Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HEFFERNAN *v.* CITY OF PATERSON, NEW JERSEY, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–1280. Argued January 19, 2016—Decided April 26, 2016

Petitioner Heffernan was a police officer working in the office of Paterson, New Jersey's chief of police. Both the chief of police and Heffernan's supervisor had been appointed by Paterson's incumbent mayor, who was running for re-election against Lawrence Spagnola, a good friend of Heffernan's. Heffernan was not involved in Spagnola's campaign in any capacity. As a favor to his bedridden mother, Heffernan agreed to pick up and deliver to her a Spagnola campaign yard sign. Other police officers observed Heffernan speaking to staff at a Spagnola distribution point while holding the yard sign. Word quickly spread throughout the force. The next day, Heffernan's supervisors demoted him from detective to patrol officer as punishment for his "overt involvement" in Spagnola's campaign. Heffernan filed suit, claiming that the police chief and the other respondents had demoted him because, in their mistaken view, he had engaged in conduct that constituted protected speech. They had thereby "depriv[ed]" him of a "right . . . secured by the Constitution." 42 U. S. C. §1983. The District Court, however, found that Heffernan had not been deprived of any constitutionally protected right because he had not engaged in any First Amendment conduct. Affirming, the Third Circuit concluded that Heffernan's claim was actionable under §1983 only if his employer's action was prompted by Heffernan's actual, rather than his perceived, exercise of his free-speech rights.

Held:

1. When an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment and §1983 even if, as here, the employer's actions are

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based on a factual mistake about the employee's behavior. To answer the question whether an official's factual mistake makes a critical legal difference, the Court assumes that the activities that Heffernan's supervisors mistakenly *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish. Section 1983 does not say whether the "right" protected primarily focuses on the employee's actual activity or on the supervisor's motive. Neither does precedent directly answer the question. In *Connick* v. *Myers*, 461 U. S. 138, *Garcetti* v. *Ceballos*, 547 U. S. 410, and *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, there were no factual mistakes: The only question was whether the undisputed reason for the adverse action was in fact protected by the First Amendment. However, in *Waters* v. *Churchill*, 511 U. S. 661, a government employer's adverse action was based on a mistaken belief that an employee *had not* engaged in protected speech. There, this Court determined that the employer's motive, and particularly the facts as the employer reasonably understood them, mattered in determining that the employer had not violated the First Amendment. The government's motive likewise matters here, where respondents demoted Heffernan on the mistaken belief that he *had* engaged in protected speech. A rule of law finding liability in these circumstances tracks the First Amendment's language, which focuses upon the Government's activity. Moreover, the constitutional harm—discouraging employees from engaging in protected speech or association—is the same whether or not the employer's action rests upon a factual mistake. Finally, a rule of law imposing liability despite the employer's factual mistake is not likely to impose significant extra costs upon the employer, for the employee bears the burden of proving an improper employer motive. Pp. 3–8.

2. For the purposes of this opinion, the Court has assumed that Heffernan's employer demoted him out of an improper motive. However, the lower courts should decide in the first instance whether respondents may have acted under a neutral policy prohibiting police officers from overt involvement in any political campaign and whether such a policy, if it exists, complies with constitutional standards. P. 8.

777 F. 3d 147, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 14–1280

JEFFREY J. HEFFERNAN, PETITIONER *v.* CITY OF PATERSON, NEW JERSEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April 26, 2016]

JUSTICE BREYER delivered the opinion of the Court.

The First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity. See *Elrod* v. *Burns*, 427 U. S. 347 (1976); *Branti* v. *Finkel*, 445 U. S. 507 (1980); but cf. *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 564 (1973). In this case a government official demoted an employee because the official believed, but *incorrectly* believed, that the employee had supported a particular candidate for mayor. The question is whether the official's factual mistake makes a critical legal difference. Even though the employee had not in fact engaged in protected political activity, did his demotion "deprive" him of a "right . . . secured by the Constitution"? 42 U. S. C. §1983. We hold that it did.

I

To decide the legal question presented, we assume the following, somewhat simplified, version of the facts: In 2005, Jeffrey Heffernan, the petitioner, was a police officer in Paterson, New Jersey. He worked in the office of the

Chief of Police, James Wittig. At that time, the mayor of Paterson, Jose Torres, was running for reelection against Lawrence Spagnola. Torres had appointed to their current positions both Chief Wittig and a subordinate who directly supervised Heffernan. Heffernan was a good friend of Spagnola's.

During the campaign, Heffernan's mother, who was bedridden, asked Heffernan to drive downtown and pick up a large Spagnola sign. She wanted to replace a smaller Spagnola sign, which had been stolen from her front yard. Heffernan went to a Spagnola distribution point and picked up the sign. While there, he spoke for a time to Spagnola's campaign manager and staff. Other members of the police force saw him, sign in hand, talking to campaign workers. Word quickly spread throughout the force.

The next day, Heffernan's supervisors demoted Heffernan from detective to patrol officer and assigned him to a "walking post." In this way they punished Heffernan for what they thought was his "overt involvement" in Spagnola's campaign. In fact, Heffernan was not involved in the campaign but had picked up the sign simply to help his mother. Heffernan's supervisors had made a factual mistake.

Heffernan subsequently filed this lawsuit in federal court. He claimed that Chief Wittig and the other respondents had demoted him because he had engaged in conduct that (on their mistaken view of the facts) constituted protected speech. They had thereby "depriv[ed]" him of a "right . . . secured by the Constitution." Rev. Stat. §1979, 42 U. S. C. §1983.

The District Court found that Heffernan had not engaged in any "First Amendment conduct," 2 F. Supp. 3d 563, 580 (NJ 2014); and, for that reason, the respondents had not deprived him of any constitutionally protected right. The Court of Appeals for the Third Circuit affirmed. It wrote that "a free-speech retaliation claim is actionable

under §1983 only where the adverse action at issue was prompted by an employee's *actual*, rather than *perceived*, exercise of constitutional rights." 777 F. 3d 147, 153 (2015) (citing *Ambrose* v. *Robinson*, 303 F. 3d 488, 496 (CA3 2002); emphasis added). Heffernan filed a petition for certiorari. We agreed to decide whether the Third Circuit's legal view was correct. Compare 777 F. 3d, at 153 (case below), with *Dye* v. *Office of Racing Comm'n*, 702 F. 3d 286, 300 (CA6 2012) (similar factual mistake does not affect the validity of the government employee's claim).

II

With a few exceptions, the Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate. See *Elrod* v. *Burns*, *supra*; *Branti* v. *Finkel*, *supra*. The basic constitutional requirement reflects the First Amendment's hostility to government action that "prescribe[s] what shall be orthodox in politics." *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943). The exceptions take account of "practical realities" such as the need for "efficiency" and "effective[ness]" in government service. *Waters* v. *Churchill*, 511 U. S. 661, 672, 675 (1994); see also *Civil Service Comm'n*, *supra*, at 564 (neutral and appropriately limited policy may prohibit government employees from engaging in partisan activity), and *Branti*, *supra*, at 518 (political affiliation requirement permissible where affiliation is "an appropriate requirement for effective performance of the public office involved").

In order to answer the question presented, we assume that the exceptions do not apply here. But see *infra*, at 8. We assume that the activities that Heffernan's supervisors *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish, see *Rutan* v. *Republi-*

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