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## Being Unbiased is Everyone's Job: Sixth Circuit Upholds Termination of Public Employee for Her Out-of- Work, Public Social Media Post

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When and how public employers should respond to the out-of-work speech of public employees is a complicated but increasingly important topic for public employers. In *Bennett v. Metropolitan Government of Nashville & Davidson County*, the Sixth Circuit Court of Appeals recently gave employers some much needed guardrails when it upheld the termination of an employee who used racial epithets on her Facebook page.

In *Bennett*, the city of Nashville discharged one of their emergency call center employees, a white woman, for using the “n-word” on her personal Facebook page when discussing the 2016 election. Bennett’s Facebook page identified her as an employee of the city within the emergency call center. The post led to several Bennett’s coworkers raising concerns with their supervisors as well as numerous complaints to human resources. The mayor’s office also received a public complaint regarding the post. After placing Bennett on leave and holding an administrative hearing, the city ultimately discharged Bennett because of the post, reasoning that her actions—and her lack of remorse—disrupted her ability to work with her colleagues, disrupted the work of the call center, and jeopardized the reputation of the call center with the community. Bennett contested her dismissal and brought a lawsuit against the city that argued she had been fired in violation of her First Amendment free speech rights.

Reversing a lower court’s decision that sided with Bennett, the Sixth Circuit held that the city did not violate Bennett’s First Amendment rights. The Court reasoned that, although Bennett was speaking as a private citizen on a matter of public concern, the city’s interests in its efficient operations outweighed her speech interests. In determining the weight of Bennett’s speech interests, the Court concluded *that it was the use of the n-word and not the political*

*message that led to her termination.* This justified a lower level of protection for her speech as she was not disciplined for purely political speech or for exposing the inner workings of government. Next, the Court looked to several factors to weigh the city's interests in its efficient operation. The Court held that Bennett's speech impaired the harmony among Bennett and her coworkers, was detrimental to the office's working relationships, and ultimately detracted from the call center's mission of providing efficient, reliable, and unbiased assistance to the community. Of particular importance to the Court was the number of complaints received about the post, the ways in which it hindered the morale and ability of the call center employees to work together, and the threat of the public perceiving the call center as being biased against certain groups of people. With these factors in mind, the Court held that Bennett's speech sufficiently threatened the efficient operation of the call center to overcome her First Amendment rights and justified her termination.

Based on the Court's decision, when employers are evaluating whether an employee's out of work speech may be protected, they should consider the public nature of the speech, the public connection between the employee and the public employer, and any impact on office morale, cohesion, and the employer's stated mission.

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