

Cancel Culture, OnlyFans and the First Amendment

presented by
Robert D. Zaruta, Esq.
Municipal Law Symposium
March 29, 2023

Objectives

- Understand the impact of Cancel Culture on Public Employers
- Understand First Amendment protections for public employees as well as the limitations on those protections
- Debunking misconceptions about First Amendment Protections
- Understand the interplay between Social Media and First Amendment Protections
- Strategies for Dealing with off-duty employee conduct, such as use of OnlyFans.

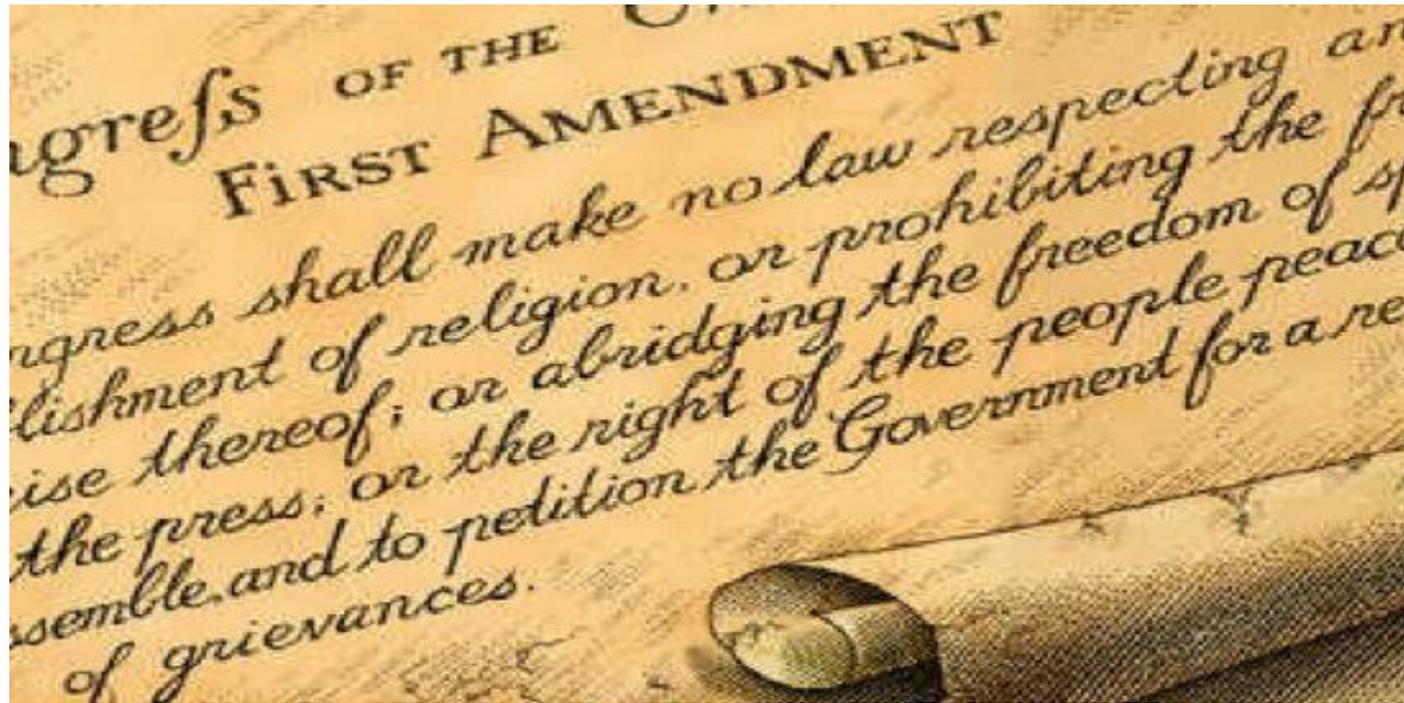
Cancel Culture



Cancel Culture (cont.)



First Amendment Protections



First Amendment (cont.)

First Amendment Protections for Public Employees

- Public speech
- Made as a private citizen
- On a matter of public concern

Limitations on First Amendment

- Harassment
- Physical threats
- Impacts your ability to perform the duties of your job

Balancing Test

Pickering Balancing Test

- Balance the interests of the public employee to engage in the speech vs. the interest of the public employer in promoting the efficiency of the public service it provides.
- Public employers have “heightened” interest in controlling speech made by employee in their public capacity.

Balancing Test

- A public employee's speech is protected by the First Amendment when:
 1. When making the speech, the employee speaks as a private citizen and not as an employee.
 2. The statement involves a matter of public concern, AND
 3. The government employer did not have "adequate justification" for treating the employee differently from any other member of the general public as a result of the statement made by the employee.

Tips for Public Employers

How should Public Employers deal with off-duty comments made by employees on social media or elsewhere?

- Review the speech in question
- Determine if the speech is generally protected
- If generally protected, determine if the employee has lost his/her protection
- If speech is protected, decided what, if anything the Employer can do to prevent a distraction or workplace issue.

OnlyFans, Tiktok, Twitter, Facebook, etc.

- Can a public employer discipline or terminate an employee for having an OnlyFans account?
- What can an employer do if an employee's social media presence is impacting the workplace?

Thank You!

Knox McLaughlin Gornall & Sennett, P.C.

Robert D. Zaruta, Esq.

rzaruta@kmgslaw.com

(814) 923-4911

Disclaimer

These materials should not be considered as, or as a substitute for, legal advice and they are not intended nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. You should not take (or refrain from taking) any action based on the information you obtain from these materials without first obtaining professional counsel. The views expressed do not necessarily reflect those of the firm, its lawyers, or clients.

Copyright Notice

Copyright © 2023

Knox McLaughlin Gornall & Sennett, P.C.

All materials contained here are protected by United States copyright law and may not be reproduced, distributed, transmitted, displayed, published or broadcast without the prior written permission of Knox McLaughlin Gornall & Sennett, P.C.