

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL CLANCEY

Plaintiff

v.

THE CITY OF COLLEGE STATION,
GLENN BROWN, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITIES, AND
KATHY MERRILL, IN HER
INDIVIDUAL AND OFFICIAL
CAPACITIES

Defendants

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CIVIL ACTION NO. _____

§ JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Michael Clancey, and complains of Defendants, the City of College Station, and Glenn Brown and Kathy Merrill, in their individual and official capacities, and for his cause of action would show the Court as follows:

I.
INTRODUCTION

1. This action seeks equitable relief, actual and compensatory damages, punitive damages, attorney's fees, expert witness fees, taxable costs of court, prejudgment and post-judgment interest for the procedural and substantive due process violations, as well as the equal protection violations and First Amendment retaliation suffered by Plaintiff in the course of his employment with the City of College Station.

2. Plaintiff demands a jury on all issues triable to a jury.

II.
PARTIES

3. Plaintiff, Michael Clancey, is a resident of Gilbert, South Carolina.

4. Defendant City of College Station is a Texas Governmental Entity. Service of the Summons and this Complaint may be served through the City Secretary, Connie Hooks, 1101 Texas Avenue, College Station, Texas 77840.

5. Glenn Brown is a resident of the State of Texas. Service of the Summons and this Complaint may be served at the following address: 1101 Texas Avenue, College Station, Texas 77840.

6. Defendant Kathy Merrill is a resident of the State of Texas. Service of the Summons and this Complaint may be served at the following address: 1101 Texas Avenue, College Station, Texas 77840.

7. Whenever in this Complaint it is alleged that Defendant committed any act or omission, it is meant that the Defendant's officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of employment of the Defendant's officers, directors, vice-principals, agents, servants, or employees.

III.
JURISDICTION AND VENUE

8. This is a civil action over which this court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4).

9. The Court has personal jurisdiction over Defendants since it is located within the State of Texas and thus maintains sufficient minimum contacts with the State of Texas.

10. Moreover, the acts about which the Plaintiff complains occurred within the State of Texas.

11. Venue is proper in the Southern District of Texas, under 28 U.S.C. § 1391(b) since a substantial part of the events or omissions giving rise to this cause of action occurred in the Southern District of Texas.

12. This Court has jurisdiction over all claims in this action.

13. All conditions precedent to filing this cause of action have been met.

IV. **FACTS**

14. Michael Clancey began a distinguished career in law enforcement 30 years ago.

15. Clancey started in law enforcement in 1979 as a Uniformed Patrol Officer for the City of Alexandria Police Department, in Alexandria Virginia.

16. After only three years as a Patrol Officer, Clancey was promoted to a Criminal Investigator—the first in a series of promotions he would receive within the Department. Clancey was made a sergeant after only 7 years on the force.

17. Clancey was subsequently promoted to Lieutenant, and ultimately to Captain within the Alexandria Police Department.

18. After an impeccable 20 years in the Alexandria Police Department, Clancey accepted a position as Chief of Police for the City of Westerville, Ohio.

19. As Chief of Police for the City of Westerville, Clancey was responsible for a department of 72 sworn Police Officers, in addition to reserve officers, non-sworn officers and dispatchers. Clancey was also responsible for a budget of over \$9 million annually.

20. In addition to his official duties as Chief of Police, Clancey was also actively involved in the community, and implemented a number of activities for the community to interact with the City of Westerville Police Department.

21. For all of his efforts, Clancey was routinely recognized by both his peers, and other governmental figures, as a dedicated public servant.

22. In January 2005, Clancey accepted the position as Chief of Police for the City of College Station.

23. In this position, Clancey became responsible for an annual budget of approximately \$13 million, and was responsible for a staff of over 160 employees, over 100 of whom were sworn Peace Officers.

24. In three years on the job, Clancey implemented numerous new policies which made the Department operate significantly more efficient, and far more effectively than in previous years.

25. In fact, Clancey's performance led to a steady three-year decline in the College Station crime rate, which was down 16% at time he left.

26. Moreover, during Clancey's tenure, his department received flagship status for having outstanding policies and procedures from a national accreditation agency, and was the only agency within the State of Texas with that designation.

27. By all objective measures, Clancey was rapidly improving the College Station Police Department.

28. However, once again, Clancey did not confine his tasks to simply his official police duties. Rather, Clancey became actively involved in the College Station community.

29. During his employment, Clancey regularly expressed disagreement over certain City policies.

30. For example, when the City first considered implementing red light cameras, the program was justified as a revenue-generating program, and was listed for public discussion and comment on the City Council docket.

31. Clancey voiced his opposition to the description of the program, explaining that he believed that the red light project should be based upon concerns for public safety.

32. This matter was not raised by Clancey in his official capacity. Rather, Clancey expressed his opinion as a citizen of College Station.

33. Moreover, the issue raised by Clancey was a matter of legitimate and public concern.

34. Clancey also regularly spoke out on the City's staffing needs, stating that he believed that the City was critically understaffed and that the staffing needs of the City had to be promptly addressed.

35. Once again, the City's staffing situation addressed by Clancey was a matter of public concern.

36. Defendant was not receptive to the matters raised by Clancey and the opinions he expressed on the issues. Rather than consider the issues raised by Clancey, Defendant began to retaliate against him in order to remove him from his position.

37. Shortly after Clancey expressed his opinion on these matters, he was inexplicably given a counseling for "poor performance" by City Manager, Glenn Brown, and Assistant City Manager, Kathy Merrill, and was warned to improve his performance.

38. At the time they gave Clancey the performance warning, Mr. Brown and Ms. Merrill failed to provide any details for how Clancey could improve his performance. Rather, Clancey was simply told to improve his performance by November 1, or he would be subject to termination, and provided no direction that would allow him to meet management's expectations.

39. Subsequent to his performance warning, Defendants privately accused Clancey of violating City policy, untruthfulness and unbecoming conduct. Unbeknownst to Clancey, Defendants then commenced an investigation into the allegations against him.

40. Although Clancey was not informed of the allegations against him, on October 26, 2007, he was told by Defendants that he was being terminated.

41. At that time, Defendants gave Clancey the option to resign from his position as Chief of Police, or be terminated.

42. Prior to his being informed that he would be terminated, Defendants never gave Clancey notice of the charges against him and never explained the evidence against him that would support the charges.

43. Moreover, Defendants failed to inform Clancey of his rights under the Supreme Court's decision in *Cleveland Board of Education v. Loudermill*, and did not allow Clancey the opportunity to present his side of the story in response to the charges and evidence against him.

V.

CAUSE OF ACTION NO. 1-VIOLATION OF 42 U.S.C. § 1983-
CLEVELAND BOARD OF EDUCATION v. LOUDERMILL

44. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

45. As described above, by threatening Plaintiff with termination, and forcing Plaintiff to resign without informing Plaintiff of his *Loudermill* rights, and without giving notice of the charges and an explanation of the evidence against him, Defendant City of College Station violated the due process clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

46. As a result of Defendant's actions, Plaintiff has suffered loss of wages, both in the past and in the future, as well as emotional pain, mental anguish,

suffering, inconvenience, loss of enjoyment of life in the past, and in all probability will continue to suffer in the future.

VI.
CAUSE OF ACTION NO. 2-VIOLATION OF 42 U.S.C. § 1983-
FIRST AMENDMENT RETALIATION

47. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

48. As described above, Defendants Brown, individually and in his official capacity and Merrill, individually and in her official capacity, retaliated against Clancey for his statements made on matters of legitimate and public concern, in violation of the First and Fourteenth Amendments to the United States Constitution and in violation of 42 U.S.C. § 1983.

49. All retaliatory acts alleged against Brown and Ms. Merrill, policy makers and final decision makers for the City of College Station, were taken under color of the laws and regulations of the State of Texas.

50. Brown and Ms. Merrill each have the authority to remedy the wrongdoing.

51. As a result of Defendants' actions, Plaintiff has suffered loss of wages, both in the past and in the future, as well as emotional pain, mental anguish, suffering, inconvenience, loss of enjoyment of life in the past, and in all probability will continue to suffer in the future.

VII.
ATTORNEY'S FEES

52. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

53. Plaintiff is entitled to recover attorney's fees and costs for bringing this action.

VIII.
JURY DEMAND

54. Plaintiff requests a trial by jury on all issues triable by a jury in this case.

IX.
RELIEF REQUESTED

55. Plaintiff prays for the following relief:

- a. For actual damages for the period of time provided by law, including appropriate backpay and reimbursement for lost pension, insurance, and all other benefits;
- b. For compensatory damages as allowed by law;
- c. For punitive damages as allowed by law;
- d. For attorneys' fees;
- e. For pre-judgement and post-judgement interest as allowed by law;
- f. For costs of court, costs of prosecuting Plaintiff's claim; and
- g. For such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SHELLIST LAZARZ, LLP

By: /s/ Nasim Ahmad

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