



# **Understanding The Free Speech Rights Of Public Safety Personnel**

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**February 26, 2025**

Presented by  
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# Understanding the Free Speech Rights of Public Safety Personnel: What Agencies and Unions Need to Know

February 26, 2025

10:00 AM PT / 1:00 PM ET

60 minutes

Presented By Richard Poulson

This 1-hour webinar is designed specifically for labor and management representatives working in the public safety sector – police, fire, and corrections – who seek a deeper understanding of the complex legal landscape surrounding the free speech rights of public safety personnel. With an increasing number of legal challenges, including disciplinary actions and union disputes, it is essential for labor relations professionals to stay informed about the latest legal precedents and best practices.

**Understanding First Amendment Protections:** What speech is protected for public safety employees?

**Disciplinary Risks & Social Media:** When can an employer take action against speech on social media?

***Garcetti & Pickering* Balancing Tests:** How courts determine when speech is protected.

**Union & Political Speech:** Rights to engage in advocacy, protests, and political action.

**Recent Legal Trends & Case Law:** Key rulings affecting public safety employees.

**Best Practices For Unions & Members:** Navigating speech-related investigations and discipline.

Richard Poulson has been representing labor unions for his entire career, representing union clients in collective bargaining, interest and grievance arbitration and employment-related litigation. He is a partner with the Philadelphia, Pennsylvania firm of Willig, Williams & Davidson, where he focuses on advising and representing police, fire, paramedic and other uniformed employees regarding municipal affairs and public employment. He earned his B.A. from La Salle University (1992) and his J.D. from the Catholic University of America, Columbus School of Law (1997). Rick is the Executive Director of LRIS. Since its inception in 1981, LRIS has been a valuable resource for public safety labor relations. LRIS conducts labor seminars, publishes a monthly newsletter, and currently has five books in print.

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# Understanding the Free Speech Rights of Public Safety Personnel: What Agencies and Unions Need to Know

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**FREE SPEECH RIGHTS, PART ONE:  
U.S. SUPREME COURT – TOP FIVE CASES**

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**#1**

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## The Balancing Test

### **Pickering v. Board of Education (1968)**

- Marvin Pickering, a high school teacher, wrote a letter to a local newspaper criticizing the school board's handling of budget and funding issues. The school board terminated him, claiming his letter was damaging to the district.
- Issue: When is public employee speech protected?
- Ruling: Employees have First Amendment rights when speaking as private citizens on matters of public concern.
- Balancing Test: Established a balancing test between the employee's speech rights and the employer's interest in workplace efficiency.

*Pickering v. Board of Education, 391 U.S. 563 (1968)*

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## Practical Application

### **Pickering v. Board of Education (1968)**

- Speech about public safety policies, staffing, or misconduct may be protected if made as a private citizen.
- Workplace grievances are not protected unless framed as a broader public issue.
- Employers can restrict speech that disrupts department operations.
- Key Consideration: Understand the distinction between public concern and internal disputes.

*Pickering v. Board of Education, 391 U.S. 563 (1968)*

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# #2

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## Speech Must Be Of Public Concern

### **Connick v. Myers (1983)**

- Sheila Myers, an assistant district attorney in New Orleans, was transferred to another division. She objected to the transfer and distributed a questionnaire to coworkers about morale and management practices. Her supervisor, Harry Connick, Sr., fired her, claiming the survey disrupted office operations.
- Issue: Did employee speech need to be on a matter of public concern to be protected?
- Ruling: Yes. If an public employee's speech is about a personal workplace issue (e.g., internal complaints about management), it is not protected under the First Amendment.

*Connick v. Myers*, 461 U.S. 138 (1983)

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## Speech Must Be Of Public Concern

### ***Connick v. Myers (1983)***

- Key Takeaway: Public employee speech must address a public concern, not just internal workplace disputes, to be protected.
- Grievances, complaints about supervisors, or personal disputes do NOT qualify as protected speech.
- Speech must involve a matter of public concern—such as government corruption, safety policies, or funding issues—to be protected.
- Unions should try to frame workplace issues as matters of public interest (e.g., “Staffing shortages affect public safety,” rather than “Our overtime policy is unfair”).

*Connick v. Myers*, 461 U.S. 138 (1983)

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# #3

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## Politically Charged Speech

### ***Rankin v. McPherson (1987)***

- Ardith McPherson, a clerical employee at the Harris County, Texas, Constable's Office, made a private remark to a co-worker after hearing about an assassination attempt on President Ronald Reagan. She said: "If they go for him again, I hope they get him."
- Supervisor overheard McPherson's comment and reported it to Constable Rankin, who fired her.
- McPherson sued for wrongful termination, claiming First Amendment protection.

*Rankin v. McPherson, 483 U.S. 378 (1987)*

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## Practical Application

### ***Rankin v. McPherson (1987)***

- Issue: Could McPherson be fired for making a politically charged statement about a matter of public concern?
- Ruling: Public employee's private remark about an assassination attempt on President Reagan was protected speech because it touched on public policy. Court emphasized that the remark did not disrupt workplace efficiency or interfere with office operations.
- Key Takeaway: If speech relates to public concern and does not disrupt the workplace, it may be protected.

*Rankin v. McPherson, 483 U.S. 378 (1987)*

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# #4

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## The Game-Changer

### ***Garcetti v. Ceballos (2006)***

- Richard Ceballos, a deputy district attorney in Los Angeles, wrote a memo recommending the dismissal of a criminal case due to concerns about police misconduct. He alleged that law enforcement officials had falsified an affidavit. After sharing his concerns, he was reassigned and denied a promotion.
- Issue: Was Ceballos protected under the First Amendment when speaking as part of his job duties?
- Ruling: No. Supreme Court ruled that speech made as part of official job duties is not protected by the First Amendment.

*Garcetti v. Ceballos*, 547 U.S. 410 (2006)

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## Practical Application

### ***Garcetti v. Ceballos (2006)***

- Key Takeaway: Speech made as part of a public employee's official duties is not protected by the First Amendment.
- Officers, firefighters, and corrections employees cannot claim free speech protection for reports, memos, or internal complaints made as part of their job.
- Blows to whistleblower protections—complaints about misconduct made through official channels are not protected speech.
- Whether to voice concerns as private citizens (e.g., speaking at city council meetings instead of through internal reports).

*Garcetti v. Ceballos*, 547 U.S. 410 (2006)

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## But ... Testifying In Court Is Protected

### ***Lane v. Franks (2014)***

- Edward Lane, a program director at Central Alabama Community College, discovered fraud by a state legislator who was on the payroll without performing work. Lane testified in a federal corruption case and was later fired.
- Issue: Was Lane's speech protected when testifying under oath?
- Ruling: Yes. Testifying as a citizen, even about work-related matters, is protected speech.
- First Amendment Application: Differentiated between required job duties and independent legal obligations.

*Lane v. Franks*, 573 U.S. 228 (2014)

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# #5

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## Religious Speech Rights Expanded

### ***Kennedy v. Bremerton School District (2022)***

- Joseph Kennedy, a high school football coach in Bremerton, Washington, regularly prayed on the field after games. The school district ordered him to stop. When Kennedy continued praying, he was placed on administrative leave and later sued for violating his First Amendment rights.
- Issue: Can public employees engage in religious expression at work?
- Ruling: The Supreme Court ruled that personal religious expression is protected if it is voluntary and does not interfere with job duties.

*Kennedy v. Bremerton School District*, 597 U.S. \_\_\_\_ (2022)

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## Religious Speech Rights Expanded

### ***Kennedy v. Bremerton School District (2022)***

- Key Takeaway: Public employees can engage in religious expression at work as long as it is personal and voluntary.
- Public safety employees now have stronger religious expression rights—prayers, religious symbols, and off-duty religious speech are more protected.
- Employers cannot impose broad restrictions on religious speech without a specific disruption.
- Query: How was Kennedy NOT speaking as part of his job duties?

*Kennedy v. Bremerton School District*, 597 U.S. \_\_\_\_ (2022)

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## **FREE SPEECH RIGHTS, PART TWO: LOWER COURTS – TOP FIVE (RECENT) CASES**

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## Speech Rights And Social Media: The First Amendment Balance



The problem in any case is to arrive at a balance between the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees.

***Pickering v. Board of Education*, 391 U.S. 563 (1968)**

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## Speech Rights and Social Media: The First Amendment Balance

### How do Courts “strike the balance”?

1. Did the employee speak as a private citizen or a public employee?
2. If private citizen, is the speech a matter of public concern?
3. If yes, is the employee’s First Amendment right outweighed by injury the speech can cause to the government agency?

*Pickering v. Board of Education*, 391 U.S. 563 (1968)

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# #1

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## Speech Rights And Social Media – Facebook

### ***Noble vs. Cincinnati and Hamilton County Public Library***

- Ohio public library security guard terminated for off-duty posting of “All Lives Splatter” meme during Black Lives Matter protests on May 26, 2020.
- Shared only with Facebook friends and took down w/n 24 hours.
  - After his mother yelled at him about it...

PSLN, Oct 2024, No. 23-3853 (6th Cir. 2024)

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## Speech Rights And Social Media – Facebook

### ***Noble vs. Cincinnati and Hamilton County Public Library***

- BUT many of Noble's Facebook friends were co-workers, who complained to the boss.
- The Library had posted pro-BLM statements on its Facebook page.
- Library terminated Noble, citing a violation of its harassment policy and a "loss of confidence in his ability to perform his duties impartially."

*PSLN, Oct 2024, No. 23-3853 (6th Cir. 2024)*

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## Speech Rights And Social Media – Facebook

### ***Noble vs. Cincinnati and Hamilton County Public Library***

- Noble sued the Library under 1st Amendment, and won before 6th Circuit Court of Appeals.
- Court found that Noble spoke on a matter of public concern and that his interest in expressing his views outweighed the Library's interest in maintaining workplace efficiency.
- Court cited lack of evidence of public backlash or that Noble's post would significantly disrupt Library operations.

*PSLN, Oct 2024, No. 23-3853 (6th Cir. 2024)*

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## Speech Rights And Social Media – Facebook

### ***Noble vs. Cincinnati and Hamilton County Public Library***

- “There is no evidence that Noble took his politics to work or that his views on the BLM protests or any other political matter ever interfered with how he performed his job... The First Amendment does not permit one side of a debate to use the government to cancel the other side. It allows all perspectives, even the very offensive, to be heard.”
- “Here, the only injuries that resulted from the speech were the alleged wounded feelings of certain co-workers who had lost trust in him...”

*PSLN, Oct 2024, No. 23-3853 (6th Cir. 2024)*

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## Speech Rights And Social Media – Facebook

### ***Noble vs. Cincinnati and Hamilton County Public Library***

- “Absent evidence that Noble posed a threat or risk to fellow workers, his hyperbolic speech alone was not enough to fire him. Given the short time Noble kept the meme on his Facebook page, its limited viewership, and the lack of public response, the Library could not have reasonably expected that Noble’s post would incite disruption.”
- “*Pickering* does not give the Library carte blanche to take away Noble’s means of livelihood based on his speech. The balance favors Noble, not the Library.”

*PSLN, Oct 2024, No. 23-3853 (6th Cir. 2024)*

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# #2

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## Speech Rights And Social Media – Facebook, Pt. 2

### ***Fenico v. City of Philadelphia***

- 20 Philadelphia police officers disciplined for offensive Facebook posts uncovered by Plain View Project stated a First Amendment claim sufficient to survive a motion to dismiss.
  - PVP posted online database of 5,000 “offensive” posts by officers.
- District Court dismissed in part based on employer argument that the posts disrupted its public safety operations.
- Third Circuit disagreed and remanded for record development on actual disruption. *Mere speculation not enough.*

(3rd Cir. 2023)

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## Speech Rights And Social Media – Facebook, Pt. 2

### ***Fenico v. City of Philadelphia, The Sequel!***

- On remand, the district court applied the *Pickering* balancing test to weigh the officers' interest in free speech against the City's interest in:
  - Promoting workplace efficiency, avoiding disruption, maintaining public trust.
- BUT... the City need not show that the speech in question caused actual disruption to its operations: “a reasonable likelihood of such disruption will suffice.” (“[W]e do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action.”).

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## Speech Rights And Social Media – Facebook, Pt. 2

### ***Fenico v. City of Philadelphia, The Sequel!***

- Court found that the City had a strong interest in regulating officers' speech that could:
  - Damage the relationship between the police department and the community.
  - Undermine the officers' credibility as witnesses in criminal trials.
  - Create tension and distrust within the police department.
- Court acknowledged the officers' right to free speech but concluded that the City's interest in preventing disruption and maintaining public trust outweighed the officers' interests in expressing themselves on social media:

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## Speech Rights And Social Media – Facebook, Pt. 2



The officer's posts making fun of women and Black Lives Matter protestors are likewise disruptive because they demonstrate bias against those groups, thereby eroding the "relationship of trust" between the police and the public that the PPD relies on. What's more, these posts could jeopardize the officer's credibility in just about any criminal proceeding because they demonstrate, as the District Attorney's Office recognized in the Giglio letter it issued him, a general "disrespect for the law."

***Fenico v. City of Philadelphia*, 2024 U.S. Dist. LEXIS 195138, October 28, 2024**

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# #3

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## Speech Rights And Social Media – Facebook, Pt. 3

### ***Brown v. City of Tulsa (10th Cir. 2025)***

- Tulsa police officer terminated for violating police department's social media policy based on posts he had made before he was employed.
- Posts included a picture of Donald Trump riding a lion, a "Blue Lives Matter" flag, and a photo of the American flag with the words "I will fight to my last breath before I submit to Islam".
- City terminated Brown just one hour and 15 minutes after being notified of posts. City then publicized its decision to media.

*Brown v. City of Tulsa, 2025 WL 38071, January 7, 2025*

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## Speech Rights And Social Media – Facebook, Pt. 3

### ***Brown v. City of Tulsa (10th Cir. 2025)***

- Brown sued and case was dismissed at trial court. Appealed to circuit court... and won.
- Court applied balancing test and found no evidence of disruption to police department's internal operations related to posts before Brown's termination.
- Sent back to trial court for discovery.

*Brown v. City of Tulsa, 2025 WL 38071, January 7, 2025*

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# #4

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## Speech Rights And Thin Blue Line Flag

### ***FOP PA State Lodge v. Springfield Township***

- Springfield Police Association adopts new logo incorporating Thin Blue Line American Flag.
- Township passed resolution prohibiting public display of the Flag by Township employees on duty, on personal items brought into Township buildings, or on Township property.
- Township argued restrictions were necessary to maintain public confidence in police and promote public safety.

*FOP Pa. Lodge v. Twp. of Springfield*, No. 23-3165, 2025 U.S. App. LEXIS 1823 (3d Cir. Jan. 28, 2025)

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## Speech Rights And Thin Blue Line Flag

### ***FOP PA State Lodge v. Springfield Township***

- FOP sued the Township in federal court... and won. Policy prohibiting the display of the Flag by Township employees violated the First Amendment.
- The Flag represents speech by the employees on a matter of public concern relating to police and community relations.
- The Township failed to show that the restricted expression's "necessary impact on the actual operation of the Government" outweighed the employees' interests.

*FOP Pa. Lodge v. Twp. of Springfield*, No. 23-3165, 2025 U.S. App. LEXIS 1823 (3d Cir. Jan. 28, 2025)

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## Speech Rights And Thin Blue Line Flag

### ***FOP PA State Lodge v. Springfield Township***

- Court used stricter test because prior restraint on speech.
- When employer imposes a prior restraint, the burden is greater than with respect to an isolated disciplinary action.
- Courts must consider not just the specific speech that concerned the government, but also the broad range of present and future expression that the rule chills and the interests of present and future speakers and audiences.

*FOP Pa. Lodge v. Twp. of Springfield*, No. 23-3165, 2025 U.S. App. LEXIS 1823 (3d Cir. Jan. 28, 2025)

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# #5

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## **Developments From Around The Country Privacy Issues – Speech And Political Beliefs**

What do THESE GUYS have  
to do with Seattle PD?



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## Speech Rights And Anonymity – January 6th

### ***Jane Doe 1 v. Seattle Police Department***

- Six Seattle police officers (“the Does”) attend former President Trump’s “Stop the Steal” political rally on January 6, 2021 in Washington, D.C.
- Note: Only 0.06% of attendees were current/former police (29 of 45,000).
- Upon returning to Seattle, the Does received complaints from the SPD’s Office of Police Accountability alleging that they might have violated the law or SPD policies during their attendance at the rally.

*PSLN, Dec 2023, 2023 WL 4182193 (Wash. App. 2023)*

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## Speech Rights And Anonymity – January 6th

### ***Jane Doe 1 v. Seattle Police Department***

- The Does are required to submit to OPA interviews during which they were asked about their whereabouts and activities on January 6.
- Does are also asked about their political beliefs and associations, including whether they attended the rally “to articulate their political views,” whether they were “affiliated with any political groups,” and “their impressions of, and reactions to, the content of the Rally.”
- Does answered all of the OPA questions.

*PSLN, Dec 2023, 2023 WL 4182193 (Wash. App. 2023)*

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## Speech Rights And Anonymity – January 6th

### ***Jane Doe 1 v. Seattle Police Department***

- June 2021. OPA clears four of the six officers.
  - Charges against two officers are sustained and those officers are terminated.
- Members of the public filed public records requests seeking disclosure of the Does' investigatory records.
- City informed the Does that it intended to disclose the investigation records as well as the Does' personnel files.
- The Does sought an injunction prohibiting the proposed release.

*PSLN, Dec 2023, 2023 WL 4182193 (Wash. App. 2023)*

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## Speech Rights And Anonymity – January 6th

### ***Jane Doe 1 v. Seattle Police Department***

The Washington Court of Appeals agreed with the Does...

*PSLN, Dec 2023, 2023 WL 4182193 (Wash. App. 2023)*

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## Speech Rights And Anonymity – January 6th



The Does assert that the disclosure of their identities in the requested records will violate their First Amendment right to political anonymity... We agree. Both the Does' attendance at the January 6 rally and their compelled statements to investigators implicate the First Amendment. Exposure by the government of this information ... would impinge the Does' constitutional right to anonymity in their political beliefs and associations

***Jane Doe 1 v. Seattle Police Department***

PSLN, Dec 2023, 2023 WL 4182193 (Wash. App. 2023)

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## Speech Rights And Anonymity – January 6th

### ***John Does v. Seattle Police Department (Feb 13, 2025)***

- **But not so fast...** In November 2023, the Washington Supreme Court accepted an appeal of the decision.
- February 13, 2025. The Washington Supreme Court overruled the Court of Appeals.
  - *Officers did not establish constitutional privacy interest in their identities related to their attendance at a very public rally.*
  - *City not required to oppose disclosure that might implicate employees' constitutional rights.*

John Does v. Seattle Police Department, 2025 Wash LEXIS 86 (Wash. Supreme Court, Feb 13, 2025)

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## Speech Rights And Anonymity – January 6th

### ***John Does v. Seattle Police Department (Feb 13, 2025)***

“This is not a case about whether public employees had a right to attend a rally in Washington, DC. This is not a case involving government action conditioning or prohibiting exercise of such a right: **the officers were not prohibited from attending a political rally.** Indeed, their public employer concluded that absent any illegal conduct, the officers had a right to attend the rally and doing so would not be grounds for adverse employment action. Though no one disputes the officers could engage in political expression and attend the rally, it does not necessarily follow that the fact of their attendance at such an event is private under the First Amendment.”

*John Does v. Seattle Police Department*, 2025 Wash LEXIS 86 (Wash. Supreme Court, Feb 13, 2025)

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## Speech Rights And Anonymity – January 6th

### ***John Does v. Seattle Police Department (Feb 13, 2025)***

“Both the rally and its purpose were widely publicized, the officers did nothing to hide their identities while attending the rally, and they were there among thousands of other people and members of the news media documenting it. **And while political beliefs may be closely and personally held in general, these public employees made the choice to attend a highly publicized political event in public.** The officers’ political beliefs are not in this record and we draw no conclusions about them. Rather, our analysis turns on the public nature of the event, not its political meaning or the officers’ beliefs.”

*Id.* at 37-38.

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## Speech Rights And Anonymity – January 6th, Pt 2

### ***John and Jane Does 1-9 v. Dept. of Justice***

- Acting Deputy Attorney General ordered FBI to compile and turn over a list of all agents who worked on the criminal investigations against Donald Trump and cases against January 6 US Capitol riot defendants.
- 5,000 employees – 13% of FBI workforce.
- Agents seek to block DOJ from collecting or disseminating the lists.
- Raise safety concerns about retribution by pardoned J6 defendants.
- Agents argue that using the information to fire FBI employees would be retaliatory and unlawful and would violate civil service protections.

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## Speech Rights And Anonymity – January 6th, Pt 2

### ***John and Jane Does 1-9 v. Dept. of Justice***

- Matter listed for hearing on preliminary injunction for March 27, 2025.
- Feb 7, 2025. Parties reach interim settlement:
  - Administration cannot release information about the FBI agents who investigated the J6 riot without giving plaintiffs at least two days' notice so that the matter can be considered again in federal court.
  - But no limit on dissemination of agents' identities to other government agencies or the White House.

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### Collective Bargaining For Public Safety Employees



**March 26-28**  
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### The Rights Of Police Officers



**June 18-20**  
**The Horseshoe Hotel**  
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