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for the Third Circuit

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8-25-2016

## Jeffrey Heffernan v. City of Paterson

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 14-1610

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JEFFREY J. HEFFERNAN,  
Appellant

v.

CITY OF PATERSON;  
MAYOR JOSE TERRES;  
POLICE CHIEF JAMES WITTIG;  
POLICE DIRECTOR MICHAEL WALKER

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil No. 2-06-cv-03882)  
District Judge: Honorable Kevin McNulty

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Before: VANASKIE, GREENBERG, and COWEN, *Circuit Judges*.

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ORDER

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**AND NOW**, upon issuance of the mandate of the United States Supreme Court in the case of *Heffernan v. City of Paterson, N.J.*, 136 S. Ct. 1412 (2016), reversing the judgment entered by this Court, and remanding for further proceedings;

**IT IS HEREBY ORDERED AND ADJUDGED** that the order of the District Court entered on March 5, 2014 is vacated insofar as it granted the motions for summary judgment filed by Defendants, and this matter is remanded for further proceedings. This

Court holds that the waiver doctrine does not apply to the issues identified by the United States Supreme Court. We further hold that, if, at the time Plaintiff was disciplined, the City of Paterson had in effect (whether written or unwritten) a neutral policy prohibiting police officers assigned to the Office of the Chief of Police from overt involvement in political campaigns, such a policy meets constitutional standards.

We direct the District Court following discovery to conduct a trial (1) to determine whether there was in fact such a neutral policy prohibiting police officers assigned to the Office of the Chief of Police from overt involvement in any political campaign of which Plaintiff was aware or reasonably should have been aware; and, if the answer to Question (1) is yes, (2) to determine whether Plaintiff was disciplined for what reasonably appeared to be a violation of that policy. If both Questions (1) and (2) are answered in the affirmative, a judgment should be entered in favor of Defendants. If either Question (1) or Question (2) is answered in the negative, Defendants are liable for any resulting damages.

We recommend, but do not hold, that the District Court first try the liability phase of this matter. Thereafter, a bifurcated determination should be made as to damages if that be necessary. We leave the bifurcation decision to the sound discretion of the District Court.

Pursuant to Local Appellate Rule 33.4, the Court refers this matter to Mr. Joseph A. Torregrossa, Chief Appellate Mediator, for mediation. To allow for appellate

mediation, issuance of the mandate is stayed pending further order by this Court.

BY THE COURT,

s/ Thomas I. Vanaskie  
Circuit Judge

Dated: August 25, 2016