

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Henry E. Lyons v. F. Wayne Vaught; Reginald Bassa

875 F.3d 1168 (8th Cir. 2017) · No. No. 16-1062 · Decided November 22, 2017

SUMMARY

The Eighth Circuit held that university officials were entitled to qualified immunity from a public employee's First Amendment retaliation claims. The court concluded that, under *Garcetti v. Ceballos*, it was not clearly established that the lecturer's complaints about preferential academic treatment of student athletes were protected citizen speech rather than speech pursuant to his official duties. The court reversed and remanded with directions to dismiss the damages claims.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Loken, Circuit Judge; Murphy, Circuit Judge; Melloy, Circuit Judge
JURISDICTION	Federal
DECIDED	November 22, 2017
DOCKET	No. 16-1062
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of individual defendants' motion to dismiss damages claims on qualified-immunity grounds in a 42 U.S.C. § 1983 First Amendment retaliation action.
STANDARD OF REVIEW	De novo review of the denial of qualified immunity, accepting as true the facts alleged in the second amended complaint.
PRECEDENTIAL VALUE	published and precedential
PARTIES	F. Wayne Vaught, Reginald Bassa v. Henry E. Lyons

TOPICS

- qualified immunity
- first amendment
- free speech
- section 1983
- appellate procedure

PRACTICE AREAS

- constitutional law
- civil rights
- employment law
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether Vaught and Bassa were entitled to qualified immunity because, at the time of the alleged retaliation, it was not clearly established that Lyons's speech to the university chancellor concerning preferential treatment of student athletes was made as a citizen rather than pursuant to his official duties.
2. Whether the second amended complaint alleged a violation of a clearly established First Amendment right sufficient to overcome qualified immunity.

HOLDINGS

1. Vaught and Bassa were entitled to qualified immunity because Lyons failed to show that it was clearly established that his speech to the chancellor, made after and concerning the grade appeal involving his student athlete, was protected citizen speech rather than speech pursuant to his official duties.
2. Lyons's speech during the student grade-appeal process was unprotected because it was made pursuant to his grading duties and the university's established appeal process.
3. The district court erred by allowing Lyons to amend his complaint without applying the more rigorous post-dismissal standards required after the Eighth Circuit's prior decision.

KEY QUOTATIONS

“The first requires determining whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based on his or her employer’s reaction to the speech. If the answer is yes, then the possibility of a First Amendment claim arises.” (at 1173)

“Determining whether an employee’s speech was pursuant to his official duties is a practical inquiry.” (at 1176)

“In these circumstances, Lyons has failed to show, using the particularized inquiry required, that his right to make this speech in these circumstances was clearly established.” (at 1178)

FACTUAL BACKGROUND

Henry E. Lyons worked as a part-time lecturer at the University of Missouri-Kansas City for seven semesters. After a student athlete challenged an F grade, Lyons participated in and pursued the university's grade-appeal process, which resulted in the student's grade being changed to D+. Lyons later met with the university chancellor and raised broader concerns about preferential academic treatment of student athletes, requesting a comprehensive investigation. Lyons was not offered a lecturer contract for the following semester, and he alleged that Vaught and Bassa, who recommended and approved lecturer contracts, retaliated against him for his speech.

PROCEDURAL HISTORY

Lyons sued Chancellor Leo E. Morton, F. Wayne Vaught, and Reginald Bassa in state court, alleging that the decision not to renew his part-time lecturer contract was retaliation for protected speech. After removal to federal court, Lyons voluntarily dismissed Morton, and Vaught and Bassa moved to dismiss based on qualified immunity and failure to state a claim. The district court denied the motion. In Lyons I, the Eighth Circuit held that the complaint stated a claim but that Vaught and Bassa were entitled to qualified immunity because the only speech alleged to have prompted the adverse action was unprotected speech during the grade-appeal process. On

remand, the district court permitted Lyons to file a second amended complaint and again denied defendants' motion to dismiss. The Eighth Circuit reversed and remanded with instructions to dismiss the damages claims on qualified-immunity grounds.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's December 14, 2015 order and dismiss Lyons's damages claims on the basis of qualified immunity.

CASES CITED

- Lyons v. Vaught, 781 F.3d 958 (8th Cir. 2015)
- Hager v. Ark. Dep't of Health, 735 F.3d 1009 (8th Cir. 2013)
- Ashcroft v. al-Kidd, 563 U.S. 731 (2011)
- White v. Pauly, 137 S. Ct. 548 (2017)
- Mullenix v. Luna, 136 S. Ct. 305 (2015)
- De La Rosa v. White, 852 F.3d 740 (8th Cir. 2017)
- Reichle v. Howards, 132 S. Ct. 2088 (2012)
- McNabb v. Riley, 29 F.3d 1303 (8th Cir. 1994)
- Connick v. Myers, 461 U.S. 138 (1983)
- Pickering v. Bd. of Educ., 391 U.S. 563 (1968)
- Garcetti v. Ceballos, 547 U.S. 410 (2006)
- Lane v. Franks, 134 S. Ct. 2369 (2014)
- Weintraub v. Bd. of Educ., 593 F.3d 196 (2d Cir. 2010)
- Williams v. Dall. Indep. Sch. Dist., 480 F.3d 689 (5th Cir. 2007)
- McGee v. Public Water Supply, District #2, 471 F.3d 918 (8th Cir. 2006)
- Kincade v. City of Blue Springs, 64 F.3d 389 (8th Cir. 1995)
- Bonn v. City of Omaha, 623 F.3d 587 (8th Cir. 2010)
- Anderson v. Douglas Cty. Sch. Dist. 0001, 342 F. App'x 223 (8th Cir. 2009)
- Bradley v. James, 479 F.3d 536 (8th Cir. 2007)
- Davenport v. Univ. of Ark. Bd. of Trs., 553 F.3d 1110 (8th Cir. 2009)
- Lindsey v. City of Orrick, 491 F.3d 892 (8th Cir. 2007)
- Winder v. Erste, 566 F.3d 209 (D.C. Cir. 2009)
- Rohrbough v. Univ. of Colo. Hosp. Auth., 596 F.3d 741 (10th Cir. 2010)
- Brown v. Armenti, 247 F.3d 69 (3d Cir. 2001)
- Coats v. Pierre, 890 F.2d 728 (5th Cir. 1989)

- Johnson v. Lincoln Univ., 776 F.2d 443 (3d Cir. 1985)
- Gorum v. Sessoms, 561 F.3d 179 (3d Cir. 2009)
- Demers v. Austin, 746 F.3d 402 (9th Cir. 2014)
- Bartlett v. Fisher, 972 F.2d 911 (8th Cir. 1992)

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