

FILED

APR 11 2008

Freitag v. Ayers, No. 07-16200

NOONAN, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

As the Supreme Court acknowledged in its 5-4 decision in *Garcetti v. Ceballos*, 547 U.S. 416, 126 S. Ct. 1951 (2006), it has been difficult to differentiate between citizen speech and employee speech “that has some potential to affect the entity’s operation.” Difficult, delicate as the differentiation is, it seems to me that *Freitag* wrote Terhune as a professional prison employee.