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NAPO VICTORY IN UNITED STATES COURT OF APPEALS DECISION: DEPUTIES' FREE SPEECH RIGHTS PROTECTED IN "FACEBOOK CASE"

Yesterday, September 18, The United States Court of Appeals for the Fourth Circuit issued its opinion in Bland vs. Roberts. This is the "Facebook Case" in which NAPO was allowed to participate as amicus curiae. In this case, Sheriff B.J. Roberts of Hampton, Virginia, terminated the employment of several deputies for political reasons. A key portion of the evidence in the case revolved around one or more of the deputies "liking" Sheriff Roberts's political opponent on Facebook. The issue was whether "liking" someone (in this case a political candidate's Facebook page) constituted "speech" within the meaning of the First Amendment, and if so, whether it is protected speech such that the deputy could not be terminated if a substantial motivation for the termination was the fact that he had engaged in such speech. The trial court had decided that clicking the "like" button on a Facebook page was not speech at all, and upheld the termination of the deputies. This appeal followed.

In the Court of Appeals decision, the majority overturned this part of the trial court's decision, holding that:

"Once one understands the nature of what Carter did by liking the Campaign Page, it becomes apparent that his conduct qualifies as speech. On the most basic level, clicking on the "like" button literally causes to be published the statement that the User "likes" something, which is itself a substantive statement. In the context of a political campaign's Facebook page, the meaning that the user approves of the candidacy whose page is being liked is unmistakable. That a user may use a single mouse click to produce that message that he likes the page instead of typing the same message with several individual key strokes is of no constitutional significance. In sum, liking a political candidate's campaign page communicates the user's approval of the candidate and supports the campaign by associating the user with it. In this way, it is the Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech. Certainly a posting on a campaign's Facebook Page indicating support for the candidate constitutes speech within the meaning of the First Amendment. As to the claims of Carter, McCoy, and Dixon, the district court erred by concluding that the Plaintiffs failed to create a genuine dispute of material fact regarding

whether the Sheriff violated their First Amendment rights. . . . Accordingly, for the foregoing reasons, we reverse the grant of summary judgment to the Sheriff regarding Carter's, McCoy's, and Dixon's reinstatement claims, and we remand these claims to the district court for further proceedings."

The case is
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 12-1671
BOBBY BLAND; DANIEL RAY CARTER, JR.; DAVID W. DIXON; ROBERT W. MCCOY; JOHN C. SANDHOFER; DEBRA H. WOODWARD,
Plaintiffs - Appellants,
v.
B. J. ROBERTS, individually and in his official capacity as Sheriff of the City of Hampton, Virginia,
Defendant - Appellee.
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AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA FOUNDATION; FACEBOOK, INC.; NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS,
Amici Supporting Appellants.

As you can see, NAPO is once again the only national police group to step up to the plate and advocate for the free speech rights of law enforcement officers in this important national case. Mike McGuinness of North Carolina and I were the lawyers of record on the briefs for NAPO.

Please feel free to contact me directly if you should have any questions about yesterday's Court decision.

Bill Johnson
Executive Director and General Counsel

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