

# eLABORate

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## SUPREME COURT HOLDS THAT RESTRICTING SPEECH THAT IS UNDERTAKEN AS A PART OF A PUBLIC EMPLOYEE'S PROFESSIONAL RESPONSIBILITIES DOES NOT VIOLATE THE FIRST AMENDMENT

On May 30, 2006, the Supreme Court reversed a Ninth Circuit Court of Appeals holding in *Gracetti v. Ceballos*, No. 04-473, 2006 WL 1458026 (U.S.). The issue in *Gracetti* was whether the First Amendment protected a public employee's speech when it was expressed as part of the public employee's employment duties. The Court's ruling is applicable only to public employers (i.e. states, cities, counties, parishes or other government owned entities such as community hospitals). It has no application to private, non-government entities or businesses.

*Gracetti* involved a former Los Angeles district attorney, Ceballos, who was allegedly unfairly punished because he revealed to a defense attorney that a deputy sheriff lied to obtain a search warrant against the attorney's client in a criminal case. Before Ceballos informed the defense attorney, he notified one of his supervisors about the deputy sheriff's actions. Ceballos recommended that the information and related memo written by him should be given to the defense attorney. The supervisor initially disagreed with Ceballos' recommendation, but decided to give the defense attorney a redacted copy of the memo. Thereafter, the supervisor made a threat of reprisal if Ceballos testified candidly at a hearing regarding a challenge to the search warrant. At the hearing, the scope of Ceballos' testimony was limited and the judge denied the challenge to the search warrant.

Over the next several months Ceballos was demoted and one of his murder cases was reassigned to a junior prosecutor. He was denied a promotion and transferred to a location that lengthened his commute. Thereafter, Ceballos filed a lawsuit against his supervisor, the Los Angeles District Attorney Office and Los Angeles County, alleging retaliation in violation of his First Amendment rights.

The Ninth Circuit agreed with Ceballos and held that the law was clearly established that Ceballos' speech (i.e. the memo he wrote and the testimony he gave) addressed a matter of public concern and that his interest in the speech outweighed the public employer's interest in avoiding efficiency and disruption. The Court rejected the public employer's argument that the speech was unprotected because it expressed views as part of the public employee's employment duties.

The Supreme Court reversed the Ninth Circuit and held that when public employees make statements as a result of their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. The Court explained that restricting speech that is undertaken as a part of a public employee's professional responsibilities does not violate any liberties that the public employee might have enjoyed as a private citizen. Such restrictions only reflect the exercise of the public employer's control over what the public employer has commissioned or created. Thus, the Court concluded that not every aspect of a public employee's employment is protected by the First Amendment.

## eLABORate

Inquiries concerning topics addressed in the *eLABORate* may be directed to any of our Employment Law attorneys:

### Jackson, Mississippi

Joseph L. Adams	adamsjo@phelps.com	(601) 360-9708
Deborah Shelby Dees	deesd@phelps.com	(601) 360-9334
Gary E. Friedman	friedmag@phelps.com	(601) 360-9355
Paul O. Miller, III	millerp@phelps.com	(601) 360-9350
W. Thomas Siler, Jr.	silert@phelps.com	(601) 360-9357
Sandra G. Brown	browns@phelps.com	(601) 360-9729
Kenneth G. Fairly	fairlyk@phelps.com	(601) 360-9705
Mark Fijman	fijmanm@phelps.com	(601) 360-9716
Jason Patrick Loden	jason.loden@phelps.com	(601) 360-9744
LaToya C. Merritt	merrittl@phelps.com	(601) 360-9749
Seale Pylate	pylates@phelps.com	(601) 360-9342
Edward O. Watson	edward.watson@phelps.com	(601) 360-9721
Tori L. Winfield	winfielt@phelps.com	(601) 360-9366

### Baton Rouge, Louisiana

Susan W. Furr	furrs@phelps.com	(225) 376-0230
Karleen J. Green	greenk@phelps.com	(225) 376-0244
Thomas H. Kiggans	kigganst@phelps.com	(225) 376-0247
Shelton Dennis Blunt	bluntd@phelps.com	(225) 376-0231
Berty C. Burke	berty.burke@phelps.com	(225) 376-0235
W. Bowen McRae, Jr.	mcraeb@phelps.com	(225) 376-0211
Mimi Flowers Plauché	plauchem@phelps.com	(225) 376-0279

### New Orleans, Louisiana

M. Nan Alessandra	alessann@phelps.com	(504) 584-9297
Jane E. Armstrong	armstroj@phelps.com	(504) 584-9244
Kim M. Boyle	boylek@phelps.com	(504) 679-5790
David M. Korn	kornd@phelps.com	(504) 584-9374
Jo Ann Butler	joann.butler@phelps.com	(504) 679-5509
Brandon Davis	brandon.davis@phelps.com	(504) 584-9312
Zenel A. Doucet	doucetz@phelps.com	(504) 584-9262
Ellen Romig Fihlman	fihlmane@phelps.com	(504) 584-9391
Sunni D. Jones	jones@phelps.com	(504) 584-9328
Taryn Southon Nunes	nunest@phelps.com	(504) 584-9383

### Tampa, Florida

Dennis M. McClelland	dennis.mcclelland@phelps.com	(813) 472-7865
John David Mullen	john.mullen@phelps.com	(813) 472-7867
John E. Phillips	john.phillips@phelps.com	(813) 472-7863
Alva L. Cross	alva.cross@phelps.com	(813) 472-7861
Jolee Land	jolee.land@phelps.com	(813) 472-7857
Leslie Schultz-Kin	leslie.schultz-kin@phelps.com	(813) 472-7875

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