

## FIREFIGHTER APPEALS DECISION IN CASE OF FIRST AMENDMENT RIGHTS



A firefighter sued the Mayor and the City of Bay Village near Cleveland, OH, claiming a violation of freedom of speech, protected by the First Amendment of the U.S. Constitution. A district court granted summary judgment in favor of the Mayor and the City, but an appeals court saw things differently. Back in 2008, budget changes for Bay Village demanded altering overtime for firefighters. The fire chief suggested the elimination of the dive team, as it was rarely needed and had cost the city substantial funds annually – including 26,000 dollars in diving gear and equipment from a business owned by the same man who ultimately filed the lawsuit. That man, a firefighter for 16 years and the instructor of the disbanded dive team, was on scene for one of two fatalities, in which two young boys drowned at beaches in the Bay Village vicinity. Two weeks subsequent to the second boy's death, the firefighter spoke publicly at a Bay Village City Council meeting. He essentially blamed the Council for the second drowning, a scene at which the man had been present. He stated that the "administration is partly responsible for condemning that child to death." By this, he was suggesting that the boy might have been saved if the dive team had not been eliminated, and that, without proper equipment and training, the firemen on scene were helpless. He further implied that the boy's death was a result of the city saving money and that citizens' safety had been "jeopardized." In response, the Mayor issued to the firefighter a Notice of Disciplinary Action, which stated that the man's comments at the City Council meeting were "misstatements, fabrications, insulting and inciteful" and not "supported by the facts." He was placed on unpaid suspension. An arbitration – a common way in which to resolve disputes outside of court – upheld the suspension and declared that the statements were not protected by the First Amendment. A district court agreed, and its decision favored the Mayor and



the City of Bay Village. The U.S. Court of Appeals, Sixth Circuit, reviewed the case. The two main points made by the defendants were that the man had not spoken at the meeting as a private citizen on a "matter of public concern" and that he made "knowingly or recklessly false statements." In contradiction to the former point, the appeals court noted that the firefighter appeared at the meeting "out of uniform", was off duty, and spoke only during the segment intended for public comments. The court did not believe that the statements were made for personal interest but rather that the man was expressing his opinion and a concern for public safety. As to the latter point, the appeals court sighted a significant detail: the plaintiff was not obliged to prove that his statements were true, but the defendants were required to offer proof that those statements were made with an "intentional or reckless disregard for the truth." As this was not done, the court concluded that proof would first be a necessity. The appeals court reversed the district court's ruling and remanded the case for further proceeding.