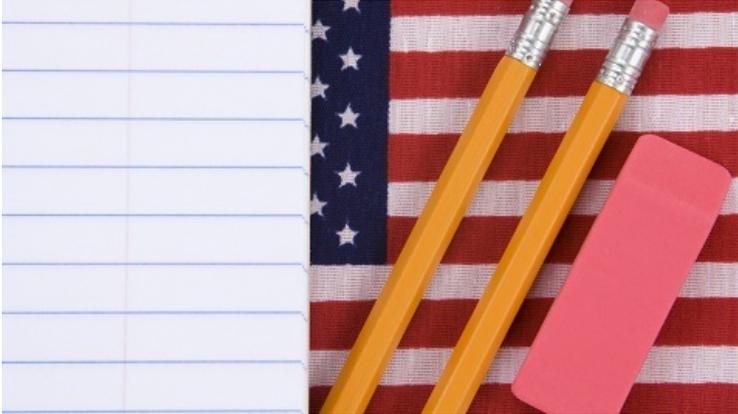


COUNTY EMPLOYEE FIRED FOR PROFANITY, OR FOR SUPPORTING COMMISSIONER'S POLITICAL OPPONENT?



Was a Texas County employee fired for using profane language, or because he publicly supported his former supervisor's political opponent? That was the question presented to both a district court and an appeals court. The man was working as the foreman for the County Commissioner, who was running for reelection in 2010. Evidently, the two men were once friends but had stopped seeing each other socially in 2008. The foreman alleged that a few months prior to the upcoming election, the County Commissioner started treating him differently. Though he didn't formally campaign for the Commissioner's opponent or even display any of her campaign materials, the foreman told people to vote for the female candidate. He likewise informed others that he'd heard rumors of the Commissioner's plan to fire six or seven employees in his district, provided that he won. The primary election was in July. The next month, the foreman was fired because, according to the County Commissioner, he'd used offensive language in violation of county policy. The former employee, however, asserted that the Commissioner had never previously enforced said policy and that he'd in actuality violated law by terminating him for exercising his First Amendment rights. He brought legal action against his former boss/friend and the Board of County Commissioners. The Commissioner filed a motion for summary judgment, arguing that the plaintiff had insufficient evidence to make a case and that it was clear that the foreman would have been fired regardless of his protected speech. He also believed that he was entitled to qualified immunity because his stated reason for terminating his employee was "objectively reasonable" considering the circumstances. The district court denied the Commissioner's motion, noting that a jury might agree that the foreman's support of the other candidate was the motivating factor in the decision to fire him. This was based on two pieces of evidence: that the Commissioner had never taken corrective action against any employee for using profanity prior to the foreman's termination, and the Commissioner accusing the foreman and others at a meeting of campaigning for his opponent and saying derogatory things about him. Federal judges also denied summary judgment based on qualified immunity. On appeal, judges stressed that the job of the appeals court is to review a district court's legal determination that argued facts can sufficiently establish a violation of a constitutional right. The Commissioner argued that the plaintiff had not adequately established that his termination was due to his political support of the defendant's opponent. But these are facts as found by the district court, which an appeals court has no jurisdiction to consider. Appellate judges noted that they would have had jurisdiction for an appeal regarding the district court's decision to deny qualified immunity, but the Commissioner didn't appeal that finding – merely continuing to argue that there was no evidence to show that he'd been motivated by the plaintiff's protected speech. For all of the Commissioner's arguments on appeal, the facts, as determined by federal judges, were questioned. Consequently, judges ruled that they had no jurisdiction to review the appeal and dismissed it. The case is still pending.