



# Supreme Court Limits the First Amendment's Petition Clause

June 28, 2011

**Borough of Duryea, Pennsylvania, et al. v. Guarnieri, 2011 U.S. LEXIS 4564 (U.S. June 20, 2011)**

In an opinion decided on June 20, 2011, the Supreme Court ruled that a government employer's alleged retaliation against an employee does not create liability under the First Amendment's petition clause, unless the employee's petition is about a "matter of public concern."

This case originated from a feud between the small town of Duryea, Pennsylvania and the town's police chief, Charles Guarnieri. Guarnieri was fired from his position as police chief, but was reinstated after filing a union grievance. Upon his return, the town's council imposed a series of directives on how he could perform his official work and Guarnieri filed a second grievance resulting in some of the directives being modified or withdrawn. Guarnieri subsequently sued, claiming the directives (and a denial of overtime pay) were in retaliation for the filing of his first grievance. Guarnieri alleged this violated his First Amendment right to petition the Government for a redress of grievances. The District Court found for Guarnieri and the Third Circuit Affirmed.

The Court reversed the Third Circuit and held that a government employer's allegedly retaliatory actions against an employee do not give rise to liability under the Petition Clause unless the employee's petition relates to a matter of public concern. The Court went on to hold that, even where the employee makes that showing, courts must balance the employee's right to engage in speech against the government's interest in promoting the effectiveness of public services performed through those employees. The Court expressed concern that petitions, much like speech, could interfere with the government's operations and when petitions take the form of lawsuits, they may be especially intrusive and disruptive.

Writing for the court, Justice Kennedy held:

*If a public employee petitions as an employee on a matter of purely private concern, the employee's First Amendment interest must give way, as it does in speech cases. When a public employee petitions as a citizen on a matter of public concern, the employee's First Amendment interest must be balanced against the countervailing interest of the government in the effective and efficient management of its internal affairs.*

The Supreme Court remanded the matter back to the Third Circuit to apply the new ruling.

*A special thanks to Sean Gajewski for helping with this post. Sean is a third-year law student at Hofstra University School of Law focusing on e-discovery and technology law. You can reach him by email at srgajewski [at] gmail dot com. Bio: [www.sgajewski.com](http://www.sgajewski.com).*