

United States Supreme Court Clarifies Public Employee Petition Clause Protections

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In [Borough of Duryea v. Guarnieri, 113 S.Ct. 2488 \(2011\) \(PDF\)](#), the United States Supreme Court clarified that, although the Petition Clause of the First Amendment of the United States Constitution provides public employees separate and distinct protections, those protections are essentially the same as those afforded by the Free Speech Clause of the First Amendment. This is good news for public sector employers, who already face a slew of additional concerns in the area of employee discipline.

The Petition Clause has been trendy for public employees lately, but its contours have been somewhat unclear. Generally, the Petition Clause protects the rights of individuals to petition the government to seek redress of grievances. The courts have held that this provision protects public employees who file grievances against their employers. In other words, public employers are prohibited from retaliating against an employee who has filed a grievance or other complaint.

However, like other protections afforded to employees, there are limits to the protections afforded by the Petition Clause. The issue in *Guarnieri* was, what types of grievances/complaints are protected?

The Court held that the protections afforded by the Petition Clause are the same as those afforded by the Free Speech Clause. Generally, the Free Speech Clause protects public employees who speak as citizens on matters of public concern, unless the speech infringes on the governmental employer's operations. In *Guarnieri*, the Court clarified that, under both the Petition Clause and the Free Speech Clause, complaints about merely personal issues are not shielded from discipline. Essentially, public employees are not protected when they advance merely personal issues, including grievances that related to personal matters.

This decision was good news for employers, because even though it may be difficult to determine whether a particular complaint is protected, the Court declined to adopt a more expansive view of the protections afforded by the Petition Clause. The decision allows public employers to rely on the rules they already know when evaluating the protections afforded to public employees by the First Amendment.

The *Guarnieri* decision is also a good reminder to public employers to review policies that may implicate employees' constitutional rights, such as social media policies, to ensure compliance.

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