



CLIENT NEWS BRIEF

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REMOVAL OF GOVERNING BOARD MEMBER'S VICE PRESIDENCY TITLE DID NOT VIOLATE FREE SPEECH RIGHTS

The United States Ninth Circuit Court of Appeals has ruled that a school district's governing board did not violate a governing board member's free speech rights when it voted to remove his title of Board Vice President. In Blair v. Bethel School District (9th Cir. 2010) ___ F.3d ___ (WL 2351928), the appellate court found that a public official may not use the First Amendment to shield the official from political fallout caused by his or her actions.

Ken Blair had served on the Bethel School District ("District") Board since 1999. The District is located near Tacoma, Washington. The Board elects its own president, vice president, and legislative representative and Mr. Blair had served in each of these positions over the years, but most recently as Board Vice President.

Mr. Blair had been a vocal and persistent critic of the District's superintendent since the superintendent was hired in 2000, and had voted consistently against renewing the superintendent's contract. The other Board members did not share Mr. Blair's dissatisfaction with the superintendent. In September 2007, Mr. Blair was the lone dissenter when the Board voted 4-1 to renew the superintendent's contract and raise his pay. The next day, Mr. Blair complained to a newspaper reporter about the renewal of the superintendent's contract, and on October 9, 2007, the Board voted to remove Mr. Blair as Vice President, though he remained on the Board. Mr. Blair sued the District, the superintendent and the other Board members under 42 U.S.C. § 1983, alleging that he was retaliated against for exercising his free speech rights. 42 U.S.C. § 1983 allows individuals to sue and recover when their constitutional rights are violated by public officials.

The court found that the Board's actions did not prevent Mr. Blair from continuing to speak out, vote his conscience and serve his constituents as a Board member. While Mr. Blair had a right to criticize the superintendent and vote against retaining him, Mr. Blair's fellow board members had the corresponding right to replace him as Vice President with someone who represented the majority view of the Board. Mr. Blair's

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authority as a Board member was unaffected by the loss of the title; even though he was no longer Board Vice President, he retained the “full range of rights and prerogatives that came with having been publicly elected.”

The court found the Board’s removal of Mr. Blair’s title analogous with unhappy constituents refusing to support an incumbent board member’s re-election. Further, while the First Amendment protects free speech, it does not immunize a person from the political fallout that can result from the exercise of free speech rights.

The court’s decision illustrates that there are means for the elected body of a public agency to censure one of its members, so long as it does so within the bounds of applicable law and does not deprive the censured member of his or her free speech rights.

If you have any additional questions about this case, governing board members’ free speech rights or free speech rights in general, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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