

## Supreme Court To Examine First Amendment Retaliation Claim

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Last Friday, the U.S. Supreme Court agreed to review a First Amendment retaliation claim brought by a public employee against his former employer following his termination after testifying against a state legislator.

In *Lane v. Central Alabama Community College*, Steve Franks, Dr., the petitioner, Edward Lane, previously worked as the Director of the Central Alabama Community College's Community Intensive Training for Youth Program ("Program"). Shortly after joining as the Director, Lane audited the Program's finances and discovered then-Alabama state representative, Suzanne Schmitz, was listed on the payroll but not performing any type of work for the Program. Lane raised his concerns about this internally and was warned by the College's president and attorney that terminating Schmitz could have negative consequences for both Lane and the College. Despite these warnings, Lane terminated Schmitz's employment after she refused to report to work.

Schmitz then filed a lawsuit against the College and sought to get her job back. Schmitz commented to a Program employee that she intended to "get [Lane] back" terminating her. Ultimately, the FBI began investigating Schmitz and contacted Lane for information. Pursuant to a subpoena, Lane testified before a grand jury and at two criminal trials – pursuant to a subpoena – regarding Schmitz's activities.

Months after testifying before the grand jury and the first criminal trial against Schmitz, Lane was one of two employees terminated due to alleged budget cuts. Lane sued the College president, Dr. Steven Franks, both in his official and individual capacity, alleging retaliation in violation of the First Amendment. The district court granted summary judgment in favor of Dr. Franks, finding that Lane's testimony was made pursuant to his official duties as a public employee and, therefore, no First Amendment protection existed. The Eleventh Circuit affirmed.

In his petition for review before the Supreme Court, Lane stated that the Eleventh Circuit's decision was "obviously" wrong and stated "[a]ny other result would sanction retaliation against a citizen who did nothing more than his duty – as a citizen – to tell the truth in support of a federal criminal investigation."

The Lane case raises an issue left undecided in *Garcetti v. Ceballos*, 547 US 410 (2006), which held that a public employee who speaks or writes as part of that employee's job duties enjoys no First Amendment protection. In *Garcetti*, the U.S. Supreme Court found that a public employer can fire that employee for speaking or writing because that employee was not speaking or writing as a citizen. In contrast, the *Lane* case will address whether *Garcetti* extends to a public employee who is fired after giving truthful subpoenaed testimony, which is not part of the employee's job duties.

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