

Employee's Speech Against Employer May Be Protected by First Amendment

By [Daniel Schwartz](#) on January 27th, 2012

Ever since the [U.S. Supreme Court ruled in Garcetti v. Ceballos](#) that an employee's speech pursuant to the employee's official job duties was not protected by the First Amendment, employers have attempted to use that case as a shield against free speech lawsuits by employees.

But a decision by a [federal court in Connecticut late last month in a case titled Ricciuti v. Gyzenis \(download here\)](#) shows the limits of that decision. It's a lengthy decision — worth reading if you're a practitioner in the area — that lays out some important theories for employers to understand.

The court notes that the facts of the case are in dispute (already meaning that the employer's motion for summary judgment is suspect):

To read the parties' statements of facts in this case is already to suspect that summary judgment is not to be. As the Plaintiff would have it, this case is about an experienced officer who was disgusted by the misuse of public funds at the Madison [Connecticut] Police Department ("MPD"), and who decided to speak up as a town resident and taxpayer. According to the Defendants, this case was brought by a complaining, often insubordinate probationary officer who thought she knew better than her superiors how to run the Department. [Plaintiff] maintains that she was retaliated against for speaking out as a citizen on a matter of public concern; the Defendants counter that her speech, which violated the MPD's Code of Conduct, was intended only to improve [her] own employment conditions.

The employer raised several arguments to say that the case should not proceed to trial and that "summary judgment" should be granted. The federal court rejected all of them.

Most notably, the employer argued that speech was not protected under the First Amendment. But the court found that under a variety of factors the speech was protected.

The employer then argued that the employee's speech was "indisputably more disruptive than valuable." But the court said that it could not conclude that either at this stage and that such an argument was ill-suited for use at summary judgment.

What's the takeaway for employers?

- The U.S. Supreme Court's decision in [Garcetti](#) may not bump every First Amendment workplace speech case. Courts still have some latitude to consider the parameters of the decision.

- Recall too that Connecticut state law applies those First Amendment rights to the private workplace in many instances. The Connecticut Supreme Court is currently considering the limits of that statute so stay tuned.

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