

To: VSEA members and staff  
From: Tim Belcher, VSEA General Counsel  
Re: Freedom of Speech  
Date: December 3, 2019

Often the most powerful action VSEA members can take is to speak publicly about who you are, what you do, and how your work affects the people in this state. When you speak up, however, you need to know whether you are safe. Your employers often advise that any communication with the press or with legislators needs to be cleared by management. That is true, **but only if you are communicating on behalf of the employer. If you are speaking as a citizen, your speech is protected**, so long as you follow some simple rules:

- Make clear that you are speaking on your own as a private citizen, and not on behalf of the employer. It's okay to tell what your job is, but you should make clear that you are not speaking for anyone but yourself. For example: "My name is Tim. I'm a youth counselor at Woodside and work for the State, but I'm speaking to you today as a private citizen."
- Dress as a civilian.
- Do it on your own time, and from your own computer or own phone. The media or the public will look for clues that you're abusing your time or using the employer's property.
- Don't disclose confidential information.
- Don't be abusive, rude, or slanderous.
- Do be professional and polite.

Your speech is only protected if it relates to a matter of public concern, and you are speaking as a citizen. You do not have a protected right to tell the world about personal personnel issues, or even low-level mismanagement. Wasting thousands of dollars of tax payer money is likely a matter of public concern, but a manager's bullying behavior is not.

Speech that is actually a part of your job is not protected by the First Amendment: if you are hired to say "x," you don't have a constitutional right to say "y." The key case on this issue is *Garcetti v. Ceballos* where a district attorney wrote an internal memo criticizing the legitimacy of a warrant, and was subsequently passed up for promotion. The US Supreme Court held that the internal memo was part of his job, and was therefore not protected by the First Amendment. Some states have directed that state-employed scientists are prohibited from speaking about climate change. Similarly, if you are employed as the spokesperson for a state initiative or program, you may not have a protected right to speak publicly against that program, even on your own time.

These rules can be complicated, so please contact us if you have any specific questions.