



June 30, 2020

Lorraine LeGates



RE: *"We Vote Pro-Life" Bumper Sticker*

Dear Ms. LeGates,

You have requested our opinion regarding your right to continue to display on your private vehicle a bumper sticker bearing the words "We Vote Pro-Life." We understand that you are currently employed as the Deputy Director of [REDACTED], North Carolina Board of Elections. You usually park your vehicle in one of the public parking spaces on the street in front of [REDACTED], a two-story building housing the Board of Elections as well as the Adult Probation-Parole Office. You have been displaying the sticker for almost two years. The sticker contains nothing other than the words "We Vote Pro-Life," that is, there are no graphics and no additional words.

Recently, your supervisor directed you to remove the bumper sticker. You have requested our opinion of the legality of this directive.

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. The ACLJ often appears before the U.S. Supreme Court and lower federal and state courts on the side of First Amendment free speech claims. *E.g. Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1999); *Hill v. Colorado*, 530 U.S. 703 (2000); *McConnell v. FEC*, 540 U.S. 93 (2003); also, *Brooks v. North Carolina State Bar*, 1996 U.S. Dist. LEXIS 16099, Civ. Action No. 2:96-cv-00857.

In our opinion, the directive you were given is *not* supported by a reasonable application of controlling First Amendment jurisprudence or North Carolina statutes. In fact, such a directive appears to be a clear violation of your rights.

To begin with, the right of public employees to speak on issues of public concern is clearly established. As the Supreme Court held in *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006), "[S]o long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively." The *Garcetti* Court quoted *Connick v. Myers*, 461 U.S. 138, 154 (1983): "Our responsibility is to ensure that citizens are not deprived of fundamental rights by virtue of working for the government." *



We are satisfied that, under the Supreme Court's long established public employee speech jurisprudence, your display of the "We Vote Pro-Life" message is constitutionally protected. The bumper sticker is clearly an expression of your viewpoint as a private citizen on an issue of public — not private, nor job-related — concern. Your display of it on a private vehicle which is not in any way identified with the Board of Elections, on a public street on which any citizen is free to park, cannot even remotely be viewed as interfering with the efficient and effective operation of the [REDACTED] Board of Elections.

In addition, as you know, North Carolina has a statute that specifically addresses speech by Board of Election members and employees. Without addressing the question whether that statute is sound from a First Amendment standpoint, it is clear that it does *not* prohibit you from displaying the bumper sticker in question.

The statute (see attached) only prohibits employees from making or disseminating public statements "supporting or opposing the nomination or election of one or more clearly identified candidates for public office," § 163-39(1), or "supporting or opposing the passage of one or more clearly identified referendum proposals." § 163-39(2). The statute also prohibits soliciting contributions for candidates and political or referendum committees. § 163-39(c).¹

Your bumper sticker does *not* fall within the prohibition of statements about "clearly identified" candidates or referendum proposals. No reasonable interpretation of "We Vote Pro-Life" would lead an observer to conclude that it supports or opposes any "clearly identified" person or proposal. On the contrary, given the Legislature's undoubted awareness of the need to tread carefully in the realm of precious First Amendment freedoms, it is likely that this section was drafted the way it was — i.e. limited to "clearly identified" individuals or proposals — precisely to avoid anyone misconstruing it as applying to general statements of broad viewpoints such as those expressed by your bumper sticker.

In summary, your display of the "We Vote Pro-Life" bumper sticker enjoys the protection of the First Amendment and North Carolina statute § 163-39. Any directive requiring that you remove it would be a violation of your rights.

If we can be of any further assistance, please feel free to contact us.

Very truly yours,



Francis J. Manion
Senior Counsel
Admitted in NJ, KY, PA

¹ The statute also expressly allows Board of Election employees to participate in party conventions as delegates, and to make contributions to candidates and political committees.

Document: N.C. Gen. Stat. § 163-39

N.C. Gen. Stat. § 163-39**Copy Citation**

Current through Session Laws 2020-1 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to Session Laws 2019-228 through 2019-251 and 2020-1 by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated CHAPTER 163. ELECTIONS AND ELECTION LAWS DIVISION 02 . ELECTION OFFICERS ARTICLE 4A. POLITICAL ACTIVITIES BY STATE BOARD AND COUNTY BOARD OF ELECTIONS MEMBERS AND EMPLOYEES

§ 163-39. Limitation on political activities

No individual subject to this Article shall:

- (1) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (2) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.
- (3) Solicit contributions for a candidate, political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member or board employee from making a contribution to a candidate, political committee, or referendum committee. Nothing in this Article shall be deemed to prohibit a board member or board employee from advising other government entities as to technical matters related to election administration or revision of electoral district boundaries.

History

2000-114, s. 1; 2007-391, s. 14(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).

▼ Annotations