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 [High court considers whistleblower lawsuits](#)

By Toni Locy
ASSOCIATED PRESS

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WASHINGTON – The Supreme Court on Tuesday debated whether government employees have free-speech rights that protect them while they are carrying out their duties.

The case involves Richard Ceballos, a Los Angeles prosecutor who was demoted after he urged his supervisors to drop a criminal case because he believed a sheriff's deputy had lied in a search warrant affidavit.

A ruling against Ceballos could affect the nation's 20 million public employees by removing their ability to use the First Amendment as protection against supervisors' retaliation for bringing government misconduct or other issues to light.

At issue is whether employers' desires to operate efficient workplaces outweigh whistleblowers' rights as citizens to speak out on matters of public interest.

The argument Tuesday was the second time the court dealt with the case this term, apparently because of a tie vote during the justices' internal discussions, or conferences. The appeal was not resolved before Justice Sandra Day O'Connor retired and was replaced by Justice Samuel Alito in late January.


Alito actively questioned all lawyers in the case, wondering whether employers would have to specify every job duty an employee has to avoid lawsuits like the one Ceballos filed.

Four other justices – including Chief Justice John Roberts – were skeptical of arguments by Bonnie Robin-Vergeer, Ceballos' attorney, that public employees have free-speech rights when they speak out in an office or write memoranda.

Employees, she said, “should not be required to tell supervisors only what they want to hear.”

“Neither should a supervisor be required to get a report from an employee that's way off,” Justice Antonin Scalia said, referring to employees who persist in making unsubstantiated charges of misconduct.

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Scalia and Roberts questioned whether Ceballos' allegations of police misconduct were correct and suggested that the Los Angeles District Attorney's office had a right to try to control "a loose cannon," as Scalia put it.

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The Bush administration sided with the DA's office, saying the government's desire to maintain an efficient workplace outweighs an employee's right to voice opinions about internal decision-making.

"When the government pays for somebody to do its work it has the absolute right to determine how that work will be performed," said Edwin S. Kneedler, deputy solicitor general.

Ceballos wrote a highly critical memorandum to his supervisors after he determined the sheriff's deputy had lied in the affidavit.

When his supervisors rejected his recommendation to drop the case, Ceballos told the defense attorney about what he thought were the deputy's lies and testified for the defendant at trial.

Ceballos sued the DA's office, alleging his free-speech rights were violated when he was demoted and denied a promotion in retaliation for exposing the lies by the sheriff's deputy.

The San Francisco-based 9th Circuit U.S. Court of Appeals reversed a trial court judge's dismissal of Ceballos' lawsuit.

If the justices side with the DA's office, Robin-Vergeer said, employees would face a "perverse" result by being forced to go public – and not keep their concerns in-house– to ensure free-speech protection. Such an outcome would be more disruptive for government agencies, she said.

When Alito suggested employers want to know about problems, Robin-Vergeer said there is "much evidence" that supervisors don't always like receiving "bad news."

The case is *Garcetti v. Ceballos*, 04-473.

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