

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Brian Bresnahan v. City of St. Peters

No. 21-3910, United States Court of Appeals for the Eighth Circuit (January 19, 2023)

SUMMARY

The Eighth Circuit reversed dismissal of a § 1983 First Amendment retaliation claim, holding that a police officer plausibly alleged he spoke as a private citizen on a matter of public concern when he shared a satirical video about Black Lives Matter and police shootings in a departmental group text. The court found the speech was not made pursuant to official duties because the group text included unrelated content, and the video's content, form, and context—criticizing BLM and media coverage—sufficiently implicated a matter of public concern. The case was remanded for further proceedings, including potential application of the Pickering balancing test.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	KOBES, Circuit Judge; LOKEN, Circuit Judge; ARNOLD, Circuit Judge
JURISDICTION	Federal
DECIDED	January 19, 2023
DOCKET	21-3910
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal of complaint under Rule 12(b)(6)
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Brian Bresnahan v. City of St. Peters; Rick Struttman; Russ Batzel

TOPICS

- first amendment
- free speech
- civil rights
- section 1983
- motions to dismiss
- appellate procedure
- standard of review
- employment law

PRACTICE AREAS

- Civil Rights
- Appellate Practice
- Employment Law

QUESTIONS PRESENTED

1. Whether Bresnahan spoke as a private citizen or a public employee when he sent the video.
2. Whether Bresnahan's speech involved a matter of public concern.

HOLDINGS

1. Bresnahan's complaint states a claim for First Amendment retaliation because he plausibly alleged that he was acting as a private citizen and that his speech involved a matter of public concern.

KEY QUOTATIONS

“Speech can be ‘pursuant to’ a public employee’s official job duties even though it is not required by, or included in, the employee’s job description, or in response to a request by the employer.” (at 2)

“Speech involves a matter of public concern when it ‘relat[es] to any matter of political, social, or other concern to the community’” (at 3)

“a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public” (at 3)

“We hold merely that Bresnahan’s complaint states a claim for First Amendment retaliation.” (at 5)

FACTUAL BACKGROUND

Bresnahan, a police officer, sent a video from the animated sitcom 'Paradise PD' to a group text of officers. The video depicted a black police officer accidentally shooting himself with a news headline stating 'another innocent black man shot by a cop.' Bresnahan intended to criticize Black Lives Matter protests. After another officer complained, Chief Struttmann ordered Bresnahan to resign or face termination. Bresnahan resigned and sued under § 1983 for First Amendment retaliation.

PROCEDURAL HISTORY

The United States District Court for the Eastern District of Missouri granted Defendants' motion to dismiss Bresnahan's § 1983 complaint for failure to state a claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

for further proceedings consistent with this opinion

CASES CITED

- Tholen v. Assist Am., Inc., 970 F.3d 979 (8th Cir. 2020)
- Smith v. S. Farm Bureau Cas. Ins. Co., 18 F.4th 976 (8th Cir. 2021)

- *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
- *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
- *Lyons v. Vaught*, 875 F.3d 1168 (8th Cir. 2017)
- *Mogard v. City of Milbank*, 932 F.3d 1184 (8th Cir. 2019)
- *Lane v. Franks*, 573 U.S. 228 (2014)
- *Connick v. Myers*, 461 U.S. 138 (1983)
- *City of San Diego v. Roe*, 543 U.S. 77 (2004)
- *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir. 2009)
- *Hernandez v. City of Phoenix*, 43 F.4th 966 (9th Cir. 2022)
- *Desrochers v. City of San Bernardino*, 572 F.3d 703 (9th Cir. 2009)
- *Rankin v. McPherson*, 483 U.S. 378 (1987)
- *Nagel v. City of Jamestown*, 952 F.3d 923 (8th Cir. 2020)
- *Tindle v. Caudell*, 56 F.3d 966 (8th Cir. 1995)
- *Pruitt v. Howard Cnty. Sheriff's Dep't*, 96 Md. App. 60 (1993)
- *Snyder v. Phelps*, 562 U.S. 443 (2011)
- *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968)
- *Sexton v. Martin*, 210 F.3d 905 (8th Cir. 2000)