. The prosecutors decided to proceed with the criminal case. Although Mr. Ceballos was called to testify by defense counsel concerning the warrant, the challenge to the warrant was rejected. Mr. Ceballos claims that following these events he was subjected to a series of retaliatory employment actions. Mr. Ceballos sued, claiming his supervisors violated his free speech rights under the First Amendment by retaliating against him based upon the memo.

Issue. Does the First Amendment to the U.S. Constitution protect a government employee from discipline based on speech made pursuant to the employee's official duties?

Analysis and Conclusion. The Supreme Court reconfirmed prior decisions that have found that a public employee does not surrender all their First Amendment rights by reason of their employment. Still, a public employee's First Amendment rights are limited based upon their employment. In determining whether a public employee's First Amendment rights apply, the Court must first determine whether the public employee spoke as a citizen on a matter of public concern. If not, no First Amendment cause of action arises out of the employer's reaction to that speech. If the public employee did speak on a matter of public concern, the Court must then determine whether the government entity had an adequate justification for treating the employee differently from any other member of the general public.

In this case, the Court focused on the first question, whether Mr. Ceballos "spoke" through the memo as a citizen on a matter of public concern. The Court noted that the statements made in this case were made pursuant to his duties as a deputy district attorney. Based on this finding, and not on the nature of the statements made, the Court found that Mr. Ceballos had no claim for relief based upon the First Amendment. The Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes and the Constitution does not insulate their communications from employer discipline."

Impact of Decision. The Ceballos decision supports the proposition that governmental whistleblowers are not protected by the First Amendment for statements made pursuant to their official duties. However, legislative enactments, such as whistleblower protection laws and labor codes, may still protect employees seeking to expose governmental inefficiency and misconduct. As a result of this decision, if governmental whistleblowers are to receive protection from adverse employment action for statements made pursuant to their official duties, then legislative enactments and employment contracts must specifically provide that protection. In Iowa, general whistle-blower protection is provided state employees and employees of political subdivisions pursuant to Iowa Code sections 8A.417, 70A.28, and 70A.29.

LSA Contact: Ed Cook, Legal Services, (515) 281-3994