



Public Employees' Facebook "Like" is the Internet Equivalent of a Political Yard Sign

10.10.2013 | By **Veronica M. Gray**

The courts are taking steps to protect communications made via social media; e.g., *Ehling v. Monmouth-Ocean Hospital Service Corp.*, No. 2:11-cv-03305 (D.N.J. Aug 20, 2013) (holding that private Facebook posts are protected under the Stored Communications Act).

Likewise, the Fourth Circuit Court of Appeals recently ruled that liking something on Facebook is a form of speech protected by the First Amendment. In *Bland et al. v. Roberts*, sheriff's department employees in Virginia lost their jobs after a political campaign in which they expressed support on Facebook for the political rival of the winning candidate.

In deciding that this activity on Facebook is considered protected speech under the First Amendment, the Court of Appeals wrote: 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. 'Liking' the campaign page of the incumbent Sheriff's political opponent, the Court of Appeals said, was the Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech.

The Court of Appeals had to balance the rights of public employees to speak as private citizens against the interest of government (public employers) in ensuring its efficient operation. Thus, it is critical that public agency employers in California analyze whether the conduct in which employees are engaging is protected speech before taking any disciplinary action.