

**POSITION STATEMENT OF THE CONNECTICUT TRIAL  
LAWYERS IN SUPPORT OF Raised Bill 6667**

**AN ACT CONCERNING THE ESTABLISHMENT OF BENEFIT CORPORATIONS AND THE LIABILITY  
OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF THE  
EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS**

The Connecticut Trial Lawyers support passage that portion of Raised Bill 6667, Section 17, which would amend Conn. Gen. Stat. Section 31-51q so that it protected the speech of employees who speak out on matters of public concern within the course of their employment.

In 1983, the Connecticut Legislature enacted Conn. Gen. Stat. §31-51q, which extended state and federal protection for constitutionally protected speech to both private and public sector employees. This statute has afforded protection to employees who speak out on matters of public concern, i.e., whistleblowers. Over the years, this statute has protected employees who have lost their jobs in retaliation for speaking up on such important issues as: Advocacy for the disabled; Cover-up of pollution violations; Airport security; Unsafe maintenance of hazardous waste; Unlawful medicare billing practices; Failure to pay income taxes; and patient safety.<sup>1</sup>

The misuse of this statute by disgruntled employees was protected by two important constraints: (1) the speech was only protected if it was speech that related to a matter of public concern, and (2) the speech must not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer. This test was consistent with the longstanding test set

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<sup>1</sup> *Sturm v. Rocky Hill Bd. of Educ.*, 2005 U.S. Dist. LEXIS 4954 (D. Conn. 2005); *Arnone v. Town of Enfield*, 79 Conn. App. 501, 831 A.2d 260 (2003), *app. denied*, 266 Conn. 932, 837 A.2d 804 (2003); *DiMartino v. Richens*, 263 Conn. 639, 822 A.2d 205(2003); *McClain v. Pfizer, Inc.*, 2008 U.S. Dist. LEXIS 17757 (D. Conn. 2008). *Burrell v. Yale Univ.*, 2004 Conn. Super. LEXIS 1185 (Conn. Super. 2004). *Weston v. Wellcare Health Plans, Inc.*, 2006 Conn. Super. LEXIS 271 (Conn. Super. 2006); *Raible v. Essex Yacht Club, Inc.*, 2003 Conn. Super. LEXIS 2474 (Conn. Super. Ct. Aug. 19, 2003); *Kahn v. Conn. Dep't of Mental Health & Addiction Servs.*, 2011 Conn. Super. LEXIS 1691 (Conn. Super. 2011).

forth by the United Supreme Court relating to the protection of speech by public employees in *Pickering v. Board of Education*.<sup>2</sup>

In 2006, the Supreme Court imposes a significant limitation on the protection the federal constitution afforded to speech made by public employees. In *Garcetti v. Ceballos*,<sup>3</sup> the court held that any speech made by a public employee in the course of their duties was not protected speech, only speech made as a private citizen. Last year, in two separate decisions,<sup>4</sup> the Connecticut Supreme Court applied this standard to Conn. Gen. Stat. §31-51q.

The effect of this dramatic revision of the statute deprives protection from those persons from protection when they speak out, because it is part of their duty to report such activities. Thus, the in-house attorney who speaks out against potentially illegal activities has no protection. The quality control supervisor in a manufacturing setting can be fired without recourse for pointing out safety and health violations. The in-house accountant or comptroller can be fired without recourse for pointing out potential fraud, tax or securities violations. An environmental compliance officer can be fired for bringing to light illegal activities because it is his job to do so. These are exactly the people that the public wants to protect and encourage to speak out. The restrictions imposed onto the 31-51q statute by the *Perez-Dickson* and *Schuman*

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<sup>2</sup> 391 U.S. 563, 568, 88 S. Ct. 1731 (1968)(The interest of the employee in commenting upon matters of public concern, must outweigh the interest of the state, as an employer in promoting the efficiency of public services it performs).

<sup>3</sup> 547 U.S. 410 (2006).

<sup>4</sup> *Perez-Dickson v. City of Bridgeport*, 304 Conn. 483; 43 A. 2d 69 (2012); *Schumann v. Dianon systems, Inc.*, 304 Conn. 585, 43 A. 3d 111(2012).

decisions are bad public policy. The law should protect people who speak out on matters of public concern in the workplace.

It is also clear that the current interpretation of the statute was never intended by the legislature when it passed Conn. Gen. Stat. §31-51q. The statute was passed to apply the *Pickering* balancing test that was in existence at the time.

The purpose of Raised Bill 6667, Section 17 is to clarify that the balancing test that has to balance the needs of employers and right of public speech will remain the in effect. Most importantly, employees who speak out on matters of public concern will continue to be protected even if the issues arose as part of their job duties.