



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**MCMICHAEL-GOMBAR V. PHOENIX CIVIL SERVICE BOARD,
ET AL.
CV-22-0176-PR**

PARTIES:

Petitioners: The City of Phoenix and The Phoenix Civil Service Board, et al.

Respondent: Stefani McMichael-Gombar

FACTS:

Stefani McMichael-Gombar is a retired City of Phoenix (**the “City”**) police sergeant. The City suspended her for 24-hours for violating the City police department’s social media policy (**the “Policy”**) after she made a post on her private Facebook page; the post’s content is not in the record.

McMichael-Gombar did not dispute making the post but instead argued that the Policy was overbroad and unconstitutional in violation of the First Amendment to the United States Constitution. In her appeal to an appointed hearing officer, the City moved to preclude McMichael-Gombar from presenting evidence on the Policy’s constitutionality or how it impacted her ability to participate in her private affairs and express her First Amendment rights. The hearing officer granted the City’s motion and upheld McMichael-Gombar’s suspension.

McMichael-Gombar appealed the hearing officer’s decision to the Phoenix Civil Service Board (**the “Board”**), before which she asserted that the Policy was “overbroad and unconstitutional—both on its face and as applied.” The Board declined to consider the constitutional question, upheld the hearing officer’s decision precluding McMichael-Gombar from presenting evidence regarding the Policy’s constitutionality, and upheld McMichael-Gombar’s sanction.

McMichael-Gombar next sought discretionary special action review in the superior court. The superior court declined jurisdiction, reasoning that the Board does not have the power to determine whether a City policy is constitutional. Instead, pursuant to the City Charter, the Board hears individual appeals, decides whether an employee violated personnel rules and policies, and determines whether discipline imposed by the City is appropriate.

The court of appeals reversed. In doing so, it relied on the “Purpose and policy” section of the City Charter chapter that addresses the City personnel system. That section lists “merit principles” of personnel administration, which include “[a]ssuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens.” Based on this language, the court of appeals held that, although the Board is not required to determine whether a policy is constitutional, it is required to determine whether a

sanction gives “proper regard” to an employee’s constitutional rights. It remanded the case and stated that, “[o]n remand, the Board must consider McMichael-Gombar’s constitutional rights in evaluating her sanction and allow her to submit evidence and argument accordingly.” Petitioners sought review here.

ISSUES:

1. Is the Civil Service Board required to consider constitutionally based arguments and defenses regarding an employee’s discipline?
2. Does the City Charter require the Civil Service Board to hear constitutional challenges to City personnel policies when it reviews the appropriateness and severity of employee discipline?

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