

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

PATTY HECTOR

PLAINTIFF

v.

CASE NO. 4:25-cv-91-JM

**MATTHEW BRUMLEY, SALINE COUNTY JUDGE,
IN HIS OFFICIAL CAPACITY, AND SALINE COUNTY,
ARKANSAS**

DEFENDANTS

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

On February 3, 2025, the Plaintiff filed her Complaint in this case, alleging that her termination as the Director of the Saline County Library (1) was a violation of her First Amendment Constitutional rights and (2) was the result of an unconstitutional “bill of attainder.” Doc. # 1. For the reasons set forth herein, the Defendant is entitled to summary judgment as a matter of law.

II. ARGUMENT

The Plaintiff claims (1) that her First Amendment rights were violated by the Defendant when she was terminated from her position as Saline County Library Director and (2) that she was the victim of an unlawful “bill of attainder.” Because the Plaintiff cannot prove that the Defendant violated her rights, however, the Defendants are entitled to summary judgment as a matter of law.

Summary Judgment Standard

“Summary judgment is appropriate when there is no dispute between the parties as to any genuine issues of material fact and when the moving party is entitled to a judgment as a matter of law.” *Get Away Club, Inc. v. Coleman*, 969 F.2d 664 (8th Cir. 1992). All facts and inferences

are looked at in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Qualified Immunity Standard

Public officials and employees are entitled to qualified immunity unless their alleged conduct violates “clearly established statutory or constitutional rights or which a reasonable person in their positions would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The purpose of qualified immunity is to allow public officials to perform their duties in a manner they believe to be correct without fear for their own financial well being. *Sparr v. Ward*, 306 F.3d 589, 593 (8th Cir. 2002). “Toward this end, the rule has evolved that an official performing discretionary functions will generally be immune from liability unless a reasonable person in his position would have known his actions violated clearly established law.” *Id.* (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

A court engaged in a qualified immunity inquiry uses a two step process. *Lawyer v. City of Council Bluffs*, 361 F.3d 1099, 1103 (8th Cir. 2004). The first question is, taken in the light most favorable to the party asserting the injury, whether the facts alleged show that the official’s conduct violated a constitutional right. *Craighead v. Lee*, 399 f.3d 954, 961 (8th Cir. 2005)(citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). If the facts, taken in the light most favorable to the party asserting the injury, show that the official’s conduct violated a constitutional right, the second question is whether the right was clearly established. *Id.* Those questions can now be considered by the Court in any order. *See Pearson v. Callahan*, 555U.S. 223 (2009).

Only One Defendant: Saline County, Arkansas

The Plaintiff's Complaint purports to sue two Defendants, (1) Matthew Brumley, Saline County Judge, in his official capacity, and (2) Saline County, Arkansas. Doc. # 1. Because those Defendants are legally identical and redundant, however, the Plaintiff has actually sued only one Defendant: Saline County, Arkansas. It is well-settled that a suit against a county official or employee, in her official capacity, is the equivalent of a suit against the county itself. *See Liebe v. Norton*, 157 F.3d 574, 578 (8th Cir. 1998); *see also Hafer v. Melo*, 502 U.S. 21, 25 (1991). Official capacity suits represent "only another way of pleading an action against an entity of which an officer is an agent." *See Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985) (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978)). In short, "an official capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Id.* At 166 (citing *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985)). **Furthermore, multiple official capacity claims against officials and employees of the same entity are legally identical and redundant, such that the dismissal of one precludes further litigation of any of the others.** *See Baker v. Chisom*, 501 F.3d 920 (8th Cir. 2007), *cert denied*, 554 U.S. 902. As such, Saline County is the only Defendant in this case.

A. No First Amendment Retaliation

The Plaintiff's first claim in this case is that she was terminated from her job as Saline County Library Director by County Judge Matt Brumley, allegedly in retaliation for exercising her First Amendment right to free speech regarding controversies surrounding the Saline County Library and citizens' concerns about children's access to certain explicit and otherwise objectionable books at the Library. *See* Doc. No. 1. For a number of reasons, however, the

Plaintiff cannot prove First Amendment retaliation and the Defendant, Saline County, is therefore entitled to summary judgment as a matter of law.

1. Plaintiff's Speech was Not Protected Under *Garcetti*.

In *Garcetti v. Ceballos*, the Supreme Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes." 547 U.S. 410, 421 (2006). The Court further explained that speech that "owes its existence to a public employee's professional responsibilities" is not protected by the First Amendment. *Id.* at 421–22. The Eighth Circuit has repeatedly recognized that *Garcetti* fundamentally changed the analysis governing public-employee speech.

In *McGee v. Public Water Supply District No. 2*, the Eighth Circuit explained that, after *Garcetti*, "[a] public employee's speech is not protected by the First Amendment if it 'owes its existence' to his professional responsibilities." 471 F.3d 918, 921 (8th Cir. 2006). Although the employee raised issues involving environmental and public safety—subjects plainly of public concern—the court nevertheless held the speech unprotected because it was made in the course of performing his governmental duties.

Likewise, in *Bradley v. James*, 479 F.3d 536 (8th Cir. 2007), the Eighth Circuit held that complaints made by a public employee concerning matters encountered through his employment were unprotected because they were made pursuant to his official responsibilities. The court affirmed summary judgment for the defendants.

Similarly, in *Bonn v. City of Omaha*, 623 F.3d 587 (8th Cir. 2010), the Eighth Circuit concluded that internal communications made while carrying out assigned responsibilities constituted employee speech rather than citizen speech and therefore fell outside the protection of the First Amendment.

Most significantly, in *Lyons v. Vaught*, the Eighth Circuit reaffirmed that *Garcetti* forecloses First Amendment claims whenever speech is made "pursuant to" official duties—not merely when the speech is expressly required by a written job description. The court emphasized that determining whether speech is made pursuant to official duties is a "practical inquiry" and expressly recognized that *McGee* controls cases involving employee speech arising from official responsibilities.

Here, the undisputed evidence establishes that Plaintiff's statements owed their existence to official duties. In fact, the Plaintiff made these public comments in a television news interview conducted *in her office* at the Saline County Library. Ex. 2, Plaintiff's multiple interviews with local news agencies (including the articles attached as part of the Exhibits and the interviews at these links <https://www.facebook.com/reel/204338959006272> and <https://www.youtube.com/watch?v=IGuOUnaLoIU>). In those interviews, the Plaintiff often wore her Saline County Library Director name tag, and she struck a decidedly antagonistic tone, accusing the tax-paying residents who had raised concerns of being racist and homophobic and deceitfully hid nefarious motives behind a false claim of concern for their children. *Id.* Plaintiff made the statements in the government office in which she worked, during work hours (she was paid for the time she spent in the interview), and in the midst of performing her official duties. *Id.* The speech concerned matters Plaintiff encountered solely through her public employment, was communicated in connection with governmental operations, and was directed toward individuals raising concerns about those operations. *Id.* Also, and importantly, the Plaintiff was the only one making public comments on behalf of the Library. Put simply, Plaintiff's speech "owed its existence" to her professional responsibilities.

The fact that Plaintiff may characterize the subject matter as one of public concern does not alter the analysis. As *Garcetti* makes clear, the dispositive question is not whether the content of the speech could interest the public; rather, it is whether Plaintiff spoke as a citizen or as a public employee performing official duties.

As the Eighth Circuit explained, *Garcetti* requires dismissal once the court determines that the employee spoke pursuant to official duties. *McGee*, 471 F.3d at 921; *Lyons*, 875 F.3d 1168, 1174–76 (8th Cir. 2017). Accordingly, Plaintiff cannot establish an essential element of a First Amendment retaliation claim. Because no constitutional violation occurred, Defendants are entitled to summary judgment.

2. Alternatively, Plaintiff Can not Make a *Prima Facie* Case of First Amendment Retaliation.

Alternatively, even if the Court finds that the Plaintiff's speech was not made pursuant to her official duties, the record in this case would not allow a reasonable finder of fact to conclude that the Plaintiff's First amendment rights had been violated.

"[T]he First Amendment restrains the government from retaliating against a public employee based on the employee's speech or associations." *Morris v. City of Chillicothe*, 512 F.3d 1013, 1018 (8th Cir. 2008) (free association claim); see *Wingate v. Gage County Sch. Dist.*, No. 34, 528 F.3d 1074, 1080-81 (8th Cir. 2008) (free speech claim); *McGee v. Public Water Supply Dist. # 2*, 471 F.3d 918, 919 (8th Cir. 2006) (free speech claim). First Amendment employment retaliation claims are analyzed under a three-step burden-shifting test. *Morris v. City of Chillicothe, et al*, 512 F.3d 1013, at 1018 (2008). First, a public employee must show that she suffered an adverse employment action that was causally connected to her participation in a protected activity. *Duffy v. McPhillips*, 276 F.3d 988, 991 (8th Cir. 2002), *see also Graning v. Sherburne County*, 172 F.3d 611, 615 (8th Cir. 1999). Once the employee satisfies her initial

burden, the burden shifts to the employer to show a legitimate, nonretaliatory reason for his or her actions. *Duffy, supra*. Finally, if the employer meets this burden, the burden shifts back to the employee to show that the employer's actions were a pretext for illegal retaliation. *Id.* This third step of showing that a defendant's justification for the adverse employment action is unworthy of credence is harder to overcome than the *prima facie* case because evidence of pretext is viewed in the light of the employer's justification. *Smith v. Allen Health Sys., Inc.*, 302 F.3d 827, 834 (8th Cir. 2002).

As to the first step in the analysis, there is no dispute that Plaintiff was terminated from her position as the Saline County Library Director, but there is no evidence to show that her termination was caused by retaliation to any protected First Amendment speech.

The only causation evidence even suggested by the Plaintiff in this case was a purported closeness in time between the speech and the termination. Eighth Circuit Court of Appeals has, depending on the circumstances, assigned varying weights to evidence of temporal proximity between protected conduct and an adverse employment action: The perceived import of such temporal proximity has ranged from being sufficient, by itself, to create an inference of causation, see, e.g., *Bassett v. City of Minneapolis*, 211 F.3d 1097, 1105 (8th Cir. 2000), and *O'Bryan v. KTIV Television*, 64 F.3d 1188, 1193 (8th Cir. 1995), to being nothing more than a "slender reed of evidence," *Caudill v. Farmland Industries, Inc.*, 919 F.2d 83, 87 (8th Cir. 1990), that was not enough to support an inference of causation, see, e. g., *id.* at 86-87, and *Nelson v. J.C. Penney Company, Inc.*, 75 F.3d 343, 346-47 (8th Cir. 1996), cert. denied, 519 U.S. 813, 136 L. Ed. 2d 23, 117 S. Ct. 61 (1996).

In this case, there was, in fact, no temporal proximity between the unprotected speech and the termination. The interviews the Plaintiff conducted with local news agencies (in her

office during work hours) was on April 20, 2023 and she was not terminated until October 9, 2023, some six months later. In any analysis, this is not the kind of “very close” proximity that is even deemed probative by the Supreme Court. *See, e.g., Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273, 121 S. Ct. 1508, 1511, 149 L. Ed. 2d 509 (2001). Even if it were, furthermore, the Eighth Circuit has repeatedly held that, “[g]enerally, more than a temporal connection between the protected conduct and the adverse employment action is required to present a genuine factual issue on retaliation.” *Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1136 (8th Cir. 1999) (citations omitted). The Plaintiff’s beliefs are of no effect and do not create a genuine issue of material fact that precludes summary judgment. *Marler v. Mo. Bd. of Optometry*, 102 F.3d 1453, 1457 (8th Cir. 1996).

In the end, there is no causal connection between Plaintiff’s exercise of her First Amendment speech and the decision to terminate her employment as the Library Director. Defendant is entitled to judgment as a matter of law.

3. Alternatively, the Plaintiff Was Terminated For Legitimate, Non-retaliatory Reasons and Cannot Establish Pretext by the Defendant.

The evidence in this case shows that there was a legitimate, nonretaliatory reason for the Plaintiff’s non-selection. The Plaintiff was an at will employee when employed as the Saline County Library Director. Generally, the law in this state is that an employer or an employee may end an employment relationship at will. *St. Edward Mercy Med. Ctr. v. Ellison*, 58 Ark. App. 100, 946 S.W.2d 726 (1997). Under the employment-at-will doctrine, an at-will employee may be discharged for good cause, no cause, or even a morally wrong cause. *Id.*

The evidence shows that the basis for Brumley’s decision to terminate the Plaintiff were completely unrelated to the substance of Plaintiff’s public statements. Ex. 1, Brumley Affidavit. His reasons were legitimate, nonretaliatory, and not in violation of any public policy. *Id.* As

the Library Director, Ms. Hector demonstrated concerning behaviors, including, but were not limited to, stating on the Saline County Library podcast that Judge Brumley, as well as the Quorum Court, approved a merger with the Garland County Library, despite the fact that she had not discussed the issue with me. She also sent emails to the Saline County Library Listserv impliedly asking library patrons to contact Quorum Court members to not vote for ordinance 2023-17. There were also issues brought to light during a Legislative Audit regarding commingling of funds to the “Friends of the Saline County Library” 501(c)(3) with the actual Saline County Library funds. Ex. 1, Brumley Affidavit.

Judge Brumley did not terminate Ms. Hector’s employment based on the substance of any of her remarks. Ms. Hector’s employment was terminated (1) because she refused to foster constructive conversations regarding the issues surrounding the Saline County Library in 2023, (2) because she refused to engage in any tangible efforts to remediate, conciliate, or even hear out citizens’ concerns (instead calling them names and accusing them of deceit and ill motives), (3) because she repeatedly said - and acted as though - none of the major functions of the Library (except for making unilateral public statements for the Library) were “her job,” and (4) based on other behaviors (described above) where Judge Brumley thought she had misused her position, provided incorrect and misleading information to patrons on official library media to sway the Quorum Courts’ vote on ordinance 2023-17, and her lack of professionalism, failure to listen to patrons and responding with name calling and insults, all of which stirred the controversy in the community. Ex. 1, Brumley Affidavit

In the end, the evidence shows that Judge Brumley made his decision to terminate the Plaintiff on legitimate, non-retaliatory grounds. The Plaintiff can offer no proof to show that the reasons proffered by Judge Brumley are a pretext for retaliation. In fact, she cannot even show

that her speech was protected (under *Garcetti*) or the cause of her termination. Accordingly, Saline County is entitled to summary judgment.

B. No Bill of Attainder

The Plaintiff cannot, on the facts, establish the existence of an unconstitutional bill of attainder in this case. While the Court has previously held that the allegations of the Complaint stated a plausible claim that Saline County Ordinance 1978-01 constituted an unconstitutional bill of attainder, the Plaintiff cannot present sufficient proof to allow the claim to proceed to trial.

In its Order on the Defendant’s earlier motion for judgment on the pleadings, the Court held that a bill of attainder is a “legislative act which inflicts punishments on named individuals or easily ascertainable groups without a judicial trial” and that the “definitional elements” were “specificity in identification, punishment, and lack of a judicial trial.” Doc. # 14 (citing *United States v. O’Brien*, 391 U.S. 367, 384, at n.30 (1968)). Of course, in the text of the ordinance at issue here, the Plaintiff was not specifically identified nor was any punishment mandated.

On the issue of identification, the Court’s earlier Order found that “[w]hile the ordinance does not identify Plaintiff Hector, a jury could find from the alleged facts and allowable inferences that the reason the quorum court passed the ordinance was to get rid of her as Director of the Saline County Library. Doc. # 14 at p. 6. While that finding was part of an order denying a motion for judgment on the pleadings, the same finding, respectfully, cannot be made on summary judgment for several reasons. First, and whatever the jury *might* find about the Quorum Court’s subjective, but unstated, “reason” for passage of the ordinance, for the ordinance to constitute a bill of attainder, it must actually “identify” the individual to be punished; without dispute, the Plaintiff was not identified in the ordinance. Further, where, as

here, the Plaintiff is seeking to impose bill of attainder liability under 42 U.S.C. §1983 based on the action of the executive (there appear to be no cases where this has actually ever happened), she would have to prove that the subjective, but unstated, “reason” for the passage of the ordinance was (1) actually conveyed to the executive by the legislative body (as it was indisputably not conveyed by the text of the ordinance) (2) that the legislative body had the authority to compel the punitive action by the executive, (3) that the legislative body did, in fact, actually mandate a particular punishment, and (4) that the executive actually imposed punishment because of the ordinance and not for any other reasons. The Plaintiff cannot offer any evidence on any of these points.

With respect to the issue of punishment, this Court’s previous Order cited Eighth Circuit case law: “To rise to the level of ‘punishment’ ... harm must fall within the traditional meaning of legislative punishment, fail to further a non-punitive purpose, or be based on a [legislative] intent to punish” and that “a sanction of mandatory forfeiture of job or office has long been considered punishment under the bill of attainder clause.” Doc. # 14, p. 6 (citations omitted). The Court also noted that, while the executive terminated the Plaintiff’s employment, the prohibition against bills of attainder applies to “legislative acts, no matter what their form. *Id.* (citation omitted). This final point is critical on summary judgment. No matter how analyzed, a bill of attainder claim must establish that the alleged punishment was a “legislative act.” Thus, even if the Court were inclined to impose bill of attainder liability under 42 U.S.C. §1983 based on the action of the executive (again, apparently for the first time), she would still have to prove - with respect to the punishment as with identification - (1) that the identity of the individual to be punished, along with the punishment, was actually conveyed to the executive by the legislative body (as these items were indisputably not conveyed by the text of the ordinance) (2)

that the legislative body had the authority to compel the punitive action by the executive, (3) that the legislative body did, in fact, actually mandate a particular punishment against a particular individual, and (4) that the executive actually imposed punishment because of the ordinance and not for any other reasons. Without such proof, the Plaintiff cannot establish that the alleged punishment of the Plaintiff was, in fact, a “legislative act.” Again, though, the Plaintiff cannot offer any evidence on any of these points.

As a final note, the Defendant would offer an analogy. Just as with the ordinance in question in this case, Amendment 55 to the Arkansas Constitution gave oversight to all county employees, including the authority to hire and fire those employees, to the County Judge. Just as with the ordinance in this case, no individuals or punishments are specified in Amendment 55, yet County Judges around the state have fired hundreds - if not thousands - of employees since its passage. Likewise, Arkansas statutory law also allows Quorum Courts to restructure county executive offices in their respective counties in any number of ways, most of which would grant new oversight to a particular county executive official over a group of new employees. *See, e.g.*, Ark. Code 14-14-601, et seq. That is all that the ordinance at issue in this case does (granting oversight to the County Judge of County Library employees), of course, at least textually. To be clear, the Defendant is not arguing that Amendment 55 or the Arkansas Code are bills of attainder - they clearly are not. Rather, the Defendant is highlighting the problems with the expansion of bill of attainder liability beyond its constitutional parameters (e.g., where no individual or punishment is identified or effected by the actual legislative enactment), especially without strict proof requirements as to coordination and causation where the challenged act is an otherwise broadly discretionary act by the executive rather than a personalized punishment mandated by the legislature.

III. CONCLUSION

For the reasons set forth herein, the Defendant respectfully requests that it be granted summary judgment as a matter of law and the dismissal of the Plaintiff's Complaint with prejudice.

Respectfully submitted,

MATTHEW BRUMLEY, SALINE COUNTY
JUDGE, IN HIS OFFICIAL CAPACITY, AND
SALINE COUNTY, ARKANSAS, Defendants

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