

## SUPERIOR COURT CLERK FIRES FORMER POLITICAL OPPONENT -- WERE FIRST AMENDMENT RIGHTS VIOLATED?



The first official act in her capacity as superior court clerk for a Georgia woman was to fire one of the deputy clerks – the same employee who ran against her in the primary. The former deputy clerk responded with a lawsuit, alleging that her First Amendment rights had been violated. The plaintiff in this case became a deputy clerk in 2004. Georgia law permits a superior court clerk to appoint one or more deputies, who are authorized to handle the same tasks as the clerk. In 2008, the clerk, a Republican who had held the position since 1973, announced that he would not be seeking reelection. The plaintiff opted to seek the Republican nomination against four other candidates, one of whom was a deputy clerk working in the same office. The two deputy clerks running against one another apparently created friction. Of the nine people working in the office, one employee publicly supported one of the women and another employee publicly supported the other. The plaintiff was eliminated from the running when she received the second-to-lowest number of votes, while her fellow deputy clerk faced off against the remaining candidate and won the primary. When no Democratic candidate ran against her, she became the superior court clerk. The candidacy on both sides was reportedly tolerant insofar as it spotlighted candidates' experience in lieu of the women criticizing one another. The plaintiff had not previously discussed the continuation of her position, assuming that she would retain her title as deputy clerk. The new superior court clerk, however, terminated the woman almost immediately. At the time, she didn't provide a reason but, when filing a motion for summary judgment in court, admitted that it was because the plaintiff had been her political opponent in the primary. And was this legal? Both the district and appeals courts believed that it was. Appellate judges noted that terminations based on political affiliation or candidacy was "muddled" in terms of First Amendment rights. They reviewed numerous cases, including ones judged by the Supreme Court, and essentially focused on employee loyalty. Judges further acknowledged that the position of deputy clerk is not protected by the civil service system. Accordingly, the deputy clerk is considered an "at-will" employee and can be discharged by the clerk for any reason or none at all. But it is within an employer's right to fire someone who was or could be a political opponent. According to appellate judges, the clerk would be invested in maintaining "confidentiality and loyalty" – a "good legal reason" to terminate the plaintiff as one of her deputies. The district court therefore granted summary judgment for the defendant, a decision that was affirmed by the appeals court. One judge, however, dissented. She believed that the other judges were relying too much on the deputy's job description to establish the clerk's need for loyalty. The dissenting judge saw a distinction between job duties for a clerk and a deputy, and as such the clerk's "governmental interest" in political loyalty cannot support the termination when the plaintiff was exercising her First Amendment rights. But the judge's differing opinion was not the majority, and the district court's ruling was upheld.