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No. 07-5694

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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David Greenwell,

*Plaintiff-Appellant,*

vs.

Paul Parsley,

*Defendant-Appellee.*

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On Appeal from the United States District Court  
for the Western District of Kentucky  
No. 3:05-CV-768-H  
The Honorable John G. Heyburn, II

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**APPELLANT'S PETITION  
FOR REHEARING OR REHEARING EN BANC**

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## Statement in Support of En Banc Rehearing

Rehearing en banc is warranted in this case because the panel decision conflicts with decisions of the Supreme Court, prior decisions of this Court, and decisions of several other circuits. Rehearing en banc is also warranted because this case presents constitutional questions of exceptional importance.

The panel decision reaffirms the rule adopted in *Carver v. Dennis*, 104 F.3d 847 (6th Cir. 1997), according to which a public employee's announcement of his candidacy for the political office held by his ultimate supervisor falls completely outside the First Amendment's protection. Inasmuch as *Carver* and the panel decision in this case rest on the proposition that there is no First Amendment interest in running for political office, they conflict with *Clements v. Fashing*, 457 U.S. 957 (1982) (plurality opinion), *James v. Texas Collin County*, 535 F.3d 365 (5th Cir. 2008), *Finkelstein v. Bergna*, 924 F.2d 1449 (9th Cir. 1991), *Flinn v. Gordon*, 775 F.2d 1551 (11th Cir. 1985), *Washington v. Finlay*, 664 F.2d 913 (4th Cir. 1981), *Newcomb v. Brennan*, 558 F.2d 825 (7th Cir. 1977), and *Magill v. Lynch*, 560 F.2d 22 (1st Cir. 1977). Inasmuch as *Carver* and the panel decision adopt a *per se* rule that denies public employees the right to speak on matters of public interest, they conflict with *Garcetti v. Ceballos*, 547 U.S. 410 (2006), *Connick v. Myers*, 461 U.S. 138 (1983), *Pickering v. Board of Education*, 391 U.S. 563 (1968), and innumerable decisions of this circuit and others, including *Scarborough v. Morgan*

*County Board of Education*, 470 F.3d 250 (6th Cir. 2006). Inasmuch as *Carver* and the panel decision permit the firing of a public employee based on the employee's political affiliation even when that affiliation is not relevant to the performance of the employee's job, they conflict with *Branti v. Finkel*, 445 U.S. 507 (1980), *Elrod v. Burns*, 427 U.S. 347 (1976) (plurality opinion), *Heggen v. Lee*, 284 F.3d 675 (6th Cir. 2002), *Sowards v. Loudon County*, 203 F.3d 426 (6th Cir. 2000), and numerous decisions of other circuits. As Judge Martin noted in concurrence, "the time to revisit *Carver* has come." *Greenwell v. Parsley*, 2008 WL 4006685, at \*3 (6th Cir. Sept. 2, 2008) (Martin, J. concurring).<sup>1</sup>

This case presents three constitutional questions of exceptional importance, each of which implicates the First Amendment's core protections. First, this case presents the question of whether there is a First Amendment interest in running for political office. Second, this case presents the question of whether a public employee may be prevented from speaking on a matter of public concern without balancing the interests of the employee, as a citizen, in commenting upon matters of public concern against the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. Finally, this case presents the question of whether a public employee can be fired based on the

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<sup>1</sup> See also *Myers v. Dean*, 216 F. App'x 552 (6th Cir. 2007) (calling *Carver* into question); cf. *Murphy v. Cockrell*, 505 F.3d 446 (6th Cir. 2007) (limiting *Carver*).

employee's political affiliation even when that affiliation is irrelevant to the performance of the employee's job. These questions directly affect public employees' participation in the political process and, consequently, the range of electoral choices that all citizens enjoy at the ballot box. Recognizing its significance, Judge Martin expressed his "hope that [this] Court will revisit this critical First Amendment issue en banc." *Greenwell*, 2008 WL 4006685, at \*3.

### **Factual and Procedural Background**

Plaintiff-Appellant David Greenwell was a deputy sheriff of Bullitt County, Kentucky. Greenwell was fired in 2005 by Defendant-Appellee Paul Parsley, who was at the time the sheriff of Bullitt County, when Parsley learned that Greenwell intended to run against him in the next election. Parsley, a Democrat, learned of Greenwell's candidacy from a newspaper article; the article reported that Greenwell, a former Democrat, would run as a Republican. The article also reported that, if elected, Greenwell planned on creating a public relations position within the sheriff's department that would "follow up with people who file police reports to make sure the department handled their complaint[s] to their satisfaction," an innovation that Greenwell believed "would hold deputies accountable and improve the department's image." *Greenwell*, 2008 WL 4006685, at \*1. Parsley, who "highlighted the parts of the article that indicated that Greenwell was running, as well as the statements Greenwell made regarding changes he would make to the

sheriff's department" (*id.*), fired Greenwell the day the article appeared. Parsley handed Greenwell a termination letter that stated:

This will confirm that as of September 7, 2005 you informed the public and me personally that you are running against me for Sheriff in the 2006 election. Therefore, I am terminating your employment with me and my office for obvious reasons.

*Id.* Parsley subsequently testified that he had fired Greenwell because "[h]e wanted to take my job away from me." *Id.* (internal quotation marks omitted).

Parsley, according to his own account, learned of Greenwell's switch to the Republican party from the newspaper article. (R.13, Parsley Depo., at 15–16; Apx. 91–92.) In the prior election, held in 2002, Greenwell had run for the position of county jailer as a Democrat. Greenwell, who had been a sheriff's deputy since 1999, ran in the 2002 election without suffering any adverse employment action. Appellees' Br. 12 (citing R.13, Greenwell Depo., at 29, 40; Apx. 40, 46). In the 2006 election, there were five sheriff's department employees other than Greenwell running for offices other than sheriff. As Parsley emphasized in his brief to this Court, "none suffered any adverse employment action, just like Greenwell in 2002." *Id.* Parsley candidly admits that "[t]he difference in this case is that Greenwell chose to run for the position held by Sheriff Parsley." *Id.*

Greenwell filed suit under 42 U.S.C. § 1983, alleging *inter alia* that he had been fired for exercising his First Amendment rights. The district court found that Greenwell was fired because he "announc[ed] his intention to take his boss's of-

fice,” an act the court characterized as “personal insubordination.” *Greenwell v. Parsley*, 2007 WL 196896, at \*2 (W.D. Ky. Jan. 22, 2007). The district court granted Parsley’s motion for summary judgment, concluding that because “Greenwell chose to express his political views by running for the political office held by his boss” “*Carver v. Dennis*, 104 F.3d 847 (6th Cir. 1997), governs our case and requires dismissal.” *Id.* The district court denied Greenwell’s motion to vacate the judgment, reiterating its conclusion that Greenwell had been fired “solely for seeking his boss’s position” and rejecting as mere “speculation” Greenwell’s contention that his change in party affiliation and his criticism of Parsley’s policies had contributed to his firing. *Greenwell v. Parsley*, 2007 WL 1406955, at \*2 (W.D. Ky. May 8, 2007). In continued reliance on *Carver*, the district court held that “[i]nsubordination in seeking his boss’s position was not a constitutional right of the plaintiff, so the court need not apply the balancing test” set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968). *Greenwell*, 2007 WL 1406955, at \*2.

Agreeing that “this case cannot be meaningfully distinguished from *Carver*” (2008 WL 4006685, at \*3), a panel of this Court affirmed summary judgment in favor of Parsley. In a separate opinion, Judge Martin concurred that *Carver* governs this case, but urged this Court to grant rehearing en banc so that it could rid itself of a decision that, “like a stray cat that hangs around the door and infests the house with fleas, . . . continues to plague this Court’s jurisprudence.” *Id.* at \*4.

## Argument

### I. REHEARING IS WARRANTED BECAUSE THE PANEL MISCONSTRUED THE FACTS OF THIS CASE, ERRONEOUSLY CAUSING IT TO APPLY *CARVER*.

The panel misconstrued the facts of this case, leading it to erroneously conclude that *Carver* governs the result. In *Carver*, it was undisputed that plaintiff had been fired “solely because she announced her candidacy” against her boss. 104 F.3d at 850. Thus, the firing in *Carver* was, on the undisputed facts, neither “a patronage dismissal” nor “a dismissal because of political beliefs or affiliations.” *Id.* Here, by contrast, there is evidence from which a reasonable jury could infer that Greenwell was fired because of his political beliefs and affiliation.<sup>2</sup> The fact that Parsley “highlighted . . . the statements Greenwell made regarding changes he would make to the sheriff’s department” (*Greenwell*, 2008 WL 4006685, at \*1) would allow a reasonable jury to infer that Greenwell was fired, at least in part, for having expressed political views implicitly critical of Parsley. Similarly, the fact that Parsley, a Democrat, fired Greenwell shortly after learning that Greenwell had become a Republican and would campaign against Parsley would allow a reason-

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<sup>2</sup> This Court reviews a grant of summary judgment, and the denial of a Rule 59(e) motion to vacate summary judgment, *de novo*. *Greenwell*, 2008 WL 4006685, at \*2. “Summary judgment requires the court to view all evidence in the light most favorable to the nonmoving party and is appropriate only if the evidence in the record is so one-sided that no reasonable jury could find for that party.” *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 349 (6th Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986)).

able jury to infer that Greenwell was fired, at least in part, for his political affiliation. Accordingly, it was erroneous for the panel to have concluded that this case is governed by *Carver* and to have affirmed summary judgment on that basis.<sup>3</sup>

## **II. REHEARING EN BANC IS WARRANTED BECAUSE *CARVER*, UPON WHICH THE PANEL BASED ITS DECISION, WAS WRONGLY DECIDED AND SHOULD BE OVERRULED.**

The panel held that that “this case cannot be meaningfully distinguished from *Carver*” (2008 WL 4006685, at \*3), and that Greenwell’s claim must therefore be dismissed because, under the rule announced in *Carver*, “[t]he First Amendment does not require that an official in [an employer’s] situation nourish a viper in the nest.” *Id.* at \*2 (quoting *Carver*, 104 F.3d at 853). But *Carver* was wrongly decided and should now be overruled.

*Carver* erroneously assumes that there is no First Amendment right to run for political office, that a public employee has no First Amendment right to announce his or her candidacy for political office, and that the First Amendment allows a public employee to be fired based on his or her political affiliation even when political affiliation is not relevant to the performance of the employee’s job.

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<sup>3</sup> To establish retaliation for engaging in constitutionally protected activity, “a plaintiff must prove the following elements: ‘(1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff’s protected conduct.’” *Sowards v. Loudon County*, 203 F.3d 426, 431 (6th Cir. 2000) (quoting *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (per curiam) (en banc)).

Each of these erroneous premises is in conflict with Supreme Court precedent, decisions of this Court, and decisions of other circuits.

**A. Contrary To *Carver*, There Is A First Amendment Right To Run For Political Office.**

*Carver* wrongly holds that there is no First Amendment right to run for political office. See 104 F.3d at 852 (holding that plaintiff’s discharge based solely on her announced candidacy did not “infringe[] her ‘constitutionally protected interests’”); *id.* at 853 (distinguishing *Newcomb v. Brennan*, 558 F.2d 825 (7th Cir. 1977), on the grounds that in *Newcomb* “[t]he First Amendment applied, because the plaintiff’s complaint implicated interests broader than a right to candidacy”); see also *Murphy v. Cockrell*, 505 F.3d 446, 450 (6th Cir. 2007) (characterizing *Carver* as holding “that there is no protected right to candidacy under the First Amendment”). *Carver* derived its conclusion that there is no First Amendment interest in running for political office from the fact that the Supreme Court “has never recognized a fundamental right to express one’s political views through candidacy.” 104 F.3d at 850–51 (citing *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (plurality opinion), and *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). But *Carver* draws an improper inference from the precedent upon which it relies.

The mere fact that candidacy is not a “fundamental” right does not mean that there is *no* constitutional right to candidacy. Indeed, *Clements*—upon which *Carver* relies—itself expressly recognizes individuals’ “First Amendment interests

in candidacy.” 457 U.S. at 971 (plurality opinion). *See also id.* at 977 n.2 (Brennan, J., dissenting) (“Although we have never defined candidacy as a fundamental right, we have clearly recognized that restrictions on candidacy impinge on First Amendment rights of candidates and voters.”). The fact that the right to candidacy is not a “fundamental” right means simply that restrictions on that right are subject to less exacting scrutiny than would otherwise be the case. *See Bullock*, 405 U.S. at 142–43 (“the Court has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review”); *see also Grider v. Abramson*, 180 F.3d 739, 749 n.12 (6th Cir. 1999) (discussing varying levels of scrutiny). Accordingly, while the right to candidacy may not be a fundamental right, that “does not suggest that . . . we should completely disregard the vital interests of the candidates and the citizens who they represent in a political campaign.” *Clements*, 457 U.S. at 977 n.2 (Brennan, J., dissenting).

Inasmuch as it denies the existence of a First Amendment right to candidacy, *Carver* is not only contrary to *Clements* and *Bullock*, but also in conflict with the decisions of other circuits that have recognized a right to candidacy in general, and a right to candidacy for public employees in particular.<sup>4</sup> For example, *Carver* conflicts with *Finkelstein v. Bergna*, 924 F.2d 1449, 1453 (9th Cir. 1991), in which the

<sup>4</sup> Indeed, *Carver* also conflicts with an unpublished decision of this Court. *Cf. Watts v. Day*, 129 F. App’x 227, 231 (6th Cir. 2005) (per curiam) (“there can be little dispute that the plaintiffs enjoyed a First Amendment right to run for political office”).

Ninth Circuit recognized that “[d]isciplinary action discouraging a candidate’s bid for elective office ‘represent[ed] punishment by the state based on the content of a communicative act’ protected by the first amendment.” Similarly, *Carver* conflicts with *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977), in which the Seventh Circuit recognized that the “plaintiff’s interest in running for Congress and thereby expressing his political views without interference from state officials . . . lies at the core of the values protected by the First Amendment” and that the constitution therefore limits any state action, such as the firing of a public employee, that discourages a particular individual’s candidacy because such action would constitute “punishment by the state based on the content of a communicative act.” *See also, e.g., Jordan v. Ector County*, 516 F.3d 290, 298–99 (5th Cir. 2008) (calling *Carver* into question and observing that “political activities” associated with public employee’s candidacy “constitute core First Amendment activity”); *Flinn v. Gordon*, 775 F.2d 1551, 1554 (11th Cir. 1985) (recognizing that plaintiff “had a constitutional right to run for office”); *Washington v. Finlay*, 664 F.2d 913, 927–28 (4th Cir. 1981) (recognizing “[t]he first amendment’s protection of the freedom of association and of the rights to run for office, have one’s name on the ballot, and present one’s views to the electorate”); *Magill v. Lynch*, 560 F.2d 22, 29 (1st Cir. 1977) (“[c]andidacy is a First Amendment freedom”).

**B. Contrary To *Carver*, There Is A First Amendment Right To Announce One's Candidacy.**

In *Carver*, this Court found no constitutional violation even though the plaintiff “was discharged solely because she announced her candidacy.” 104 F.3d at 850. That result does not withstand scrutiny.

Not only does an announcement of one's candidacy for political office constitute speech, it constitutes speech entitled to the highest degree of constitutional protection. *See, e.g., Connick v. Myers*, 461 U.S. 138, 145 (1983) (“speech on public issues occupies the ‘highest rung of the hierarchy of First Amendment values,’ and is entitled to special protection”); *Wiggins v. Lowndes County*, 363 F.3d 387, 390 (5th Cir. 2004) (“Political speech regarding a public election lies at the core of matters of public concern protected by the First Amendment.”). But *Carver* categorically denies any protection whatsoever to a public employee's announcement of his or her candidacy for political office, at least when the employee is running against his or her boss.

Inasmuch as *Carver* adopts a *per se* rule that denies public employees the right to announce their candidacy, and thus the right to speak on matters of public interest, it conflicts with well-established law recognizing that “citizens are not deprived of fundamental rights by virtue of working for the government.” *Connick*, 461 U.S. at 147. Although the State may constitutionally limit public employees' speech on matters of public concern under certain circumstances, “[s]o long as em-

employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.” *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006). Thus, when evaluating a public employee’s First Amendment claim, courts must “seek ‘a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.’” *Connick*, 461 U.S. at 142 (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)). See also *Scarborough v. Morgan County Bd. of Educ.*, 470 F.3d 250, 255 (6th Cir. 2006) (“[i]f the speech relates to a matter of public concern, then the court employs the balancing test outlined in *Pickering*”) (internal quotation marks omitted). But contrary to this well-established law, *Carver* held that the *Pickering* balancing test “do[es] not apply” when a public employee announces his or her intention to run against his or her boss. 104 F.3d at 852.<sup>5</sup>

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<sup>5</sup> As illustrated in this case—where Greenwell’s candidacy announcement described a policy innovation he planned on implementing if elected—the *per se* rule adopted in *Carver* not only infringes the employee’s First Amendment right to announce his or her candidacy, but also deprives the electorate of the benefit of the employee’s unique insight. See *Garcetti*, 547 U.S. at 419 (2006) (“[t]he Court has acknowledged the importance of promoting the public’s interest in receiving the well-informed views of government employees engaging in civic discussion”); *San Diego v. Roe*, 543 U.S. 77, 82 (2004) (per curiam) (“Were [public employees] not able to speak on [the operation of their employers], the community would be deprived of informed opinions on important public issues.”); *Waters v. Churchill*, 511 U.S. 661, 674 (1994) (“Government employees are often in the best position to



576 (7th Cir. 1972)). Accordingly, “government action that inhibits belief and association through the conditioning of public employment on political faith” directly implicates First Amendment rights. *Id.*; *see also id.* at 360 (“the practice of patronage dismissals clearly infringes First Amendment interests”). Patronage dismissals are permissible, but only where “they advance[] a governmental, rather than a partisan, interest.” *Branti v. Finkel*, 445 U.S. 507, 517 n.12 (1980). Thus, patronage dismissals are constitutional if, but only if, “the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.” *Id.* at 518.<sup>6</sup>

*Carver*, which permits patronage dismissals without requiring any showing that political affiliation is relevant to the effective performance of the public office involved, conflicts not only with *Elrod* and *Branti*, but with subsequent decisions of this Court. *Cf. Heggen v. Lee*, 284 F.3d 675 (6th Cir. 2002) (holding that Kentucky deputy sheriffs are entitled to First Amendment protection from patronage firings); *Sowards v. Loudon County, Tennessee*, 203 F.3d 426 (6th Cir. 2000) (reversing summary judgment against sheriff’s employee who had been fired after

<sup>6</sup> *Carver* asserts that the facts of that case did not present an issue of political affiliation, but that is incorrect. Although the affiliation in question may not have been partisan in the narrow sense, it was no less political. The plaintiff had associated herself with a campaign (namely, her own) that was, like a political party, opposed to the candidacy of the defendant. *See Jordan*, 516 F.3d at 296 (recognizing that the “*Elrod-Branti* doctrine [also] applies when an employment decision is based upon support of and loyalty to a particular candidate as distinguished from a political party”) (internal quotation marks omitted).

supporting her husband’s candidacy against the sheriff). *Carver*, which denies a public employee First Amendment protection when the employee announces his or her candidacy against his or her boss, the incumbent office holder, also conflicts with *James v. Texas Collin County*, 535 F.3d 365, 377 n.12 (5th Cir. 2008), in which the Fifth Circuit recognized that even if a content neutral prohibition on candidacies were constitutionally acceptable “it would obviously not be permissible for the government to prohibit employees only from running against incumbents.”<sup>7</sup>

### CONCLUSION

The Court should grant the petition for rehearing or rehearing en banc.

Respectfully submitted,

/s/ Andrew Tauber

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September 16, 2008

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<sup>7</sup> That, of course, is precisely what happened in this case. By the defendant’s own admission, Greenwell was fired because he “chose to run for the position held by Sheriff Parsley,” while other employees, who campaigned for other offices, were not terminated. Appellees’ Br. 12.

**CERTIFICATE OF SERVICE**

I, Andrew Tauber, hereby certify that on September 16, 2008, I caused copies of the **APPELLANT’S PETITION FOR REHEARING OR REHEARING EN BANC** in the above-captioned matter to be served by overnight courier on the following:

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## Addendum

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**H**Greenwell v. Parsley

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Argued: March 21, 2008.

Decided and Filed: Sept. 2, 2008.

**Background:** Fired deputy sheriff brought action against sheriff, alleging a violation of his First and Fourteenth Amendment right to run for political office. The United States District Court for the Western District of Kentucky, John G. Heyburn II, Chief District Judge, [2007 WL 196896](#), granted summary judgment to sheriff and denied deputy's motion to amend. Deputy appealed.

**Holding:** The Court of Appeals, [Alan E. Norris](#), Circuit Judge, held that deputy's termination did not violate the First Amendment.

Affirmed

[Boyce F. Martin, Jr.](#), Circuit Judge, filed a concurring opinion.

**[1] Constitutional Law 92**  **1937**[92](#) Constitutional Law[92XVIII](#) Freedom of Speech, Expression, and Press[92XVIII\(P\)](#) Public Employees and Officials[92k1937](#) k. Political Speech, Beliefs, or Activities. [Most Cited Cases](#)

While the First Amendment protects the right of public employees to speak out on matters of public concern, it has not been extended to candidacy alone. [U.S.C.A. Const.Amend. 1.](#)

**[2] Constitutional Law 92**  **1181**[92](#) Constitutional Law[92X](#) First Amendment in General[92X\(B\)](#) Particular Issues and Applications[92k1180](#) Public Employees and Officials[92k1181](#) k. In General. [Most Cited](#)[Cases](#)

First Amendment does not require that an official in an employer's situation nourish a viper in the nest. [U.S.C.A. Const.Amend. 1.](#)

**[3] Constitutional Law 92**  **1955**[92](#) Constitutional Law[92XVIII](#) Freedom of Speech, Expression, and Press[92XVIII\(P\)](#) Public Employees and Officials[92k1955](#) k. Police and Other Public Safety Officials. [Most Cited Cases](#)**Sheriffs and Constables 353**  **21**[353](#) Sheriffs and Constables[353I](#) Appointment, Qualification, and Tenure[353I\(C\)](#) Deputies and Assistants, Substitutes, and Special Officers[353k16](#) Deputies and Delegation of Powers[353k21](#) k. Term and Tenure of Office.[Most Cited Cases](#)

County sheriff's termination of deputy sheriff at the moment that he learned of deputy's candidacy against sheriff from the newspaper did not violate deputy's First Amendment speech rights, notwithstanding the fact that sheriff may have highlighted certain implied criticisms of the department in the newspaper account; sheriff unequivocally told deputy, "you're trying to take my job," and there was nothing in the record to belie the conclusion that the termination was because of the candidacy. [U.S.C.A. Const.Amend. 1.](#)

**ARGUED:** [Philip C. Kimball](#), Louisville, Kentucky, for Appellant. [David Paul Bowles](#), Landrum & Shouse, Louisville, Kentucky, for Appellee. **ON BRIEF:** [Philip C. Kimball](#), Louisville, Kentucky, for Appellant. [David Paul Bowles](#), [Robert T. Watson](#), Landrum & Shouse, Louisville, Kentucky, for Appellee.

Before: [MARTIN](#) and [NORRIS](#), Circuit Judges;  
STAMP, District Judge. <sup>FN\*</sup>

[NORRIS](#), J., delivered the opinion of the court, in which STAMP, D.J., joined. [MARTIN](#), J. (p. ----), delivered a separate concurring opinion.

## OPINION

[ALAN E. NORRIS](#), Circuit Judge.

\*1 Paul Parsley, the former sheriff of Bullitt County, Kentucky, fired deputy sheriff David Greenwell immediately after he learned through a newspaper article that his deputy intended to run against him in the next election. Greenwell responded by filing suit against Parsley and his chief deputy Mack (Jim) McAuliffe. The only federal cause of action included in the complaint was an allegation that defendants violated Greenwell's First and Fourteenth Amendment right to run for political office. The district court granted summary judgment to defendants on this claim and on various state-law claims that are not at issue on appeal. Plaintiff then filed a motion to amend pursuant to [Fed.R.Civ.P. 59\(e\)](#), which the district court denied. The only issue on appeal concerns whether Sheriff Parsley violated Greenwell's First Amendment right to engage in political activity. Like the district court, we hold that [Carver v. Dennis, 104 F.3d 847 \(6th Cir.1997\)](#), a prior published decision of this court, controls the outcome of this case. We therefore affirm the grant of summary judgment.

### I.

Greenwell served as a deputy in Sheriff Parsley's office from 1999 until 2005. On September 7, 2005, an article appeared in the *Louisville Courier-Journal* announcing Greenwell's candidacy for the sheriff's office:

Republican Dave Greenwell, a Bullitt County sheriff's deputy, has filed with the Kentucky Registry for Election Finance to run....

....

Greenwell has been a deputy for six years and spent eight years in the 1990s as a Bullitt County deputy jailer.

He said he'd like to become sheriff and create a public relations position.

A deputy in such a position, he said, would follow up with people who file police reports to make sure the department handled their complaint to their satisfaction. Doing so would hold deputies accountable and improve the department's image....

While reading this announcement, Parsley highlighted the parts of the article that indicated that Greenwell was running, as well as the statements Greenwell made regarding changes he would make to the sheriff's department. Parsley summoned Greenwell to his office, and told him, "See in the paper here where you're trying to take my job." Parsley then asked him to step outside. After consulting with his attorney, Parsley emerged and handed the following termination letter to Greenwell:

Dear Mr. Greenwell:

This will confirm that as of September 7, 2005 you informed the public and me personally that you are running against me for Sheriff in the 2006 election. Therefore, I am terminating your employment with me and my office for obvious reasons.

Greenwell maintains that Parsley fired him not only due to his candidacy, but because Parsley was upset that Greenwell had spoken out on a matter of public concern, namely, the operation of the sheriff's department. For his part, Parsley testified, "He wanted to take my job away from me.... He put it in the paper he was running for sheriff--was gonna take my job."

\*2 In the end, neither man was elected sheriff. Parsley lost the Democratic primary to Donnie Tinnell, who then defeated Greenwell in the general election.

### II.

We review the grant of summary judgment *de novo*. [Lockett v. Suardini, 526 F.3d 866, 872 \(6th Cir.2008\)](#). Further, while the denial of a motion under [Federal Rule of Civil Procedure 59\(e\)](#) is generally reviewed for abuse of discretion, to the extent the

motion seeks reconsideration of a grant of summary judgment, the denial of the motion is reviewed *de novo*. [Columbia Gas Transmission Corp. v. Limited Corp.](#), 951 F.2d 110, 112 (6th Cir.1991). Summary judgment is proper if “there is no genuine issue as to any material fact” such that the moving party is entitled to a judgment as a matter of law. [Fed.R.Civ.P. 56\(c\)](#).

[1][2] In the [Carver](#) decision, upon which the district court relied in granting summary judgment to defendants, a county court clerk terminated her deputy clerk the day after the deputy announced her intention to run in the next election. The deputy presented no evidence that she had been dismissed because of her political beliefs. This court characterized the issue before it in these terms:

Stated narrowly, the issue before us is whether Carver, a deputy county clerk who was an at-will employee in a two-person office-the other person being the county clerk herself-had a First Amendment right to run against the incumbent clerk in the next election and still retain her job.

[Carver](#), 104 F.3d at 849. While the First Amendment protects the right of public employees to speak out on matters of public concern, *id.* (citing [Connick v. Myers](#), 461 U.S. 138, 146, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983)), it has not been extended to candidacy alone. *Id.* at 850-851. In short, “[t]he First Amendment does not require that an official in [an employer’s] situation nourish a viper in the nest.” *Id.* at 853.

[3] Since the [Carver](#) decision, panels of this court have both questioned the wisdom of [Carver](#) and sought to read it narrowly. See [Murphy v. Cockrell](#), 505 F.3d 446, 450 (6th Cir.2007) (“[W]e limited our holding in [Carver](#) to the question of whether the First Amendment recognized a government employee’s ability to run for office as a fundamental right.”); [Myers v. Dean](#), 216 Fed.Appx. 552, 554 (6th Cir.2007) (collecting cases from other circuits in tension with [Carver](#), but concluding that it continued to be the law of this circuit). Clearly, cases involving political speech by public employees proceed on a continuum; drawing a clear line between the simple announcement of a candidacy, which does not trigger protected political speech, and an announcement coupled with speech critical of one’s opponent (and

boss), which does trigger constitutional protection, is not an easy task. In [Murphy](#), the dissenting judge expressed the dilemma in these terms:

I am not persuaded by [plaintiff’s] argument that [Carver](#) can be distinguished because she was discharged not only for the fact of her candidacy but also for the manner in which she campaigned. As the district court aptly observed, this turns “on the question of whether attacking your opponent’s political experience is akin to an expression of political beliefs.” As I see it, saying “I am a better or more experienced candidate than my boss” is nothing more than the assertion of a rival candidacy. I believe that the only reasonable conclusion to be drawn in this case is that [plaintiff] was discharged for her rival candidacy and not on account of her political beliefs or affiliations.

\*3 [Murphy](#), 505 F.3d at 456 (dissent). In [Murphy](#) the plaintiff was only terminated after a “spirited” campaign. *Id.* at 448. Furthermore, “it [was] undisputed that [defendant] terminated [plaintiff] due to her political speech *during the course of the campaign*.” *Id.* at 449 (emphasis added). In the case before us, by contrast, Parsley terminated Greenwell at the moment that he learned of the candidacy from the newspaper. The fact that he may have highlighted certain implied criticisms of the department in the newspaper account does not transform this case into one of political speech. As Parsley unequivocally told Greenwell, “you’re trying to take my job,” and there is nothing in the record to belie the conclusion that the termination was because of the candidacy. The announcement of candidacy “is nothing more than the assertion of a rival candidacy.” *Id.* at 456 (dissent). In our view, this case cannot be meaningfully distinguished from [Carver](#).

The judgment of the district court is **affirmed**. [BOYCE F. MARTIN, JR.](#), Circuit Judge, concurring. I concur separately to point out once again the weak precedential support for this Court’s decision in [Carver v. Dennis](#), 104 F.3d 847, 850-51 (6th Cir.1997), and express my hope that our Court will revisit this critical First Amendment issue en banc.

I.

As I have noted in previous decisions, see [Murphy v.](#)

Cockrell, 505 F.3d 446, 450 (6th Cir.2007), the holding in Carver was based on two decisions that do not support its final conclusion. See 104 F.3d at 850-51 (citing Bullock v. Carter, 405 U.S. 134, 143, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), and Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982)). In Bullock, the Supreme Court held simply that states have no obligation to permit a person's name to appear on the ballot. See 405 U.S. 134, 143, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972). While Clements v. Fashing did uphold a law prohibiting certain elected officials from running for the state legislature, that decision expressly distinguished cases where a civil servant is the candidate. 457 U.S. 957, 972, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982). Whether out of hostility to the First Amendment or a mere misreading of the precedent, the Carver decision expands these cases to find that a public employee may be terminated simply because of the fact of that employee's candidacy. This decision puts us in opposition with as many as six other circuits, which have held that firings based on one's political candidacy do violate the First Amendment.<sup>FN1</sup> In addition, Carver continues to be criticized and distinguished in our own circuit, see Murphy, 505 F.3d at 450; Myers v. Dean, 216 Fed.Appx. 552, 553-54 (6th Cir. Feb.9, 2007); Becton v. Thomas, 48 F.Supp.2d 747, 756 (W.D.Tenn.1999) (“[T]he Sixth Circuit clearly had no intention of using the Carver case to resolve the broader question of whether the First Amendment ever provides any protection for an individual's right to run for political office.”). Clearly, the time to revisit Carver has come.

\*4 Still, like a stray cat that hangs around the door and infests the house with fleas, this decision continues to plague this Court's jurisprudence.<sup>FN2</sup> As such, we are bound by its conclusion, and I concur in the judgment of the Court.

FN\* The Honorable Frederick P. Stamp, Jr., Senior United States District Judge for the Northern District of West Virginia, sitting by designation.

FN1. See Finkelstein v. Bergna, 924 F.2d 1449, 1453 (9th Cir.) cert. denied, 502 U.S. 818, 112 S.Ct. 75, 116 L.Ed.2d 49 (1991). See also Stiles v. Blunt, 912 F.2d 260, 265 (8th Cir.1990) (recognizing “the right to run for public office”), cert.

denied, 499 U.S. 919, 111 S.Ct. 1307, 113 L.Ed.2d 241 (1991); Flinn v. Gordon, 775 F.2d 1551, 1554 (11th Cir.1985) (“[H]e certainly had a constitutional right to run for office and to hold office once elected ...”), cert. denied, 476 U.S. 1116, 106 S.Ct. 1972, 90 L.Ed.2d 656 (1986); Washington v. Finlay, 664 F.2d 913, 927-28 (4th Cir.1981) (recognizing “[t]he [F]irst [A]mendment's protection of the freedom of association and of the rights to run for office, have one's name on the ballot, and present one's views to the electorate”), cert. denied, 457 U.S. 1120, 102 S.Ct. 2933, 73 L.Ed.2d 1333 (1982); Newcomb v. Brennan, 558 F.2d 825, 829 (7th Cir.) (holding that the “plaintiff's interest in running for Congress and thereby expressing his political views without interference from state officials ... lies at the core of the values protected by the First Amendment”), cert. denied, 434 U.S. 968, 98 S.Ct. 513, 54 L.Ed.2d 455 (1977); Magill v. Lynch, 560 F.2d 22, 27 (1st Cir.1977) (“It appears that the government may place limits on campaigning by public employees if the limits substantially serve government interests that are important enough to outweigh the employees' First Amendment rights.”), cert. denied, 434 U.S. 1063, 98 S.Ct. 1236, 55 L.Ed.2d 763 (1978).

FN2. But the cat came back the very next day / The cat came back; we thought he was a goner / But the cat came back-it just wouldn't stay away. *The Cat Came Back*, Harry S. Miller (1893).

C.A.6 (Ky.), 2008.  
Greenwell v. Parsley  
--- F.3d ----, 2008 WL 4006685 (C.A.6 (Ky.))

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**H**Greenwell v. Parsley  
W.D.Ky.,2007.

Only the Westlaw citation is currently available.

United States District Court, W.D. Kentucky,  
at Louisville.

David GREENWELL, Plaintiff

v.

Paul PARSLEY, Individually and in his capacity as  
Sheriff of Bullitt County, Kentucky, and Mack (Jim)  
McAuliffe, Individually and in his capacity as Chief  
Deputy Sheriff of Bullitt County, Kentucky,

Defendants.

**Civil Action No. 3:05-CV-768-H.**

May 8, 2007.

[Garry R. Adams, Jr.](#), Clay, Kenealy, Wagner &  
Adams PLLC, [Thomas E. Clay](#), [Thomas E. Clay](#),  
PSC, Louisville, KY, for Plaintiff.

[David P. Bowles](#), [Robert T. Watson](#), Landrum &  
Shouse, LLP, Louisville, KY, for Defendants.

#### MEMORANDUM OPINION AND ORDER

[JOHN G. HEYBURN, II](#), Chief Judge.

\*1 Plaintiff David Greenwell, former deputy sheriff of Bullitt County, filed suit against the former sheriff, Defendant Paul Parsley, for termination of employment in violation of his federal civil rights and Kentucky law. Parsley had fired Greenwell after learning that Greenwell was running against him for his position as sheriff in the upcoming election. On January 22, 2007, the Court sustained Defendant's motion for summary judgment. On January 31, 2007, Plaintiff moved to vacate that judgment.

[Fed.R.Civ.P. 59\(e\)](#) encompasses motions to vacate judgments. [Foman v. Davis](#), 371 U.S. 178, 181 (1962); [Huff v. Metropolitan Life Ins. Co.](#), 675 F.2d 119, 122 (6th Cir.1982). The decision to grant such a motion is within the sound discretion of the trial court. [Huff](#), 675 F.2d at 122. The Sixth Circuit Court of Appeals has determined, however, that a court should grant such a motion only "if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice." [GenCorp, Inc. v. Am. Int'l](#)

[Underwriters Co.](#), 178 F.3d 804, 834 (6th Cir.1999) (citations omitted).

Here, Plaintiff essentially claims that the Court's analysis represents a clear error of fact and law. The Court has fully discussed the facts in its recent Memorandum Opinion and there is little need to repeat them here. On the other hand, Plaintiff has made quite reasonable objections which have caused the Court to thoroughly review its original analysis. In the end, the Court concludes that its original analysis was sound. The Court adds the following thoughts.

#### I.

Plaintiff has reiterated his concerns about the scope of the Sixth Circuit decision in [Carver v. Dennis](#), 104 F.3d 847 (6th Cir.1997) as this Court has defined it here. Plaintiff contends that by granting Defendant's motion for summary judgment, the Court misapplied *Carver*. In that case, the defendant county clerk fired the plaintiff from her position as deputy county clerk solely because she announced her candidacy against the defendant in the upcoming election. *Id.* at 848. The *Carver* court held that termination of the plaintiff's employment upon her announced candidacy for her superior's position did not violate any First Amendment free speech or associational right, absent some allegation that the dismissal was motivated by the deputy county clerk's political beliefs, expressions, affiliation, partisan political activity, or expression of opinion. *Id.* at 851. The Sixth Circuit said that there is no fundamental right to express one's political views through candidacy. *Id.* at 850-51.

Plaintiff tries to distinguish his case from *Carver* on three grounds. While *Carver's* application here is not absolutely clear, the Court continues to respectfully disagree with Plaintiff's narrow view.

#### A.

First, Plaintiff says that his evidence is different than in *Carver*. Greenwell alleges that, unlike the plaintiff in *Carver* who was discharged solely for the fact of

her announced candidacy, he was terminated for the additional reasons of having criticized Parsley's administration and changed party affiliation. Plaintiff may make such an assertion, but he also "bears the initial burden of proving that he or she was discharged because of his or her political affiliation." Hall v. Tollett, 128 F.3d 418, 423 (6th Cir.1997). In *Carver*, plaintiff conceded the sole reason for his termination; here, the evidence requires the same conclusion. Although Plaintiff argues otherwise, he points to no additional facts of which the Court was not already aware. His arguments to the contrary are based on speculation, rather than evidence.

\*2 In some cases, the reason for an at-will employee's termination can be a relatively difficult and often disputed issue of fact. Here, the evidence is otherwise. Parsley terminated Greenwell on the same day the Courier-Journal and The Pioneer News published pieces on Greenwell's bid as Republican for Bullitt County Sheriff. The evidence seems clear. Parsley called Greenwell into his office after learning of Greenwell's election bid.<sup>FN1</sup> Parsley began that meeting by stating: "See in the paper here where you're tryin' to take my job." The whole thrust of that conversation concerned whether Greenwell was in fact running against Parsley for sheriff. In his typed statement, which was presumably written as part of his election campaign and has been submitted as an exhibit with his motion to dismiss, Greenwell further indicates that the sole reason he was fired was because he was trying to take Parsley's job as sheriff:

FN1. The meeting was taped via a recorder on Sheriff Parsley's desk.

On September 7, 2005 while responding to a burglary in our county, I was summoned to the office of the sheriff. The sheriff Paul Parsley called me into his office and placed a copy of the Courier Journal [sic] newspaper in front of me. Highlighted was an article that contained statements that I had made about my intensions [sic] to run for the office of sheriff and changes that I would like to see for Bullitt County.

I was immediately fired! Sheriff Parsley stated to me that he should not have to pay me to try and take his job.

Parsley further testified that the reason he fired Greenwell was because "he wanted to take my job away from me." Greenwell presents no evidence to counter this stated and obvious reason. That the firing arose from other reasons, such as his change of party affiliation or his disagreement about policies, is merely Plaintiff's speculation. As the court held in *Carver*, seeking election against a person's boss for his job is an act of insubordination not protected by the First Amendment. 104 F.3d at 851.

B.

Plaintiff next argues that *Carver* does not apply because the plaintiff there was defendant's only employee, whereas Greenwell was one of thirty-seven deputy sheriffs. Plaintiff suggests that the *Carver* rule can only apply in a small office setting. This Court does not believe that this is so.

In support of his argument, Plaintiff incorrectly states that the *Carver* court applied the "balancing test" set forth in Donlin v. Watkins, 814 F.2d 273, 277 (6th Cir.1987). However, the Sixth Circuit in *Carver* did not use the *Pickering* balancing test used in *Donlin*. Carver, 104 F.3d at 847. Although the lower court had used the *Pickering* balancing test, the Sixth Circuit explicitly held that *Pickering* did not apply because the basis for the plaintiff's discharge was solely the fact that she was trying to take the job of her employer. *Id.* Insubordination in seeking his boss's position was not a constitutional right of the plaintiff, so the court need not apply the balancing test. The Court believes that the same is true here. Because Greenwell was fired solely for seeking his boss's position, *Pickering* does not apply, and this Court need not examine whether a close working relationship existed that would afford the sheriff a wide degree of deference in his firing decisions.

C.

\*3 Finally, Greenwell contends that *Carver* does not apply because it involved a nonpartisan election in which the candidates were directly opposed to one another; whereas, in this case, the candidates were running for office from different political parties. Therefore, Plaintiff argues, Parsley and Greenwell were not in direct opposition to one another in the primary elections and *Carver* should not apply. The

Court is unpersuaded by this argument. Greenwell's intention, regardless of the necessary steps to achieve it, was to unseat Parsley. By declaring his bid for the election, Greenwell announced his intent to compete with his boss for his position. Such an action is an act of insubordination not protected by the First Amendment, and Parsley legally terminated Greenwell's employment.

II.

Any time an employee announces his candidacy against his boss, such an action constitutes either a public policy or political statement. However, *Carver* says that the First Amendment does not protect such candidacy statements. Even if Greenwell had presented evidence of some history of disagreement between himself and Parsley, the result here would not change. Parsley did not act until Greenwell expressed his policy or political views by filing for office. On our facts, it is certain that Parsley acted because Greenwell filed for office against him and not for any other reason. There is certainly room for argument about the *Carver* doctrine. However, if Greenwell is allowed to proceed to trial on this evidence, then the *Carver* rule means very little. For all these reasons, the Court will not give *Carver* such a narrow reading. The Court maintains its view that a reasonable reading of *Carver* requires dismissal of this case.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff David Greenwell's motion to vacate is DENIED.

This is a final order.

W.D.Ky.,2007.  
Greenwell v. Parsley  
Not Reported in F.Supp.2d, 2007 WL 1406955  
(W.D.Ky.)

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**H**Greenwell v. Parsley  
W.D.Ky.,2007.

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United States District Court, W.D. Kentucky,  
at Louisville.

David GREENWELL, Plaintiff

v.

Paul PARSLEY, Individually and in his capacity as  
Sheriff of Bullitt County, Kentucky, and Mack (Jim)  
McAuliffe, Individually and in his capacity as Chief  
Deputy Sheriff of Bullitt County, Kentucky,  
Defendants.

**Civil Action No. 3:05CV-768-H.**

Jan. 22, 2007.

[Garry R. Adams, Jr.](#), Clay, Kenealy, Wagner &  
Adams PLLC, [Thomas E. Clay](#), [Thomas E. Clay](#),  
PSC, Louisville, KY, for Plaintiff.

[David P. Bowles](#), [Robert T. Watson](#), Landrum &  
Shouse, LLP, Louisville, KY, for Defendants.

#### MEMORANDUM OPINION

[JOHN G. HEYBURN II](#), Chief U.S. District Judge.

\*1 Plaintiff, David Greenwell, was a deputy sheriff of Bullitt County; Defendant, Paul Parsley, was the Sheriff of Bullitt County. Greenwell alleges that Parsley terminated his employment in violation of his federal civil rights under [42 U.S.C. § 1983](#) and [§ 1985](#) and in violation of his rights under Kentucky law. Parsley says that he terminated Greenwell because Greenwell had announced his intention to seek Parsley's job in the upcoming election. Discovery is now complete and both Defendants have moved for summary judgment.<sup>FNI</sup>

<sup>FNI</sup>. In his response, Greenwell agreed to dismiss all claims against another Defendant, Mack McAuliffe and the claims against both Defendants under [42 U.S.C. § 1985](#).

I.

Prior to becoming deputy sheriff under Defendant Parsley, Greenwell worked as Bullitt County Deputy

Jailer. Greenwell was appointed a Deputy Sheriff in Bullitt County in January of 1999. Parsley has worked in some capacity with the Bullitt County Sheriff's office since 1978. Parsley was elected Bullitt County Sheriff in 1998 and took office in 1999. Although Greenwell was a Democrat when he began working for Sheriff Parsley in 1999, he recently switched parties and is now a registered Republican.

On Wednesday, September 7, 2005, the Courier-Journal published an article chronicling Greenwell's intent to run as the Republican candidate for Sheriff and his filing with the Kentucky Registry for Election Finance. On the same day, in The Pioneer News, an editorial was published also discussing Greenwell's bid as a Republican for Bullitt County Sheriff.

On that same day, Parsley called Greenwell into his office and told him that he was terminated. Parsley told Greenwell that he had read in the paper about Greenwell's political plans. Parsley has stated that his reason for terminating Greenwell was because "he wanted to take my job away from me." Later that same day, Greenwell's cousin, Mack McAuliffe related to Greenwell that he thought he had made a mistake. He said that Greenwell should apologize to the Sheriff and withdraw his bid, in the hopes Sheriff Parsley would restore his job. Greenwell told Mack that he had every right to his opinions.

After his termination, Greenwell applied for a job as Deputy Sheriff in Nelson County. He began to work in Nelson County in January of 2006. When Greenwell showed up to meet with Sheriff Newton of the Nelson County Sheriff's Department, Sheriff Newton acted as if he did not know Greenwell, gave Greenwell "the runaround" and had given the position to somebody else. Shortly thereafter, Greenwell went to Shepherdsville to pass out campaign fliers and ran into former Chief Deputy of the Bullitt County Sheriff's Office, Larry Hawkins. Mr. Hawkins asked Greenwell if the rumors were true regarding Parsley thwarting Greenwell's attempts to get a new job. Greenwell mentioned the incident which had just occurred with Sheriff Newton in Nelson County and Mr. Hawkins informed him that he had heard Parsley told Sheriff Newton that

Greenwell was a “trouble maker and lazy and no count” and to do himself a favor and not hire Greenwell.

Greenwell prevailed in the primary election for the Republican candidate for Sheriff on May 16, 2006. Parsley ran against Donnie Tinnell, former Louisville and Shepherdsville police officer, in the primary elections. Mr. Tinnell prevailed as the Democratic candidate on the same date. Ultimately, Greenwell defeated Tinnell in the general election of 2006.

## II.

\*2 Greenwell says that he was speaking out on issues of public concern and that he was fired for doing so. The problem here is that Greenwell chose to express his political views by running for the political office held by his boss. The question then presented is whether Parsley fired Greenwell for expressing his political beliefs in a certain manner or because Greenwell decided to challenge Parsley for his current job. The evidence shows beyond any doubt that Greenwell expressed his views by running for office. Under these circumstances, [Carver v. Dennis](#), 104 F.3d 847 (6th Cir.1997) governs our case and requires dismissal.

In *Carver*, the Sixth Circuit held that the First Amendment free speech and associational rights do not protect the deputy clerk's right to run for office against her boss. *Id.* at 853. The Court distinguished between expressing one's political views by speaking on issues or supporting a particular candidate as compared to actually attempting to take over an office, which the court viewed as an act of insubordination. *Id.* at 851-53. The facts of our case fall squarely in line with *Carver*.

The Court can find no evidence suggesting that Greenwell was dismissed based on his political beliefs, his political affiliations or due to patronage concerns. All of the evidence points to the conclusion that Parsley was upset that his own employee would enter a political race against him and that he fired Greenwell for that reason. Thus, it was not a dismissal based on politics at all, except to the extent that running for public office is a political exercise in a broad sense. *Id.* at 850.

The Court is not persuaded by Greenwell's attempts

to distinguish *Carver* from our facts. Under *Carver* the First Amendment is deemed not to protect actions which are less akin to the exercise of political speech and more like an act of direct insubordination. Certainly, Greenwell's actions fall into the latter category. In *Carver*, both sides agreed that the plaintiff was terminated because she tried to oust her boss, not because of any particular political view. Similarly, Greenwell presents no actual evidence he was communicating any particular expression or that Parsley opposed any particular viewpoint. What Parsley opposed was the political act of Greenwell seeking his defeat at the polls. The record permits no escape from the fact that Greenwell, like *Carver*, was fired because he filed for announcing his intention to take his boss's office. *See id.* at 853.

Greenwell likens his claim to that in [Heggen v. Lee](#), 284 F.3d 675 (6th Cir.2002). In doing so, Greenwell seems merely to make the legal argument that conducting a personal political campaign against one's boss is the same as speaking out on an issue of public concern. The Court disagrees with Greenwell's view of the law and a review of *Heggen* confirms this. In *Heggen*, the Sixth Circuit held that a deputy sheriff could not be terminated on the grounds of his political affiliation. The court confirmed that the discharge of an employee for patronage reasons alone, such as the failure to support a party of the sheriff in a recent election, did raise First Amendment concerns. *Id.* at 680. The instant case, however, presents a deputy sheriff going far beyond the mere expression of a political viewpoint to the point of personal insubordination. Therefore, the rule in *Heggen* does not control.

\*3 The evidence is absolutely clear that Parsley fired his deputy, Greenwell, because the deputy chose to enter a political campaign to oust his boss from office. Greenwell certainly had a right to run for office. However, the First Amendment does not provide constitutional cover for him to do so against the very person who hired him and supervised him.

## III.

The Court will also discuss Greenwell's state law claims. Greenwell's wrongful termination claim fails for essentially the same reasons as his First Amendment claims. All of the evidence points to Greenwell's decision to run for the political office

held by his boss as the factor leading to his termination. [KRS 95.017](#) protects all manner of political activity of uniformed employees. However, that statute does not protect a person who seeks personally to unseat his boss.

Greenwell has no claim under [KRS 15.520](#), because deputy sheriffs are designated as at-will employees under [KRS 70.030\(1\)](#). The Court concludes that this specific statute governs the employment and removal of deputy sheriffs under Kentucky law. Finally, the outrage claim is dismissed because Parsley's actions fall far short of the kind of outrageous or emotionally damaging conduct required to support such a claim.

The Court will enter an order consistent with this  
Memorandum Opinion.

W.D.Ky.,2007.  
Greenwell v. Parsley  
Not Reported in F.Supp.2d, 2007 WL 196896  
(W.D.Ky.)

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