



A Deputy Sheriff Can Lose His Job for Campaigning Against His Boss



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The case of McCaffrey v. Chapman, ___ F.3d ___, 2019 WL 1523044 (4th Cir. 2019), arose from Sheriff Michael L. Chapman's decision not to re-appoint Mark F. McCaffrey as a deputy sheriff in Loudoun County, Virginia. In response, McCaffrey sued Sheriff Chapman, the Board of Supervisors of Loudoun County, and Loudoun County (collectively "Appellees"). McCaffrey alleged that Sheriff Chapman did not re-appoint him because he supported Sheriff Chapman's political opponent during the re-election campaign. McCaffrey also claimed that Sheriff Chapman's failure to re-appoint him for his political disloyalty violated his First Amendment rights to freedom of political association and speech. The United States District Court for the Eastern District of Virginia found that the Elrod-Branti doctrine, which permits public officials to fire certain employees for their support of a political opponent, precluded McCaffrey's First Amendment claims. Therefore, the District Court dismissed McCaffrey's complaint. This appeal followed.

Under Virginia law, a sheriff has the power to appoint deputy sheriffs. Appointments of deputy sheriffs technically expire at the end of a sheriff's four-year term, even if the sheriff is re-elected. In practice, deputy sheriffs are routinely re-appointed after each election.

McCaffrey started working in the Loudoun County Sheriff's Office ("LCSO") in 2005. In 2008, he began working as a major crimes detective serving as a lead detective in complex, high-profile cases. McCaffrey supported Sheriff Chapman when he first ran for sheriff in 2011.

However, when Sheriff Chapman ran for re-election in 2015, McCaffrey supported his opponent. McCaffrey placed a sign in his yard in support of Sheriff Chapman's opponent and served as a delegate to the Republican convention in which the Republican candidate for sheriff was chosen. McCaffrey also participated as an outside advisor in the screening of local candidates for potential endorsement by the Board of Directors of the local chapter of the Virginia Police Benevolent Association.

On the other hand, McCaffrey did not speak publicly about the election. He did not wear campaign apparel or accessories. And, he did not use his LCSO position in support of Sheriff Chapman's opponent. Nevertheless, Sheriff Chapman viewed McCaffrey's support of his opponent as disloyal, and McCaffrey's colleagues warned McCaffrey that there would be consequences for his disloyalty.

After Sheriff Chapman won re-election, McCaffrey received a letter informing him that his appointment as a deputy sheriff would not be renewed. In addition to not reappointing McCaffrey, Sheriff Chapman lowered McCaffrey's score on his final performance evaluation to prevent McCaffrey from receiving a bonus. Sheriff

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Chapman also interfered with McCaffrey's opportunity to be considered for a law enforcement position sponsored by the LCSO and a nearby municipal police department.

In response to Sheriff Chapman's actions, McCaffrey filed a complaint against Appellees in Virginia state court. McCaffrey alleged that Sheriff Chapman's decision not to re-appoint him violated his First Amendment rights to freedom of political association and speech under both the United States and the Virginia Constitution.

Appellees removed the case to federal court based on federal question jurisdiction. Appellees then moved to dismiss McCaffrey's complaint. Appellees asserted that Sheriff Chapman's decision not to re-appoint McCaffrey fell squarely within an exception to the First Amendment known as the Elrod-Branti exception. The Elrod-Branti exception, when applicable, allows public officials to terminate public employees for supporting a political opponent. The District Court agreed with Appellees and found that the Elrod-Branti exception applied and, thus, dismissed McCaffrey's complaint. This appeal followed.

In its opinion affirming the District Court's dismissal of McCaffrey's Complaint, the United States Court of Appeals for the Fourth Circuit explained that, generally, the First Amendment's right to freedom of political association prohibits government officials from terminating public employees solely for supporting political opponents. However, under the Elrod-Branti exception, certain public employees can be terminated for political association in order to give effect to the democratic process. *Branti v. Finkel*, 445 U.S. 507 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976).

The Elrod-Branti exception to the First Amendment's protection against political affiliation dismissals was created from two Supreme Court cases. In *Elrod*, a plurality of the Supreme Court established the general rule that dismissing public employees for political affiliation violates their First and Fourteenth Amendment rights by limiting their political belief and association. However, the Supreme Court simultaneously carved out a narrow exception to this general rule prohibiting patronage dismissals: a government official does not violate a public employee's First Amendment rights when the employee is dismissed for political association if the employee holds a policymaking position. In creating this exception, the Supreme Court recognized the dangers of the government's interests being undercut by tactics obstructing the implementation of policies of the new administration, i.e., policies presumably sanctioned by the electorate.

In *Branti*, the Supreme Court clarified the exception announced in *Elrod*. The Supreme Court explained that the ultimate inquiry is not whether the label "policymaker" or "confidential" fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved. The Supreme Court reasoned that, if an employee's private political beliefs would interfere with the discharge of his public duties, his First Amendment rights may be required to yield to the State's vital interest in maintaining governmental effectiveness and efficiency.

Accordingly, lower courts have established a two-step inquiry for determining when party affiliation is an appropriate job requirement. First, a court must examine whether the position at issue relates to partisan political interests. If the first inquiry is satisfied, the second step is to examine the particular responsibilities of the position to determine whether it resembles an office holder whose function is such that party affiliation is an equally appropriate requirement.

The Fourth Circuit noted that, on several occasions, it had applied the Elrod-Branti exception in the context of a sheriff dismissing a deputy for supporting the sheriff's opponent. Most notably, in *Jenkins v. Medford*, 119 F.3d 1156 (4th Cir. 1997), the Fourth Circuit held that, under the Elrod-Branti, exception a North Carolina sheriff could terminate his deputy sheriffs for political affiliation. In determining that political affiliation was an appropriate job requirement, the Fourth Circuit recognized that the electorate generally chooses a candidate

based on policies and goals espoused by that candidate. Thus, a sheriff owes a duty to the electorate to ensure that those policies are implemented.

The Fourth Circuit also found that deputy sheriffs play a special role in implementing the sheriff's policies and goals. Deputy sheriffs on patrol exercise significant discretion and make decisions that create policy. The sheriff relies on his deputies to foster public confidence in law enforcement and to provide the sheriff with the truthful and accurate information he needs to do his job. Because, under North Carolina law, a sheriff is liable for his deputies' actions, the legislature created deputies as at-will employees who shall serve at the pleasure of the appointing officer. After examining the role of deputy sheriffs, the Fourth Circuit determined in Jenkins that a deputy sheriff could appropriately be terminated for political affiliation under the Elrod Branti exception. Accordingly, the Fourth Circuit has held that whether the Elrod-Branti exception applies to a deputy sheriff depends on an examination of the electorate's approval of the policies on which the sheriff ran and the duties and responsibilities of the deputy sheriff in implementing those policies and priorities and an examination of the State's law concerning the relationship between sheriffs and their deputies.

In McCaffrey's case, Sheriff Chapman won an election for sheriff after espousing positions on how the LCSO should be run. Therefore, the Fourth Circuit agreed with the District Court that Sheriff Chapman should be entitled to carry out the policies the voters approved in the election.

In addition, the Fourth Circuit noted that the allegations in McCaffrey's complaint indicated that his duties and responsibilities involved carrying out Sheriff's Chapman's policies and priorities. McCaffrey was a sworn deputy sheriff. He was a lead investigator of high-profile crimes including rape, robbery, and homicide investigations. McCaffrey received the Loudoun County Investigator of the Month Award three times and was part of the "Team of the Month" three times. In 2015, McCaffrey was recognized for closing violent crime cases at a rate that significantly exceeded the national average. McCaffrey also received the Victim Services award from the Loudoun County Commonwealth Attorney's office. As such, the Fourth Circuit agreed with the District Court that McCaffrey engaged in law enforcement functions on behalf of the sheriff and that a deputy sheriff with these duties and responsibilities fell within the Elrod-Branti exception.

In short, a sworn deputy sheriff, like McCaffrey, has a special role in carrying out the law enforcement policies, goals, and priorities on which Sheriff Chapman campaigned and prevailed. Sheriff Chapman was entitled to carry out the policies on which he ran and won with deputy sheriffs who did not oppose his re-election. The Fourth Circuit stated that it did not believe that it was ever contemplated that a sheriff must attempt to implement his policies and perform his duties through deputies who have expressed clear opposition to him. Requiring a sheriff to employ deputies who have displayed the level of hostility portrayed in this complaint could reasonably impede a sheriff's obligation to his electorate to implement the platform on which he campaigned.

That being said, the Fourth Circuit noted that its holding in this case did not mean that law enforcement responsibilities are or should be handled in a political manner. Instead, the Fourth Circuit limited its holding in this case based on the reality that sheriffs do and should carry out the policies, goals, and priorities on which they ran. Sheriffs, by virtue of their executive roles, do not set policy in the same way as those performing legislative roles. But, in attempting to faithfully enforce the law, they must make policy-oriented decisions about the allocation of manpower and financial resources. A deputy sheriff necessarily carries out the sheriff's policies, goals and priorities which were approved by the electorate in a political election.

As for his other claim regarding Sheriff Chapman's post-termination downward adjustment of McCaffrey's evaluation scores and interference with McCaffrey's efforts to obtain other employment, the Fourth Circuit held that McCaffrey's allegations were not material to the Elrod-Branti analysis. Such conduct might support a state law claim such as interference with prospective contractual relationship or other similar theories. But, the

Fourth Circuit stated that it must look to the nature of the deputy sheriff's duties, not the way in which he was terminated. Therefore, the Fourth Circuit concluded that McCaffrey's post-termination allegations were of no import here.

Accordingly, the Fourth Circuit held that, under the Elrod-Branti exception, Sheriff Chapman's decision not to re-appoint McCaffrey did not violate his First Amendment right to freedom of political association. The Fourth Circuit also held that Sheriff Chapman's decision not to reappoint McCaffrey did not violate his First Amendment right to freedom of speech because the applicable balancing test weighed in favor of Sheriff Chapman. Therefore, the Fourth Circuit affirmed the District Court's ruling dismissing McCaffrey's case.