EXAMINERS' ANALYSIS'OF QUESTION 8

The First Amendment of the U.S. Constitution, applicable to the states via the 14th Amendment, prohibits the state from abridging a person's freedom of speech. Generally, content-based speech restrictions must meet the strict scrutiny standard - the restriction must be narrowly tailored to promote -a compelling government interest and must be the least restrictive means of serving that interest. *US v Playboy Entertainment Group,•Inc,* 529 US 803, 813 (2000).

However, special rules apply in the context of government employees. Public employees do not surrender all their First Amendment rights by reason of their employment, and a state may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech. *Perry v Sindermann,* 408 US 593, 597 (1972).

The determination whether a public employer has properly disciplined an employee for engaging in speech requires balancing the interests of the employee and the interest of the state in promoting the efficiency of the public services it performs through its employees. *Rankin v McPherson,* 483 U.S. 378, 384 (1987). The Supreme Court of the United States has established a two-part inquiry to determine the constitutional protections accorded to a public employee's speech.

(1) The first part of the inquiry considers whether the employee spoke as a citizen on a matter of public concern. *Garcetti v Ceballos,* 547 US 410, 418 (2006). Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record. *Rankin* at 385. Moreover, First Amendment protection applies even when an employee communicates *privately* with the employer rather than expressing his views to the public. *Givhan v Western Line Consolidated Sch Dist,* 439 US 410 (1979). If the employee's speech was **not** made as a private citizen, or does **not** involve a matter of public concern, there is no First Amendment violation premised on the employer's reaction to the speech. *Connick v Myers,* 461 US 138 (1983); *Garcetti, supra.*

If the answer to the first part of the inquiry is yes, then the second part of the inquiry is considered: (2) whether the state had an adequate justification for treating the employee differently from any other member of the general public. *Garcetti, supra* at 418. This inquiry focuses on the effective functioning of the workplace. "Interference with work, personnel relationships, or the speaker's job performance can detract from the public employer's function; avoiding such interference can be a strong state interest." *Rankin* at 388. employees speaking as citizens on matters of public concern "must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively." *Garcetti, supra* at 419.

Here, just as in *Garcetti,* Nathan's speech was made pursuant to his official duties as an internal affairs investigator. Because his statements were made pursuant to his official duties, he was not speaking as a citizen for First Amendment purposes, even if the statements addressed a matter of public concern. Therefore, Nathan's constitutional rights were not violated, and the First Amendment does not protect him from employer discipline.