

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ROBERT D. FRANKLIN,)	
)	
Plaintiff,)	Case No.
)	
v.)	Judge
)	Magistrate Judge
CITY OF MT. JULIET, TENNESSEE,)	
LINDA ELAM, as Mayor of the City of)	Jury Demand
Mt. Juliet and individually, and)	
SHEILA LUCKETT, officially and)	
individually,)	
)	
Defendants.)	

COMPLAINT

For his Complaint against Defendants the City of Mt. Juliet, Tennessee, and Linda Elam and Sheila Lockett, in their official and individual capacities, Plaintiff Robert D. Franklin states:

PARTIES

1. Plaintiff is a citizen and resident of Mt. Juliet, Tennessee, and a former employee of Defendant City of Mt. Juliet.
2. Defendant City of Mt. Juliet is a Tennessee municipal corporation organized and existing under the laws of the State of Tennessee.
3. Defendant Elam is a citizen and resident of Mt. Juliet, Tennessee, and the Mayor of the City of Mt. Juliet.
4. Defendant Lockett is a citizen and resident of Mt. Juliet, Tennessee, and the City Recorder and former Acting City Manager of the City of Mt. Juliet.

JURISDICTION AND VENUE

5. This is a retaliatory discharge from employment action brought under 42 U.S.C. § 1983; the Tennessee Public Employee Political Freedom Act, Tenn. Code Ann. § 8-50-601 *et seq.* (“PEPFA”); and the Tennessee Public Protection Act, Tenn. Code Ann. § 50-1-304 (“TPPA”). The Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(4), and 1367(a). Venue is proper under 28 U.S.C. § 1391.

FACTS

6. Mr. Franklin served as the Director of Planning, or City Planner, for the City of Mt. Juliet from January 8, 2001 until July 13, 2007.

7. Mr. Franklin was qualified for his job with the City and performed his job duties in an exemplary manner.

8. In the spring of 2007, Mr. Franklin engaged in constitutionally and legally protected activity by speaking and/or engaging in speech activity on matters of public concern, by opposing and refusing to remain silent about illegal and unethical activity, and by participating in investigations of illegal and/or unethical activity.

9. On April 20, 2007, Mr. Franklin testified in an ethics investigation of Defendant Elam that had been ordered by the Mt. Juliet City Commission following its receipt of a written ethics complaint against Elam by the former Director of Public Works, Hatton Wright.

10. Mr. Franklin also engaged in protected activity by speaking to the City Manager, City Commissioners, the Planning Commission, the City Attorney, the Planning Attorney, citizens and members of the public, and local friends and family members about matters of public concern and conduct that he reasonably believed to be illegal and/or unethical. Mr. Franklin spoke in public meetings in March, April, May, and June 2007 and to elected officials,

including but not limited to Vice-Mayor Ed Hagerty, Commissioner Ray Justice, and Commissioner Jim Bradshaw, about conduct that he reasonably believed to be in violation of laws, regulations, rules, ordinances, codes, and the City's charter and policies, including but not limited to the under funding of the Joint Economic Community Development Board fund, the breaching of the City's contract with the JECDB and potential loss of state grants, the illegal and/or improper contracting of zoned property and making re-zonings conditional upon a land owner donating land that could violate laws, regulations, rules and the like and lead to litigation, the illegal intimidation of employees and the ignoring and disregarding of rulings of the City Board of Zoning Appeals, and violations of the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-101, *et seq.*

11. Testifying in a deposition in an ethics investigation and speaking to public officials about matters of public concern or illegal and/or unethical conduct was not part of Mr. Franklin's regular or official job duties, and his testimony and speech or speech conduct was not given pursuant to a duty as Director of Planning but rather, as a cooperative person being interviewed about his knowledge of Elam's alleged unlawful and/or unethical conduct and as a concerned citizen exposing what he believed to be graft, corruption and wrongdoing in the local government.

12. Mr. Franklin testified, asserted and communicated that Elam had attempted to improperly persuade or pressure him into withholding information concerning certain subdivision regulations and requirements from the City's Planning Commission by accusing him of attempting to interfere with her private employer's alleged land ownership rights and/or by suggesting that his conduct could result in litigation against the City for inverse condemnation.

13. The City Commission ultimately censured Defendant Elam for the portion of the ethics complaint filed by the former Director of Public Works concerning her communication with Mr. Franklin described in paragraph 12 above.

14. Mr. Franklin testified, asserted and communicated that Elam was attempting to obtain special consideration for a private builder by calling a special meeting and advocating that it should be allowed to waive building standards and obtain permits before it had completed foundation and/or infrastructure work and use its own private inspectors, all in contravention of the City's building ordinances, standards and policies.

15. Mr. Franklin testified, asserted and communicated that Elam attempted to have him place items on meeting agendas in an improper fashion and became angry at him for carrying out the duties of his position.

16. Mr. Franklin testified, asserted and communicated that Elam's employment with her private employer violated the Code of Ethics and unreasonably inhibited or interfered with her performance of official duties as Mayor and constituted an unethical conflict of interest that could be used to disapprove zoning requests by her employer's competitors.

17. Mr. Franklin testified, asserted and communicated that Elam violated the City's Personnel Ordinance and ethical obligations with respect to accusations made against the Director of Public Works that could lead to litigation, that she was improperly hostile and abusive toward the Director of Public Works, and that her conduct discouraged employees from opposing or reporting gender discrimination and other unlawful conduct.

18. Mr. Franklin testified, asserted or communicated that Elam improperly discharged and/or caused the separation of employment of the former City Manager, Robert Shearer, and the constructive discharge of former Director of Public Works, Hatton Wright, and violated various

laws, rules, regulations, ordinances and/or codes and the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-101, *et seq.*

19. Defendants and their agents and attorneys knew or should have known of Mr. Franklin's engaging in protected activity as described above at the time that they decided to terminate his employment.

20. Mr. Franklin suffered an adverse employment action in that Defendant City, by and through its agents Defendants Elam and Luckett, discharged him from his employment with the City on July 13, 2007. Certain agents of the City advised, aided, abetted and allowed the discharge decision rendering the City liable for conduct attributable to it by operation of law.

21. As Acting City Manager at the time of Mr. Franklin's discharge, Defendant Luckett was Mr. Franklin's immediate supervisor who controlled the terms and conditions of his employment, had authority to discharge him, and ostensibly made the decision to discharge him.

22. Upon information and belief, Defendant Luckett terminated Mr. Franklin's employment in concert with or with the encouragement and ratification of or at the direction, demand or improper coercion of Defendant Elam.

23. Defendants Elam and Luckett had final policy making authority on behalf of the City and they abused their authority under color of state law in effectuating the discharge of Mr. Franklin and others, including but not limited to the former City Manager and the former Director of Public Works, rendering them individually liable.

24. The conduct of Defendants Elam and Luckett violated clearly established statutory and constitutional rights of which they and objectively reasonable persons in their positions would have known, and such conduct was unreasonable in light of those clearly established rights.

25. There was a causal connection between Mr. Franklin's engaging in protected activity and his discharge, which activity was acutely near in time to his discharge.

26. Defendants' purported reasons for discharging Mr. Franklin are pretexts for retaliation. The reasons that Defendants provided, published and communicated for terminating Mr. Franklin's employment are false and defamatory and unworthy of credence. Mr. Franklin's engaging in protected activity, speaking or engaging in speech conduct on matters of public concerns, opposing and refusing to remain silent about illegal and/or unethical activity, and participating in investigations of illegal and/or unethical activity motivated and caused his discharge. Defendants retaliated against Mr. Franklin in violation of 42 U.S.C. § 1983, the PEPFA, and the TPPA.

27. Defendants' conduct described herein was undertaken with malice or with reckless disregard for and indifference to Mr. Franklin's protected rights and was intentional, malicious, reckless and/or fraudulent.

28. As a result of Defendants' conduct, Mr. Franklin has lost income and other privileges and benefits of employment, has suffered embarrassment, humiliation, stress, anxiety, inconvenience, damage to his reputation and standing in the community, and loss of enjoyment of life, and has incurred attorneys' fees and expenses.

CLAIMS

29. Mr. Franklin incorporates all of the paragraphs above as if fully stated in each count below.

Count I – All Defendants Violation of 42 U.S.C. § 1983 / First Amendment Retaliation

30. Defendants deprived Mr. Franklin of his rights secured by the Constitution while acting under color of state law.

31. Mr. Franklin engaged in constitutionally protected speech activity on matters of public concern and his interest in such activity outweighs the City's interest in promoting the efficiency of the public service it provides as an employer.

32. Mr. Franklin's speech activity did not disrupt the workplace and Defendants had no legitimate competing interest in prohibiting it for the Court to balance.

33. Mr. Franklin suffered an adverse employment action in that he was discharged from employment on July 13, 2007, and his discharge would chill an ordinary person in the exercise of his or her constitutional rights.

34. Mr. Franklin's speech activity was a substantial or motivating factor in his discharge.

35. Defendants terminated Mr. Franklin's employment in violation of 42 U.S.C. § 1983.

36. Defendants' conduct was undertaken with malice or reckless disregard for or indifference to Mr. Franklin's federally protected rights.

37. Defendants' conduct harmed and caused damage to Mr. Franklin.

**Count II – Defendant City
Violation of PEPFA**

38. Mr. Franklin's exercise of his right to communicate with elected and other public officials was a substantial or motivating factor in his discharge.

39. Defendants terminated Mr. Franklin's employment in violation of the PEPFA.

40. Defendant's conduct was intentional, reckless, malicious, and/or fraudulent.

41. Defendant's conduct harmed and caused damage to Mr. Franklin.

**Count III – Defendant City
Violation of TPPA**

42. Defendants terminated Mr. Franklin's employment solely because he exercised his constitutional and statutory rights and refused to participate in or remain silent about conduct that violated, or that he reasonably believed violated or would violate, a law, regulation, or rule intended to protect the public health, safety or welfare.

43. Defendants terminated Mr. Franklin's employment in violation of the TPPA.

44. Defendants' conduct was intentional, reckless, malicious, and/or fraudulent.

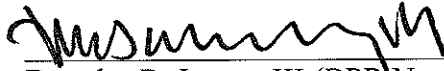
45. Defendants' conduct harmed and caused damage to Mr. Franklin.

RELIEF REQUESTED

Mr. Franklin respectfully requests:

1. A jury trial;
2. Back pay and damages for lost benefits;
3. Reinstatement or front pay;
4. Compensatory damages for embarrassment, humiliation, stress, anxiety, inconvenience, and loss of enjoyment of life;
5. Punitive damages;
6. Treble damages under the PEPFA;
7. Attorneys' fees and expenses;
8. Prejudgment interest and, if applicable, post-judgment interest;
9. Such other and further legal or equitable relief to which he may be entitled.

Respectfully submitted,



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