

I. PARTIES

1. Plaintiff, Patti Grey, is a natural person whose primary residence is located in Texarkana, Miller County, Arkansas, which is in this judicial district.
2. Defendant Harold E. Boldt is a resident of Texarkana, Miller County, Arkansas, and can be served at P.O. Box 2711, Texarkana, Texas 75504.
3. Defendant City of Texarkana, Arkansas, is a municipal corporation and can be served by serving its Mayor, N. Wayne Smith, at P.O. Box 2711, Texarkana, Texas 75504.
4. Defendant Director Laney J. Harris is a resident of Texarkana, Miller County, Arkansas, and can be served at P.O. Box 2711, Texarkana, Texas 75504.
5. Defendant Director Rev. Londell Williams is a resident of Texarkana, Miller County, Arkansas, and can be served at P.O. Box 2711, Texarkana, Texas 75504.
6. Defendant Director James Mike Jones is a resident of Texarkana, Miller County, Arkansas, and can be served at P.O. Box 2711, Texarkana, Texas 75504.
7. Defendant Director Sue Johnson is a resident of Texarkana, Miller County, Arkansas, and can be served at P.O. Box 2711, Texarkana, Texas 75504.

II. JURISDICTION

8. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. § 1331. This is a claim for damages arising under the First and Fourteenth Amendment to the Constitution of the United States, and the Family and Medical Leave Act (FMLA), all as more fully set forth below.

9. This Court should also exercise jurisdiction over the claim that Defendants violated the Arkansas Whistle-Blowers Act, the claim of defamation, and the claim of the tort of

outrage, pursuant to Section 1367 of Title 28 of the United States Code, for the following reasons:

- (a) The action for damages and injunctive relief, which is alleged in Counts One through Four of this Complaint, arises under the First and Fourteenth Amendment to the Constitution of the United States, the FMLA, and Section 1983 of Title 42 of the United States Code, and jurisdiction of the action is conferred on the Court by Section 1331 of Title 28 of the United States Code.
- (b) The action for violation of the Arkansas Whistle-Blowers Act, the tort of defamation, and the tort of outrage, which are alleged in Counts Five through Seven, are so related to the claim in the action alleged in Counts One through Four that the claims in Counts One through Four and Counts Five through Seven form part of the same case or controversy under Article III of the United States Constitution.
- (c) The violation of the Arkansas Whistle-Blowers Act, the defamation claim, and the tort of outrage claim, which are alleged in Counts Five through Seven, neither raise a novel or complex issue of state law, nor substantially predominate over the violation of Plaintiff's First and Fourteenth Amendment rights, which are alleged in Counts One through Three of this Complaint, or Plaintiff's rights under the FMLA, which is alleged in Count Four of this Complaint.
- (d) There are no compelling reasons for the Court to decline jurisdiction over the violation of the Arkansas Whistle-Blowers Act, the defamation claim, or the claim of the tort of outrage, which are alleged in Counts Five through Seven.

III. VENUE

10. Venue is proper in the Western District of Arkansas, Texarkana Division, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

11. Venue is also proper in the Western District of Arkansas, Texarkana Division, pursuant to 28 U.S.C. § 1391(b)(1) because Defendants reside in this district and all Defendants are residents of the State in which the district is located.

IV. FACTS

12. Patti Grey was an employee of the City of Texarkana, Arkansas, for over twenty (20) years, the last fourteen (14) of which she served as City Clerk.

13. On or around March 18, 2013, Harold Boldt was terminated as city manager due to multiple conflicts created by his conduct, such as failing to receive board approval for expenditures over \$25,001.00, and for directing expletive words at a citizen during a board of directors' meeting.

14. Senator Jimmy Hickey and/or Representative Mary "Prissy" Hickerson requested information from Mayor Smith about certain city checks that were stamped with the dual signature stamp, containing both Plaintiff Grey and Harold Boldt's name.

15. Both Senator Hickey and Representative Hickerson sit on the Executive Committee of the Legislative Joint Auditing Committee.

16. Mayor Smith, in turn, asked Plaintiff about these checks.

17. Ms. Grey responded to the Mayor by giving him a notarized statement containing a list of over twenty (20) checks where her stamp was used without her knowledge, and she also told Mayor Smith that the signature stamp was kept in the Finance Department.

18. Ms. Grey's statement was turned over to the Arkansas Division of Legislative Audit.

19. One of the checks Mayor Smith inquired about was Check No. 21633 drawn on the City of Texarkana, Arkansas General Fund Account in the amount of \$584,500.00 and issued to Texarkana Hotels, LLC. This money was used to pay for furniture, fixture, and equipment for Texarkana Hotels, LLC. This payment was in direct violation of A.C.A. § 14-47-120 and Ordinance L-275, which requires the expenditure of funds be for capital needs of the city.

Additionally, the expenditure was in violation of City Ordinance 2-72, which requires board approval for any expenditure over \$25,000.00. Board approval was not given for this expenditure.

20. Another check Mayor Smith inquired about was Check No. 21709 drawn on City of Texarkana, Arkansas, General Fund Account in the amount of \$676,523.00 and issued to Texarkana Hotels, LLC. This expenditure was in violation of City Ordinance 2-72, which requires board approval for any expenditure over \$25,000.00. Board approval was not given for this expenditure.

21. As a result of Plaintiff Grey's notarized statement, on the October 7, 2013, board meeting, Mayor Smith presented the board with a new check signing policy, which the City Board unanimously passed.

22. At this same October 7, 2013, board meeting, the City Board also voted to rehire City Manager Harold Boldt with an effective date of October 8, 2013.

23. The week following his rehire as city manager, Defendant Boldt began the process of terminating Plaintiff's employment with the city.

24. On October 15, 2013, Defendant Boldt wrote a memorandum to Plaintiff accusing her of telling board members that he stole the dual signature stamp, which contained both his and Plaintiff's name.

25. In this memorandum, he directly instructed her "NOT" to speak to "ANYONE" regarding the investigation.

26. Defendant Boldt also stated that Plaintiff "took her marching orders from the Mayor." However, her job description specifies that she receives direction from both the city manager and the Board of Directors, which includes the Mayor.

27. Defendant Boldt and Co-Defendant Director/Assistant Mayor Mike Jones initiated an internal police investigation on November 13, 2013, to determine whether Plaintiff made the alleged statements regarding the dual signature stamp.

28. Defendant Director/Assistant Mayor Mike Jones published a memorandum to the Chief of Police for Texarkana, Arkansas, accusing Plaintiff of making statements that Defendant Boldt stole the dual signature stamp.

29. The police investigation confirmed that Ms. Grey was truthful regarding statements she made about her stamp being kept in the Finance Department and being used without her knowledge.

30. Defendant Directors Harris, Williams, and Jones all wrongfully accused Plaintiff Grey of stating to another Director that Defendant Boldt stole the dual signature stamp in signed affidavits.

31. Defendant Boldt also made comments to the Texarkana Gazette accusing Plaintiff of saying that Defendant Boldt stole the dual signature stamp.

32. Mr. Boldt admitted in the police report that the City was violating "sound financial policy or principle" by keeping the stamp in the Finance Department.

33. During this time period, the issue of the unauthorized check payment to various entities along with the alleged improper use of the dual signature stamp became a matter of concern to members of the public in Texarkana, Arkansas.

34. Citizens attended board meetings to voice their concerns with these issues.

35. During this time period, the City of Texarkana, Arkansas, employed 50 or more employees who worked twenty (20) or more workweeks in 2013 and the preceding calendar

year. Therefore, the City of Texarkana, Arkansas, is a “covered employer” under the Family and Medical Leave Act (FMLA).

36. Plaintiff worked for Defendant City for 1,250 hours over the previous twelve months. Plaintiff worked at a location for the Defendant City with 50 or more employees, or with sufficient employees within 75 miles. Therefore, Plaintiff is a “covered employee” under the FMLA.

37. Plaintiff was entitled to twelve workweeks of unpaid leave pursuant to the FMLA, subject to providing sufficient documentation. This was also provided in the City’s employee handbook. *See* City of Texarkana, Arkansas Personnel Policy § 4.17.

38. In November 2013, Plaintiff requested leave under the FMLA and the City’s employee handbook.

39. With her request, Plaintiff submitted sufficient documentation from a physician to support her leave request.

40. The City either denied Plaintiff’s request or failed to respond to Plaintiff’s request. Either action by the City effectively denied Plaintiff her federal right to leave under the FMLA, despite the City Attorney’s recommendation to the City, in a memorandum, that denial of leave would be difficult to defend as the doctor’s reasons qualified for leave independently.

41. On February 3, 2014, Plaintiff was terminated by Defendant Boldt. He cited the police investigation results as the reason for the termination. The police report does not contain any interviews of the Directors, even though Defendant Boldt’s specific accusation against Ms. Grey was that she told Board members he stole the stamp.

42. At the time of her termination, Ms. Grey was earning \$74,089.60 a year plus benefits.

43. On February 18, 2014, the Board denied Ms. Grey the opportunity to present her side in response to Defendant Boldt's allegations at the Board of Directors' meeting.

44. The Board of Directors' Administrative Rules and Procedures states, "...members of the public will be offered an opportunity to speak on all questions presented to the Board on that particular meeting's agenda."

45. The Board of Directors may circumscribe a citizen's right to speak at a Board Meeting, but only if the Board acts to suspend the Administrative Rules and Procedures by a two-thirds vote.

46. The Board of Directors failed to obtain the required two-thirds majority vote to suspend the Administrative Rules and Procedures at the February 18, 2014, meeting.

47. Representative Mary P. Hickerson, Senator Jimmy Hickey, and Prosecuting Attorney Carlton D. Jones requested an audit from the Division of Legislative Audit on the City of Texarkana and City Manager Harold Boldt's activities.

48. The audit uncovered multiple violations of Arkansas law, including wrongdoing for the \$584,500 check that was utilized to pay two "invoices" from Texarkana Hotels, LLC, and which Plaintiff originally reported to Mayor Smith.

V. CAUSES OF ACTION

COUNT ONE

Constitutional and Civil Rights Pursuant to 42 U.S.C. §§ 1983, 1988

Violation of First Amendment Speech Rights

(Against all Defendants)

49. The foregoing allegations are incorporated as if re-alleged herein.

50. The conduct of the Defendants violated and continues to violate the Plaintiff's Constitutional and substantive due process rights.

51. Upon information and belief, the individual board members, named herein, and Defendant Boldt, individually and in concert with, determined to retaliate against Plaintiff for her notarized statement to Mayor Smith. Said retaliation would not have occurred but for Plaintiff's public comments on her suspicions of the signature stamp being used without her knowledge.

52. Said Defendants further retaliated against Plaintiff, under the color of state law, by singling her out for adverse directives, disciplinary treatment, interfering with her job performance without just cause, and based on the notarized statement made by Plaintiff, to retaliate against her for her exercise of her constitutional free speech rights.

53. Defendants' termination of Plaintiff from her position as city clerk deprived and continues to deprive Plaintiff of her right to free speech guaranteed by the First Amendment thereto and constituted and continues to constitute retaliation for the Plaintiff's exercise of said right, causing the damages alleged herein.

54. The termination complained of herein was brought in bad faith by Defendant Boldt because it is intended to punish Plaintiff for her exercise of her constitutionally protected right of free speech on a matter of public concern.

55. Defendants' initiation of a police investigation into whether Plaintiff made the alleged statements deprived and continues to deprive Plaintiff of her right to free speech guaranteed by the First Amendment thereto, and constitutes retaliation for the Plaintiff's exercise of said right, causing the damages alleged herein.

56. Defendant City of Texarkana, Arkansas's refusal to rehire Plaintiff despite clear evidence that the termination was in retaliation for the exercise of her right to free speech

deprived and continues to deprive Plaintiff of her right to free speech guaranteed by the First Amendment thereto. The City's retaliation for Plaintiff's exercise of said right caused the damages alleged herein.

57. Defendants had no justification for treating Plaintiff differently for exercising her right to free speech when she made the notarized statement.

58. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiff is entitled to compensatory damages against them, jointly and severally, as well as exemplary damages and statutory attorney's fees provided for violation of her civil rights.

COUNT TWO
Unconstitutional Prior Restraint Pursuant to
42 U.S.C. §§ 1983, 1988
Violation of First and Fourteenth
Amendment Rights of Free Speech
(Against all Defendants)

59. The foregoing allegations are incorporated as if re-alleged herein.

60. Defendant Boldt prohibited Plaintiff from speaking to anybody regarding her suspicion that someone had used her signature stamp without her knowledge.

61. Any speech regarding the use of her signature stamp by someone without authority was protected speech as it was made by her in her capacity as a citizen. Plaintiff Grey had the unfettered right to speak to anyone regarding any unauthorized use of the dual signature stamp. Investigating the unauthorized use of the dual signature stamp or providing comment to anyone on the use of the dual signature stamp was not one of Plaintiff Grey's official job duties as city clerk. The city clerk of Texarkana, Arkansas, is tasked with the responsibilities of keeping a record of all proceedings, maintaining custody of the city seal, record all ordinances and bylaws, and keep a record of all real property owned by the city. Ark. Code Ann. § 14-43-506

(West); Ark. Code Ann. § 14-43-406; Ark. Code Ann. § 14-55-205. Defendant Boldt's clear mandate prohibiting Plaintiff Grey from speaking on said matters essentially strips Plaintiff of her right as a citizen to criticize the government, which is the specific fundamental right the First Amendment was designed to protect. The First Amendment to the United States Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. amend. I. The First Amendment protections are applicable to all states through the Fourteenth Amendment. U.S. Const. amend. XIV. Defendant Boldt's prohibition chilled Plaintiff's exercise of protected speech. The improper use of the signature stamp is a criticism of government officials and a matter of public concern.

62. The alleged statements of Defendant Boldt barring Plaintiff's speech on a matter of public concern at issue here constitute impermissible violations of Plaintiff's rights under the First Amendment to the United States Constitution. This prohibition against Plaintiff exercising her right to freedom of speech is a prior restraint of her First Amendment right of free speech.

63. Defendant(s) had no justification for treating Plaintiff differently for exercising her right to speak.

64. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiff is entitled to compensatory damages against them, jointly and severally, as well as exemplary damages and statutory attorney's fees provided for violation of her civil rights.

COUNT THREE
Unconstitutional Deprivation of Procedural Due Process
Pursuant to 42 U.S.C. § 1983
Violation of Fourteenth Amendment Right to Procedural Due Process
(Against All Defendants)

65. The foregoing allegations are incorporated as if re-alleged herein.

66. Plaintiff had a constitutionally protected liberty interest in her “good name, reputation, honor, and integrity...” See *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971).

67. Plaintiff had a right to notice of a hearing and an opportunity to be heard. *Id.*

68. Defendants, acting under the color of state law, prohibited Plaintiff Grey and/or her attorney from speaking at the Board Meeting, immediately prior to the Board’s vote on whether to approve the City Manager’s termination of Plaintiff Grey, in direct violation of the applicable board rules and the Fourteenth Amendment.

69. Plaintiff suffered damages from this violation of her procedural due process rights guaranteed to her by the Fourteenth Amendment to the United States Constitution.

COUNT FOUR
Violation of the Family Medical Leave Act

70. The foregoing allegations are incorporated as if re-alleged herein.

71. Plaintiff had a federally protected right to twelve workweeks of unpaid leave pursuant to the Family and Medical Leave Act.

72. Defendant City unlawfully interfered with, restrained, and denied Plaintiff from exercising her rights provided by the Family Medical Leave Act.

73. Plaintiff’s request for leave pursuant to the FMLA may have been a contributing factor in the Defendants’ actions in wrongfully terminating Plaintiff on February 3, 2014. Such

retaliatory action by the Defendants toward the Plaintiff for attempting to take leave for which she was rightfully entitled violates Plaintiff's rights under the FMLA.

74. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiff is entitled to lost wages, lost benefits, additional liquidated damages, reinstatement, interest, attorney's fees, and court costs.

COUNT FIVE
Arkansas Whistle-Blower Act
Title 21, Subchapter 6 et seq.
Violation of the Arkansas Whistle-Blower Act
(Against all defendants)

75. The foregoing allegations are incorporated as if re-alleged herein.

76. Senator Jimmy Hickey and/or Representative Mary "Prissy" Hickerson requested information from Mayor Smith regarding the unauthorized use of the dual signature stamp that contained both Plaintiff Grey and Harold Boldt's signature.

77. Plaintiff, a public employee, communicated in good faith to an appropriate authority the presence of her stamp on approximately twenty (20) checks without her knowledge. She also told Mayor Smith about the stamp being kept in the Finance Department.

78. Pursuant to the request of Senator Hickey and/or Representative Hickerson and Mayor Smith, this information was then submitted to the Division of Legislative Audit.

79. Defendant Boldt terminated Plaintiff's employment with the City of Texarkana, Arkansas, in retaliation for Plaintiff communicating this information to the Division of Legislative Audit.

80. The aforementioned Board of Directors, in concert with Defendant Boldt, further retaliated against Plaintiff by affirming the termination of Plaintiff's employment, despite clear evidence that the termination was wrongful and unjustified.

81. Plaintiff suffered irreparable damages as a result of this retaliation, including lost wages, lost benefits, damage to reputation, and attorney's fees.

COUNT SIX
Defamation
(Against all defendants)

82. The foregoing allegations are incorporated as if re-alleged herein. The following defamatory statements were made:

- Defendant Boldt made comments to the board of directors accusing Plaintiff of saying that Defendant Boldt stole the dual signature stamp.
- Defendant Boldt made comments to the Texarkana Gazette, which were subsequently published, accusing Plaintiff of saying that Defendant Boldt stole the dual signature stamp;
- Defendant Boldt published an internal memorandum accusing Plaintiff Grey of saying that Defendant Boldt stole the dual signature stamp;
- Defendant Directors Harris, Williams, and Jones all wrongfully accused Plaintiff Grey of stating to another Director that Defendant Boldt stole the dual signature stamp in signed affidavits.
- Defendant Jones published a memorandum to the Chief of Police for Texarkana, Arkansas, accusing Plaintiff of making statements that Defendant Boldt stole the dual signature stamp.

83. All of the above defamatory statements directly injured Plaintiff's reputation and diminished the esteem, respect, and goodwill in which she was held.

84. All defendants directly identified Plaintiff as the target of their derogatory speech.

85. Defendants published these defamatory statements by sharing or discussing the statements with others.

86. None of the defamatory statements were true. The police investigation did not support Defendant Boldt's accusation that Plaintiff Grey accused Defendant Boldt of stealing the signature stamp.

87. These defamatory statements have caused Plaintiff significant damages to her reputation and her relationship to the community. Further, these statements have and will continue to have a detrimental effect on Plaintiff's professional reputation and her ability to further her career.

COUNT SEVEN
Tort of Outrage
(Against Defendants Boldt and Jones)

88. The foregoing allegations are incorporated as if re-alleged herein.

89. Defendant Boldt willfully and wantonly engaged in extreme and outrageous conduct by accusing Plaintiff falsely of saying he stole the dual signature stamp, publishing defamatory comments about Plaintiff to others, including the Texarkana Gazette, and for firing Plaintiff in blatant disregard of the facts.

90. Defendant Jones willfully and wantonly engaged in extreme and outrageous conduct by initiating a police investigation against Plaintiff when he had no knowledge of any wrongdoing and by falsely communicating defamatory statements to others regarding Plaintiff.

91. This action was outside Defendant Jones official capacity as a director. The police department, including the chief of police, report to the city manager, not any individual director. *See* City of Texarkana, Arkansas Organizational Chart (2013). Additionally, City Ordinance M-52, Rule 6.03 states that the Board of Directors does not "involve itself with individual personnel matters and day to day operations of the City." Initiating a police investigation is outside the scope of Director Jones' duties as a director.

92. The conduct of both Defendant Boldt and Defendant Jones proximately caused damage to Plaintiff Grey in the nature of extreme emotional distress.

VI. DAMAGES

93. As a proximate result of the Defendants' acts, Plaintiff suffered injuries which would not have otherwise occurred. Plaintiff Patti Grey pleads for all damages available under federal law, Arkansas state law, and equity, including, but not limited to:

- Lost Wages
- Lost Benefits
- Damage to Reputation
- Reinstatement, if feasible
- Attorney's Fees and Costs
- Punitive Damages
- Pre and Post Judgment Interest
- For such other and further relief, at law and in equity, to which Plaintiff may show herself entitled.

VII. JURY DEMAND

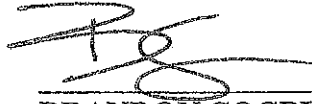
94. Plaintiff asserts her rights under the Seventh Amendment to the United States Constitution, and pursuant to Fed. R. Civ. P. 38, demands a trial by jury on all issues.

VIII. CONCLUSION

95. Plaintiff requests that Defendants be cited in terms of law to appear and answer herein; that upon final trial and hearing, Plaintiff be awarded judgment against the Defendants; for lost wages and benefits; for other compensation lost; for additional liquidated damages; for other actual damages; for reinstatement, if feasible at the time; and for such other and different amounts as Plaintiff shall show by proper amendment before trial; for pre and post-judgment

interest at the applicable legal rate; for attorneys' fees; for all Court costs incurred in this litigation; and for such other and further relief, at law and in equity, both general and special, to which Plaintiff may show herself entitled to and to which the Court believes herself deserving.

Respectfully submitted,



BRANDON COGBURN

Arkansas Bar No. 02094

Texas State Bar No. 24038824

Email: bcogburn@arwhlaw.com

LOUISE TAUSCH

Arkansas Bar No. 86212

Texas State Bar No. 19680600

Email: ltausch@arwhlaw.com

**ATCHLEY, RUSSELL, WALDROP
& HLAVINKA, L.L.P.**

1710 Moores Lane -- P. O. Box 5517

Texarkana, Texas 75503

TEL: 903/792-8246 FAX: 903/792-5801

ATTORNEYS FOR PLAINTIFF

PATTI GREY