

# US Supreme Court rules against government employees who report misconduct

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On May 30, the United States Supreme Court ruled in the case *Garcetti v. Ceballos* that government employees who report misconduct to supervisors as part of their “official duties” are not entitled to protection under the free speech clause of the First Amendment to the US Constitution.

The reactionary ruling reversed a decision by the Ninth Circuit Court of Appeals. It will have a chilling effect on would-be “whistleblowers” who work for public agencies, encouraging government secrecy and lack of accountability.

The five-to-four vote in support of the decision by Justice Anthony Kennedy saw the four-man right-wing bloc, consisting of Antonin Scalia, Clarence Thomas and two recently installed Bush nominees, Chief Justice John Roberts and Associate Justice Samuel Alito, line up against the more moderate wing, composed of Ruth Bader Ginsburg, David Souter, Stephen Breyer and John Paul Stevens.

It was the first significant case to reflect the further rightward shift resulting from the elevation of Roberts and Alito to the high court, particularly Alito’s succession to the post vacated by retired justice Sandra Day O’Connor. The latter was known as a “swing vote” and in a number of important cases lined up with the more liberal minority.

In 2000, Mr. Ceballos, a Los Angeles County prosecutor, wrote a memo to his superiors stating that sheriff’s deputies had made false statements in an affidavit that supported a search warrant and subsequent criminal prosecution. After talking to the police, the prosecutor’s supervisors in the district attorney’s office continued the prosecution. Ceballos subsequently sued his superiors, claiming his constitutional rights were violated when he was transferred and denied a promotion in retaliation for his

report.

For decades, Supreme Court and federal appellate court decisions had recognized that government employees do not surrender the rights of citizens to speak out on matters of public concern. They held that if such speech was reasonable under the circumstances, an employer’s retaliation against such speech would violate the First Amendment’s protection of free speech and the right to petition the government for redress of grievances.

In 1979, for example, then-Chief Justice William Rehnquist wrote for a unanimous Supreme Court in deciding that a teacher who criticized racist hiring practices to a supervisor could not be disciplined.

In his decision in the Ceballos case, Kennedy said that courts and juries should never second-guess employer decisions as to whether an employee’s report was well founded or whether the employee should be disciplined, if the employee was speaking in connection with his job duties, rather than as a private citizen.

Lining up squarely behind the “right” of employers to discipline their underlings, Kennedy argued that the danger of workplace disruption from unfounded accusations could not be countenanced, even at the cost of muzzling accurate reports. He further argued that upholding Ceballos’s suit would constitute an illegitimate intrusion of the courts into relations between employers and employees, producing a huge “displacement of managerial discretion by judicial supervision.”

The far-reaching implications of the ruling are underscored by the underlying civil liberties issues in the case. Ceballos’s complaint to his superiors of false statements by police, leading to an illegal criminal prosecution, came in the midst of the Ramparts Division police scandal in Los Angeles, which exposed

widespread police brutality and frame-ups of mostly poor and immigrant residents.

In opinions joined in by Justices Souter, Stevens, Ginsburg and Breyer, the dissenting justices criticized the majority's novel interpretation for turning logic and public policy favoring reporting misconduct on their head: first, because it implied that employees who spoke out in public were protected, while those who attempted internally to correct misconduct were not; second, because the public interest in exposing wrongdoing required that employees who spoke out about matters of which they knew because of their job should, if anything, receive greater protection.

Commenting on the ruling, Ceballos said its message was: "Keep quiet. Keep your mouth shut."

The case was originally argued after Justice O'Connor had announced her retirement, but before she was replaced by Alito. It was then reargued, a fact that suggests the court had been split 4 to 4 and Alito cast the deciding vote.

Writing in praise of the ruling, George Will, the right-wing columnist for the *Washington Post*, celebrated the further shift to the right on the court in a June 4 op-ed piece. "What were the Roberts and Alito confirmation battles about? That," he concluded.



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