

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

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

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants' motion for summary judgment relies almost entirely on Judge Brumley's post-deposition declaration. But in neither his declaration nor his summary-judgment papers does Judge Brumley acknowledge the significant evidence that contradicts his account. There is ample proof to support a jury finding that Judge Brumley's declaration is not credible and that he fired Plaintiff for her speech. As to whether that speech is protected, Defendants are wrong on the law and fail even to address Plaintiff's statement at the citizen-comment portion of the May 2023 Quorum Court meeting—a comment that she plainly made as a citizen and that, as the evidence shows, Judge Brumley cited as a reason for firing her. And though Defendants try to relitigate the Court's earlier order on the attainder claim, the law has not changed and Plaintiff's facts have only gotten stronger in discovery. For these reasons and others discussed below, the Court should deny Defendants' motion for summary judgment.<sup>1</sup>

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<sup>1</sup> Plaintiff agrees with Defendants that, for legal purposes, Saline County and Judge Brumley acting in his official capacity are one and the same. Because Judge Brumley was "acting as the final decisionmaker for the county," Saline County is liable for his action in firing Plaintiff. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986). Defendants briefly discuss the qualified-immunity standard, but they do not argue that the Defendants are

### FACTUAL BACKGROUND

Defendants’ only factual summation is the account provided in Judge Brumley’s declaration. Besides citing some of Plaintiff’s statements to the media, Defendants mention *none* of the evidence from the depositions and documents. Much of what they present as “undisputed fact” through Judge Brumley’s declaration is in reality disputed or dependent upon Judge Brumley’s credibility—a determination that the Court cannot make at this stage. Plaintiff will provide a factual summation that relies upon the record developed during discovery, with appropriate citations.

Around the beginning of 2023, citizens who were upset about the content of materials in the collection of the Saline County Library began complaining about those materials to elected county officials, demanding that books be removed from the library. Ex. 4 at 18 (“Hector Dep.”). Some citizens called librarians “pedophiles,” “groomers,” and “perverts.” Hector Dep. at 51. One group erected billboards attacking the library. Hector Dep. at 92; Ex 20. The Saline County Quorum Court responded to the complaints and the controversy by passing a resolution. The resolution said that the “Library should enact policies to relocate materials that are not subject matter or age appropriate for children, due to their sexual content or imagery, to an area that is not accessible to children.” Ex. 9.

The resolution had no force of law and did not require the library to do anything. Ex. 3 at 55:17–25 (“Brumley Dep.”). The library already had in place policies to

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actually entitled to qualified immunity. Nor could they—qualified immunity does not apply to municipal liability, which is the form of liability at issue for each of Plaintiff’s claims. *See Owen v. City of Independence, Mo.*, 445 U.S. 622, 638 & n.18 (1980).

ensure the appropriate placement of materials and to allow citizens to challenge materials in the collection. *See* Ex. 13. Those policies left removal decisions to a committee of librarians, who would review the challenged work in its entirety to determine whether it met the selection criteria. *Id.*

Plaintiff Patty Hector was the Director of the Saline County Library when the controversy arose. She responded to the censorship efforts and the resolution in public statements. As Defendants points out, she gave several interviews that were broadcast on television. In April, she spoke with KATV and THV. *See* <https://www.facebook.com/reel/204338959006272> (“KATV Video”); <https://tinyurl.com/2zddtbsc> (“THV Video”). In May, she spoke with KARK. *See* <https://www.youtube.com/watch?v=lGuOUaLoIU> (“KARK video”).

As Defendants fail to point out, she also spoke on the issue during the Quorum Court meeting on May 15, 2023. At the April meeting at which the resolution was approved, the Quorum Court declined to hear from Ms. Hector and declined to delay the passage of the resolution so they could do so. *See* Video of April Quorum Court meeting, 2:32:15–2:39:05, <https://www.youtube.com/watch?v=fezosmg1IMc>. At the May Quorum Court meeting, she signed up to speak during the period reserved for three-minute citizen comments. She prefaced her statement by saying:

I am the director of the library, but I’m not going to waste my three-minute opportunity to speak as a citizen of Saline County talking about a resolution that concerns my job as an employee of the county. If you want to talk about that, then come see me at the library. Only three JPs have even talked to me, and no one has talked to my library board.

Video of May Quorum Court meeting, 51:20–51:42,

<https://www.youtube.com/watch?v=XPPx7JFfKcw>. She then made the following statement:

I'm going to share with you what it feels like to be constantly dehumanized and criticized by a group of fanatics who post on social media every day about the library. How their hateful rhetoric and the words thrown at us by our own JPs has hurt the library staff. How calling library staff “pedophiles” demeans us and hurts people who have been assaulted by real pedophiles. How we fear walking out to our cars at night because we're worried that their name-calling will resonate with someone who owns a gun.

They twist every word from emails and texts and they mislead people about the excerpts of books that they post. They put up a billboard that's so salacious and sensationalized that we have patrons calling who are furious that the library is being attacked.

The library has yet to get a reconsideration-of-material form turned into us, but based on the books that they posted on their Facebook pages, and comments at previous quorum court meetings, they are targeting books with gay characters and “anti-white” books. There is nothing wrong with those books. It's not illegal to be gay or trans; same sex-couples aren't living a deviant lifestyle and there is nothing sexually explicit in a picture book.

We are the public library, it is our job to make sure every child [interruption].

We are the public library, it is our job to make sure every child is seen, heard, and supported, not marginalized and targeted because they are not straight, white, and Christian. I know it's difficult to stand up against people who call you a pornographer, a pedophile, a pervert, but hate will only win if people stand by and let it happen.

*Id.* 51:43–53:40.

Matthew Brumley decided to run for County Judge in 2022 and became the Saline County Judge in January 2023, as calls for censorship of library materials began to increase. Brumley Dep. at 16:9–11. While denying that he “put energy” in

the resolution, he supported the principle that “materials should be located in the proper place.” Brumley Dep. at 32:12–33:10. And he illustrated what he meant by that when he challenged a particular book, *All Boys Aren’t Blue*. Judge Brumley first met about the book with Ms. Hector, who informed him of the library’s policies but declined to take unilateral action against the book (which would not have been consistent with the library’s reconsideration policy). Hector Dep. at 60–63. Judge Brumley was unhappy that Ms. Hector would not take unilateral action and, as discussed further below, later filed a formal challenge under the policy. Ex. 14.

At this time, Judge Brumley did not exercise authority over Ms. Hector. Rather, Ms. Hector answered to the library board. Brumley Dep. 56:1-20. Judge Brumley met with members of the library board individually in May 2023. Brumley Dep. at 58:9–23. As one library board member testified about her meeting with Judge Brumley, “What I remember is just feeling a lot of frustration that he kept giving these points that, to me, were telling me that, as a board member, I should fire her. And I—as I’m one to do, I just burst out and said, we’re not firing her.” Ex. 6 at 4–5 (“Conrad Dep.”); *see also* Conrad Dep. at 2–3 (similar testimony).

Judge Brumley then appeared at the library board’s public meeting on May 22, 2023. He raised a number of concerns at this meeting. Ex. 1. Some of the concerns revolved around the operation of the library, such as its failure to submit quarterly reports as required by its operating ordinance. *See, e.g.*, Ex. 1 at 47:25–48:35. The library addressed those concerns promptly. Brumley Dep. at 73:11–74:11; Ex. 5 at 2–3 (“Espy Dep.”).

Judge Brumley's other concerns involved books and Ms. Hector's statements about the controversy. He informed the board that, earlier that day, he had asked for reconsideration of a book (*All Boys Aren't Blue*) with "more than four instances of explicit and graphic sexual encounters."<sup>2</sup> Ex. 1 at 1:02:10–1:03:30. He then complained about Ms. Hector's public statements: "My major concern, let me just kind of refine it down to this. 'There's nothing wrong with those books, it is not illegal to be gay or trans.' To say there's nothing wrong with the book that has been now submitted for reconsideration, it can defeat the competence of somebody in putting forth a policy." *Id.* at 1:25:08–32. He wanted to know whether the board had approved Hector's public comments, specifying her remarks that "this marginalizes groups including LGBTQ and people of color" and that "there is nothing wrong with those books, it is not illegal to be gay or trans." *Id.* at 1:05:23–1:06:10. He emphasized that he had a "high, high, high degree of concern in regards to the leadership and the operations of the Saline County Library." *Id.* at 1:07:15–1:07:55.

Despite Judge Brumley's urging, the library board showed no interest in firing Ms. Hector. But there was a substantial amount of public pressure to do so, including a resolution by the Saline County Republican Committee that Ms. Hector be fired as soon as possible and the display of a billboard on Interstate 30 in Saline County that said, "Director Hector MUST GO." Exs. 19–20.

On June 5, 2023, the Saline County Quorum Court Finance Committee introduced an ordinance that would allow Judge Brumley to fire Ms. Hector by

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<sup>2</sup> Judge Brumley also complained about the book's discussions of homosexuality, transgenderism, and race. *See* Ex. 14; Brumley Dep. at 154–60.

striking language that had given the library board the power to hire and fire library employees. Ex. 10. Judge Brumley introduced the ordinance by telling the Quorum Court that he had lost confidence in Ms. Hector. Ex 2 at 13:10–15:40. He said, “It has been stated that there is nothing wrong with those books. These are books that Ms. Hector has told me time and time again she has not read. I believe that flies in the face of the process. It has been said time and time again, three times at the board meeting, that moving books is the same as banning books. That is false. . . . There’s a fundamental difference in the comprehension, I believe, in what this body is asking, requesting for, and what’s being received and communicated outward by the Director of the Saline County Library.” *Id.* at 17:36–18:12, 18:52–19:08. He said that he had personally asked for materials to be reconsidered and that the Quorum Court had asked for action on the books, but they had been met with “resistance.” *Id.* at 19:45–20:45.

JP Jim Whitley then commended Brumley for saying that he had lost confidence in Hector and urged his colleagues, “I would ask each one of you before the next Quorum Court meeting, do you personally, have you also, lost confidence in the Director and the leadership of the Saline County Library?” *Id.* 28:20–29:40. JP Whitley had recently sent a text message to JP Everette Hatcher stating: “We are obviously dealing with a mentally unstable individual. Everything she has said is absolutely untrue and unhinged. I have been the director of 3 psychiatric facilities and can tell you that she is not in touch with reality. She really needs professional

help. Persecutorial personality disorder and quite possibly sckizzo affective [sic].” Exs. 17–18.

The ordinance required three readings to become law, meaning it would not be enacted until the August Quorum Court meeting. Brumley Dep. at 112:4–15. In the interim, Judge Brumley continued to attack Ms. Hector’s leadership and her public speech about the book issue. On June 26, 2023, a week after the first reading of the ordinance at the June Quorum Court meeting, he called a 45-minute press conference about the library. *See* June Press Conference, <https://www.youtube.com/watch?v=sJSdZTOXBzA>. Among other things, he criticized “multiple statements to the media” that “categorized the feelings of those that sat on the Quorum Court” and that flagged “motivations to marginalize people groups.” *Id.* at 12:38–13:20. He complained about books with “explicit sexual content,” reiterating that he had challenged a specific book and was looking “for the responsible response and conversation so that we can have success.” *Id.* 30:15–31:20. He asserted that “we need to get some leadership in here and assure that something that may have slipped by us has now been assessed.” *Id.* 46:05–46:40. In response to a question about whether someone will “lose their job” if there’s disagreement about challenges, Brumley responded, “I am looking for the findings. And I think once we get the findings of one, we might be able to answer your question a lot more accurately.” *Id.* 48:00–48:47.

On July 12, 2023, members of the reconsideration committee met with Judge Brumley and informed him that *All Boys Aren’t Blue* would not be removed from

the Young Adult section of the library as he had requested. Brumley Dep. at 168. However, the committee told him that the library was exploring the creation of a New Adult section for readers ages 18–24, pending the development of selection criteria and legal review.<sup>3</sup> Ex. 15. When Judge Brumley asked about the status of the New Adult section the next month, the deputy library director provided him a thorough update documenting significant progress on creation of the section. Brumley Dep. at 175–180; Ex. 16. Indeed, when pressed at his deposition about whether Ms. Hector impeded creation of the New Adult section, Judge Brumley admitted she had not. Instead, he expressly complained about her speech: “No. All I have is her statements in words that there’s nothing wrong with those books and they shouldn’t be moved.” Brumley Dep. at 180:18–20.

The ordinance giving Judge Brumley authority to fire Ms. Hector received its third reading at the Quorum Court meeting on August 21, 2023. Before the quorum court voted on the ordinance, JP Clint Chism stated as follows: “Hey, this is a simple issue. Not complicated. It’s been turned into something complicated. All along, all this was protect the children. *If the books had been moved, we wouldn’t be going through all this tonight.* For some reason I don’t understand, we’ve got censorship laws all over this country, and I guess they stop at the threshold of the library. I don’t understand that.” *See* Video of August Quorum Court Meeting,

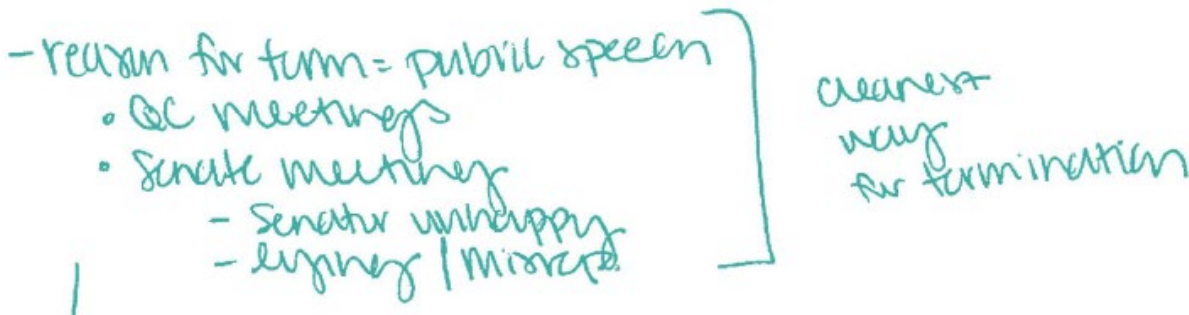
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<sup>3</sup> During discovery, there was conflicting testimony about whether and how Ms. Hector, who was not on the reconsideration committee, had a role in changing the substance of its recommendation. However, any dispute on this point is immaterial because Judge Brumley does not cite any change to the reconsideration committee’s recommendation as a reason for firing Ms. Hector.

41:30–41:55, <https://www.youtube.com/watch?v=dKOyHWkriO8>. The Quorum Court then passed the ordinance.

Under Ark. Code Ann. § 14-14-905, after an ordinance is passed, the county judge must sign it or veto it within seven days. Then, if approved, it must be published by the county clerk. The ordinance becomes effective thirty days after publication. Judge Brumley signed the ordinance the day the quorum court enacted it. Ex. 11. The Saline Courier published the ordinance on August 30, 2023. Ex. 12. Judge Brumley thus gained authority to fire Ms. Hector on September 29, 2023.

On September 27, 2023, Judge Brumley initiated a call with the Association of Arkansas Counties (“AAC”) to discuss Ms. Hector’s termination. *See* Ex. 21. Mallory McInvale (née Floyd), an AAC employee, took contemporaneous notes at this meeting, which AAC disclosed to Plaintiff’s counsel in FOIA before Plaintiff initiated the litigation. Ex. 23; Ex. 7. The notes say that “Judge wants to terminate this employee.” Ex. 23 at 1. The notes also show that Judge Brumley and Ms. McInvale discussed a number of topics but zeroed in on Ms. Hector’s public comments about the book issue as a primary reason for her firing:



- reason for term = public speech  
 • QC meetings  
 • Senate meetings  
 - Senator unhappy  
 - lying / misrep  
 ] cleanest way for termination

*Id.* at 4. (The “senate meeting” referenced here is discussed further below.) The call between Judge Brumley and Ms. McInvale ended with Judge Brumley assigned a

task: “gather evidence pointing to reasons for termination \*Not including refusal to remove books.” *Id.* at 6. In a follow-up call on September 29, Ms. McInvale’s notes indicate that Judge Brumley “wanted to ‘make it clear’ his #1 priority is terminating Ms. Hector.” *Id.*<sup>4</sup>

Between September 27 and October 2, Judge Brumley sent Ms. McInvale a series of emails concerning Ms. Hector. Ex. 22. Among the materials he sent were links to the THV interview (broadcast on April 20, 2023), the KARK interview (broadcast on May 15, 2023), and a recording of her statement to the Quorum Court on May 15, 2023. *Id.* at 50–52, 56–57.

Consistent with the notes reproduced above, Judge Brumley also sent a video related to Ms. Hector’s purported speech at a state senate committee meeting. *Id.* at 17. But review of the video shows that Ms. Hector did not testify or otherwise say anything at this meeting other than to acknowledge that she was present when identified by one of the speakers. See <https://tinyurl.com/yd3d7vx7>. Ms. McInvale informed Judge Brumley that the senate meeting was not a valid basis for firing

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<sup>4</sup> Notes disclosed under the Arkansas FOIA before the initiation of litigation are not privileged. See *Bosch v. Thurman*, No. 22-cv-677, ECF No. 61 (E.D. Ark. Nov. 25, 2023); *Fatemi v. White*, No. 11-cv-458, 2014 WL 12754937 (E.D. Ark. Mar. 27, 2014). At her deposition, though she cited privilege to avoid answering substantive questions about her conversations with Judge Brumley, Ms. McInvale authenticated the notes. Ex. 7. A jury could infer from the notes and other AAC materials that Judge Brumley fired Ms. Hector because of her speech. Defendants’ failure to address the notes and other communications with AAC is perhaps the most glaring example of their failure to acknowledge obvious factual disputes.

Ms. Hector but that he could fire her for her speech about the censorship efforts.<sup>5</sup>  
Ex. 24.

Judge Brumley was out of the office from Tuesday, October 3, to the end of that week, Friday, October 6. Ex. 22 at 1. Judge Brumley terminated Ms. Hector the morning of Monday, October 9, 2023, by telling her that her services were no longer needed. Brumley Dep. at 243:14–21. Judge Brumley could not recall having any conversation with Ms. Hector about a remediation plan after he obtained the authority to fire her. Brumley Dep. at 240:10–243:13. Judge Brumley testified at his deposition, contrary to Ms. McInvale’s notes, that he did not know he was going to fire Ms. Hector until the day he fired her. Brumley Dep. at 238:20–240:9. Judge Brumley has not fired any other library employee since gaining authority to do so, though the library has fired three library employees. Brumley Dep. at 244:25–245:16.

### ARGUMENT

#### **I. Defendants are not entitled to judgment on Plaintiff’s First Amendment retaliation claim.**

##### **A. Plaintiff spoke as a citizen on a matter of public concern.**

The question at issue here is not whether Ms. Hector addressed matters of public concern. Plainly she did. “The [Supreme] Court has recognized the right of employees to speak on matters of public concern, typically matters concerning government policies that are of interest to the public at large, a subject on which

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<sup>5</sup> Needless to say, Plaintiff disagrees with Ms. McInvale’s conclusion that the First Amendment does not protect her speech. *See* Part I.A *infra*.

public employees are uniquely qualified to comment.” *City of San Diego v. Roe*, 543 U.S. 77, 80 (2004). “Speech involves a matter of public concern when it can fairly be considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Lane v. Franks*, 573 U.S. 228, 241 (2014). Censorship of materials in the library’s collection was a topic of hot public interest during the relevant timeframe. Defendants do not argue otherwise.

Rather, Defendants argue that Ms. Hector’s comments are unprotected because they “owed their existence to official duties.” ECF No. 27, Br. at 5. But Defendants’ articulation of the “citizen speech” test does not account for recent Supreme Court precedent. And Defendants fail even to address Ms. Hector’s comments at the May 2023 Quorum Court meeting, which is plainly citizen speech.

As Defendants point out, in *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006), the Court held that a public employee does not speak as a citizen if the speech was made “pursuant to their official duties” or “owes its existence to a public employee’s professional responsibilities.” The Court alternatively stated the test as whether the speech “had no official significance and bore similarities to [speech] submitted by numerous citizens every day”; whether the speech is “work product”; whether the speech was made as the employee was “simply performing his or her job duties”; and whether it is the “kind of activity engaged in by citizens who do not work for the government.” *Id.* at 422–23. In *Garcetti*, the Court held that a line prosecutor’s

internal memo concerning the proposed disposition of a particular case was not citizen speech. *See id.* at 422.

Defendants fail to follow the legal trail from there. The Supreme Court has continued to refine and clarify its test for what constitutes official versus citizen speech. And Ms. Hector’s comments were citizen speech under that test.

In *Lane v. Franks*, the Court held that the “mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech. The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” 573 U.S. at 240. There, the Court held that a public employee’s subpoenaed testimony was not official speech when giving testimony was “outside the scope of his ordinary job responsibilities.” *Id.* at 238.

In *Kennedy v. Bremerton School District*, 587 U.S. 507 (2022), the Court held that a football coach’s postgame prayers offered at the fifty-yard line constituted citizen speech. In so holding, the Court emphasized that the coach “did not speak pursuant to government policy,” “was not seeking to convey a government-created message,” and was not “engaged in any other speech the District paid him to produce as a coach.” *Id.* at 529–30. Moreover, the prayers did not occur during a time at which coaches were expected to be performing other duties. *Id.* at 530. And it was not “dispositive that Mr. Kennedy’s prayers took place within the office environment” in light of the totality of the circumstances. *Id.* (internal quotation

mark omitted). Argument to the contrary “commits the error of positing an excessively broad job description by treating everything teachers and coaches say in the workplace as government speech subject to government control.” *Id.* at 530–31 (cleaned up).

Most recently, in *Lindke v. Freed*, 601 U.S. 187 (2024), the Court examined whether public officials speak as citizens when they post on social media. To resolve this question, the Court invoked *Garcetti* and *Lane*, emphasizing that public officials maintain their right to speak as citizens, which “includes the ability to speak about information related to or learned through public employment, so long as the speech is not itself ordinarily within the scope of the employee’s duties.” *Id.* at 197 (cleaned up) (quoting *Lane*, 573 U.S. at 236, 240). The Court then held that a social media post constitutes state action “only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.” *Id.* at 198.

The second prong of this test is particularly relevant to the “citizen speech” analysis attached to a First Amendment retaliation claim. “If the public employee does not use his speech in furtherance of his official responsibilities, he is speaking in his own voice.” *Id.* at 201. That is an apt distillation of the citizen-speech test, which likewise depends upon whether the speech is “ordinarily within the scope of an employee’s duties.” *Lane*, 573 U.S. at 240. *Lindke* recognizes that public employees, even high-ranking officials, have significant speech rights:

Hard-to-classify cases require awareness that an official does not necessarily purport to exercise his authority simply by posting about a

matter within it. He might post job-related information for any number of personal reasons, from a desire to raise public awareness to promoting his prospects for reelection. Moreover, many public officials possess a broad portfolio of governmental authority that includes routine interaction with the public, and it may not be easy to discern a boundary between public and private lives. Yet these officials too have the right to speak about public affairs in their personal capacities.

*Id.* at 203.

Applying these tests, Ms. Hector's comments to the Quorum Court and her statements to the media are citizen speech. There can be little question about the comments to the Quorum Court. Ms. Hector made them as a common citizen, along with other citizens who chose to speak at the meeting. She even prefaced her remarks by stating that, though she was the library director, she was "not going to waste my three-minute opportunity to speak as a citizen of Saline County talking about a resolution that concerns my job as an employee of the county."<sup>6</sup> The statement that followed obviously addressed matters relevant to the library about which Ms. Hector was knowledgeable, but speaking about matters relevant to one's employment does not render the speech unprotected. *See Lane*, 573 U.S. at 240. The Quorum Court did not invite Ms. Hector to speak at its meeting, and speaking during the citizen-comment portion of the meeting had nothing to do with her job responsibilities. *Cf. Lindsey v. City of Orrick*, 491 F.3d 892, 897 (8th Cir. 2007) (public works director's complaints at city council meetings about noncompliance with sunshine law were protected because, even though director was required to

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<sup>6</sup> At his deposition, Judge Brumley had it precisely backwards, stating that Ms. Hector told the Quorum Court, "I'm not going to waste my time here speaking as a citizen but rather the Saline County Library director." Brumley Dep. at 54:17–55:2; *see also id.* 236:16–237:6 (stating that Ms. Hector "chose to . . . [s]peak in her official capacity").

speak at council meetings about the public works department, his job did not concern sunshine-law compliance).

Indeed, in their summary-judgment papers, Defendants do not address Ms. Hector's comments to the Quorum Court at all—much less argue that they constitute unprotected speech—even though Judge Brumley specifically identified that statement as a reason for firing Ms. Hector. Exs. 22 at 14–15, 57; Ex. 23 at 4. That deficiency alone defeats Defendants' argument for judgment as a matter of law.

Ms. Hector's media statements were also citizen speech. Contending otherwise, Defendants argue that Ms. Hector gave the interviews at her office while wearing a name tag, “during work hours (she was paid for the time she spent in the interview), and in the midst of performing her official duties.” Br. at 5. Defendants also say that, “importantly, the Plaintiff was the only one making public comments on behalf of the Library” (though they do not explain or cite authority for why this is important). *Id.*<sup>7</sup>

There are factual disputes on these points. Not all of the interviews were in Ms. Hector's library office (or otherwise obviously recorded at the library), not all appear to have been during work hours, and none were in the “midst of performing her official duties.” Ex. 8 ¶3 (“Hector Decl.”). Likewise, while Ms. Hector contests the

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<sup>7</sup> Defendants also say that Ms. Hector “struck a decidedly antagonistic tone, accusing tax-paying residents who had raised concerns of being homophobic and deceitfully hid nefarious motives behind a false claim of concern for their children.” Br. at 5. Plaintiff contests Defendants' characterization of her speech. In any event, Defendants do not explain how Ms. Hector's tone has anything to do with whether her speech is protected.

conclusory statement that she was commenting “on behalf of the Library,” the record shows that other library employees spoke up about the controversy, just as Ms. Hector did. *See, e.g.*, Ex. 22 at 57 (email from Judge Brumley identifying these employees as speakers).

But even were the facts as Defendants posit—even had Ms. Hector given each of the interviews in her personal office during library hours while displaying her name tag, and even had no one else from the library spoken publicly on this issue—the statements would still be citizen speech. Whether the speech occurred “within the office environment” is not dispositive given the other factors. *Kennedy*, 587 U.S. at 530. Defendants have not shown that Ms. Hector was “speaking pursuant to government policy,” that she was “seeking to convey a government-created message,” or that she was “engaged in any other speech the [Library] paid [her] to produce.” *Id.*

To the contrary, Ms. Hector did not typically speak with the media. Hector Decl. ¶4. Defendants point to neither a formal job description nor an informal expectation that she would speak to the media, and the library board (which had authority over her) did not attempt to regulate her comments to the media one way or the other. Hector Dep. at 72. She was not prohibited from taking a break to speak with a reporter. Hector Decl. ¶3. Her comments did not convey information that she was uniquely privileged to possess through her employment, which might lead one to conclude that she was speaking in an official capacity. *Cf. Nagel v. City of Jamestown*, 952 F.3d 923, 930 (8th Cir. 2020) (finding that a police officer’s

televised interview wasn't citizen speech because he spoke about "internal law enforcement affairs [that] made clear to the viewing public that [his] appearance at the interview was ordinarily within the scope of his duties as a member of the [police department] and President of the [Fraternal Order of Police]"). Rather, Ms. Hector's comments "bore similarities to [speech] submitted by numerous citizens every day." *Garcetti*, 547 U.S. at 422. Her protest of the censorship efforts did not owe itself to any special knowledge she had as a librarian. She did not make any statement of library policy. Many citizens could and did express themselves about the controversy through similar means. *See* KARK Video at 1:46–1:56 (citizen stating "our children don't need to be groomed, our children don't need to see things that they aren't allowed to see at the movie theaters").

To argue otherwise, Defendants rely on cases that are off base. In *McGee v. Public Water Supply*, 471 F.3d 918, 920 (8th Cir. 2006), the Court held that a district manager of a water supply district "was speaking and functioning as an employee who was performing his job" when he disagreed with his colleagues about how to handle sewage and piping problems. In *Bradley v. James*, 479 F.3d 536, 538 (8th Cir. 2007), the plaintiff's allegations against his superior were unprotected because they were "made at no other time than during [an internal] investigation, and thus his speech was pursuant to his official and professional duties." In *Bonn v. City of Omaha*, 623 F.3d 587, 589 (8th Cir. 2010), the plaintiff's job required her to "review and audit citizen complaints about sworn police officers and firefighters." "As part of her duties, Bonn authored numerous published reports, and she spoke

often to media organizations to disseminate her findings.” *Id.* The Court thus held that her reports and media comments about those reports were not protected speech. *See id.* at 592–93. Even without the clarifications offered in *Lane*, *Kennedy*, and *Lindke*, the speech at issue in these cases was obviously made as part of the plaintiffs’ official duties. By contrast, Ms. Hector spoke to matters generated *outside* the library, not to matters generated within it.

Nor are Defendants helped by what they identify as their “most significant[]” authority, *Lyons v. Vaught*, 875 F.3d 1168 (8th Cir. 2017). There, the speech at issue arose from a dispute between the plaintiff, a college lecturer, and college administrators about a student-athlete’s grade. The administrators forced the plaintiff to pass the student-athlete, and the plaintiff later initiated a meeting with the college chancellor and others in the community to express concerns about student-athlete grading more generally. *See id.* at 1170. Applying *Garcetti* only—because *Lane* was a “decision after the events in issue here,” *id.* at 1173—the court found that the defendants were entitled to qualified immunity because they “could reasonably conclude that Lyon spoke solely as an aggrieved lecturer in asking Chancellor Morton to investigate grading policies for student athletes.” *Id.* at 1175. The court further allowed that “perhaps” the plaintiff “transform[ed] what began as unprotected speech pursuant to his duties as a lecturer into protected speech by virtue of speaking more broadly about the issue,” but he could not overcome qualified immunity. Of course, qualified immunity is not available to Defendants in this case.

In sum, Ms. Hector discussed an issue that was on the minds of many Saline County citizens—whether the library should censor books. She had a unique perspective on that topic because she led the library, but that does not mean she had no right to speak on it. To the contrary, the Supreme Court has recognized that her speech was particularly valuable. *See Lane*, 576 U.S. at 240 (“[S]peech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment.”). While Ms. Hector’s speech *concerned* the library, that is not enough—it must be “ordinarily within the scope of an employee’s duties.” *Id.* Defendants have not established that it was. *See Mayfield v. Mo. House of Reps.*, 111 F.4th 1046, 1053–54 (8th Cir. 2024) (finding that email from state legislative employee to superiors concerning Covid protocols was protected even though it was “an internal, nonpublic email’ sent through his work account and during work hours”); *Noon v. City of Platte Woods*, 94 F.4th 759, 764 (8th Cir. 2024) (finding police officers’ internal grievances protected because “they had no obligation as employees to report these issues”); *Davenport v. Univ. of Ark. Bd. of Trs.*, 553 U.S. 1110 (8th Cir. 2009) (finding one comment protected because plaintiff’s “duties did not include reporting either wrongdoing by a superior officer or a lack of resources,” but finding a second comment unprotected because “as a public safety officer, Davenport had a duty to cooperate with the Arkansas State Policy investigation”).

**B. Defendants articulate the wrong causation standard, but the jury could conclude that Judge Brumley fired Ms. Hector for her protected speech under any applicable standard.**

Incredibly, Defendants argue that there is “no evidence that to show that [Plaintiff’s] termination was caused by retaliation to any protected First Amendment speech.” Br. at 7. To the contrary, Ms. Hector has *direct* evidence that Judge Brumley terminated her because of her speech. Ms. McInvale’s notes exhibit that the “reason for term = public speech.” Ex. 23 at 4. They show that the “public speech” includes the “QC meetings.” *Id.* Judge Brumley identified the video of Ms. Hector’s comments at the May 2023 Quorum Court meeting as well as her interviews with the press as the specific “public speech” for which he fired her. Ex. 22 at 14–15, 50–52, 56–57. And Ms. McInvale told Judge Brumley that he could fire Ms. Hector for her speech. Ex. 24. This evidence is direct evidence of retaliation because it “demonstrates a specific link between a materially adverse action and the protected conduct, sufficient to support a finding by a reasonable fact finder that the harmful adverse-action was in retaliation for the protected conduct.” *Lars v. Dean*, 746 F.3d 857, 865 (8th Cir. 2014).

The Court might well deny summary judgment on that basis alone. But to continue the analysis, Defendants incorrectly urge the Court to apply the *McDonnell Douglas* framework. *McDonnell Douglas* requires the defendant to respond to a *prima facie* case with legitimate non-discriminatory reasons but places the ultimate burden of proof on the plaintiff to show pretext. *See* Br. at 6–7 (citing Eighth Circuit cases that apply *McDonnell Douglas*). However, when a plaintiff

produces direct evidence of retaliation, as Ms. Hector has, courts instead apply the *Mt. Healthy* framework. *See Graning v. Sherburne Cnty.*, 172 F.3d 611, 615 n.3 (8th Cir. 1999).<sup>8</sup> Under the *Mt. Healthy* framework, “the burden of proof shifts to the employer to show as a matter of law that he would have made the same decision absent the plaintiff’s protected activity.” *Davison v. City of Minneapolis*, 490 F.3d 648, 663 (8th Cir. 2007) (Colloton, J., concurring in part and dissenting in part).

Based on the record here, the jury could conclude that Judge Brumley would not have fired Ms. Hector absent her speech. Judge Brumley cites a *mélange* of reasons for terminating Ms. Hector. But he informed her of none of these reasons when he fired her. Brumley Dep. at 243:14–21. After gaining authority to fire her, he did not seek correction of these purported problems (at least not that he could recall). Brumley Dep. at 240:10–243:13. And his declaration does not establish that he would have fired her regardless of her speech. To the contrary, he *invokes* her speech when he says that he fired her because she “called [citizens] names,” “accused them of deceit and ill will,” and “respond[ed] with name calling and insults.” ECF No. 28-1, at 5–6. While Ms. Hector disagrees with these characterizations, they are plainly references to the protected speech at issue—her comments that the censorship efforts targeted marginalized communities and that there is nothing wrong with being gay, trans, or non-white.<sup>9</sup>

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<sup>8</sup> Even without direct evidence, the Court retains discretion to apply the *Mt. Healthy* framework absent direct evidence of discrimination. *See Davison v. City of Minneapolis*, 490 F.3d 648, 655 n.5 (8th Cir. 2007).

<sup>9</sup> Similarly, when asked at his deposition about his emails informing AAC of Ms. Hector’s media interviews, Judge Brumley objected to the substance of Ms. Hector’s speech,

But regardless of which standard applies, Defendants are not entitled to summary judgment. On this record, the jury could find for Ms. Hector under *McDonnell Douglas* as well.

The plaintiff's burden is "minimal" at the *prima facie* stage, *Stewart v. Indep. Sch. Dist. No. 196*, 481 F.3d 1034, 1043 (8th Cir. 2007), and Ms. Hector can plainly satisfy it. First, Defendants are wrong that Ms. Hector has suggested only temporal proof that she was fired because of her speech. In addition to the evidence discussed above, the record shows that Judge Brumley consistently took issue with Ms. Hector's comments, criticizing them at the library board meeting where he expressed a "high, high, high degree of concern in regards to the leadership and the operations of the Saline County Library;" at the Finance Committee meeting where he prefaced the ordinance that would allow him to fire Ms. Hector; and at the press conference he called to address the library controversy.

Defendants are also wrong in their analysis of the timeline. In arguing that six months passed between Ms. Hector's initial televised interview and her termination, Defendants appear to forget that Judge Brumley did not gain the authority to fire Ms. Hector until September 29, 2023. He fired her ten days later—beginning the termination process with a call to AAC *before* he even had legal firing authority. AAC completed its review while Judge Brumley was out of the office. Then Judge Brumley fired Ms. Hector the morning of his return.

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specifically (as he phrased it), that there's "nothing wrong with these books. They're just mad because they're LGBTQ plus," and, "They're not Christian and they're not white." Brumley Dep. at 193:7–24.

This timing would be strong prima facie evidence even without the AAC notes showing that Judge Brumley fired Ms. Hector for her speech. “[W]here the evidence of causation for purposes of establishing a prima facie case is quite strong, it may be sufficient, standing alone, to prove a defendant’s liability without resort to further evidence.” *Stewart*, 481 F.3d at 1043. The jury could find that the evidence in this case fits into that category.

And even if the jury moved to the pretext inquiry, it could find in Ms. Hector’s favor there, too. “There are at least two ways a plaintiff may demonstrate a material question of fact regarding pretext. A plaintiff may show that the employer’s explanation is unworthy of credence because it has no basis in fact. Alternatively, a plaintiff may show pretext by persuading the court that a prohibited reason more likely motivated the employer.” *Torgerson v. City of Rochester*, 643 F.3d 1031, 1047 (8th Cir. 2011) (en banc) (cleaned up). The evidence discussed above goes to the second point. On top of that, the jury could disbelieve the reasons that Judge Brumley now cites in his summary judgment papers.

Most egregious is Judge Brumley’s assertion that Ms. Hector “repeatedly said” that “none of the major functions of the Library . . . were ‘her job’.” ECF No. 28-1 at 6. Nowhere in his deposition did Judge Brumley make this contention. The statement is false. Hector Decl. ¶2. And so is the implication that Ms. Hector did not do her job. Ms. Hector addressed Judge Brumley’s complaints about the library’s operations. *See Espy Dep.* at 2–3.

Judge Brumley also cites “concerning behaviors,” specifically listing Ms. Hector’s purported comment on a podcast that he and the Quorum Court “approved a merger with the Garland County library”; her provision of “incorrect and misleading information to patrons on official library media to sway the Quorum Courts’ vote on” the ordinance; and “issues brought to light during a Legislative Audit regarding commingling of funds to the ‘Friends of Saline County Library’ 501(c)(3) with the actual Saline County Library Funds.” ECF No. 28-1 at 5–6.

The last point is so vague as to be meaningless. Judge Brumley was no clearer about it at his deposition. *See* Brumley Dep. at 70:6–71:25. Ms. Hector apparently ensured that the issue was resolved. *See id.* at 201:7–202:23. Whatever the facts here, Judge Brumley’s resort to vague allegations is suggestive of pretext.

There is a dispute about whether the emails contained “incorrect and misleading information,” as Judge Brumley alleges. The main purported “inaccuracy” was whether the ordinance would affect the library’s ability to receive state aid. But at his deposition, Judge Brumley could not establish that *anyone* knew how the ordinance would affect state aid when the emails went out. *Id.* at 224–31. Judge Brumley also complained that the emails misstated the amount of state aid the Saline County Library receives by listing the amount as “approximately \$200,000.” *Id.* But Ms. Hector continues to assert that this is an accurate number. Hector Dep. at 27, 100; Hector Decl. ¶5. In any case, the jury could believe that Ms. Hector’s speech, rather than a discrepancy about the “approximate” amount of funds stated in an email, was the reason for her firing.

Finally, Judge Brumley gravely mischaracterizes the podcast, which is dated January 24, 2023. Ms. Hector did not say that Judge Brumley or the Quorum Court had “approved a merger with the Garland County Library.” She actually said the following:

We do have a new county judge. But I’ve talked to him, and he’s come to the library, he’s come to the library board meetings, so we’re you know, we really feel like he understands the situation, and most of the Quorum Court members I’ve talked to have been supportive, especially Keith Keck, who is the member that’s from Hot Springs Village. He can see a real benefit to his area.

See <https://www.youtube.com/watch?v=uXmUjefWD-U> at 7:10–7:41; *cf.* Ex. 22 at 16 (Judge Brumley telling AAC to “look to minute 7” of this video). Clearly, Ms. Hector was over-optimistic about Judge Brumley here, but she did not say that Judge Brumley or the Quorum Court had “approved a merger.” She said he had come to the library and the library board meetings. The jury could find that Judge Brumley has seized upon these anodyne comments as a pretext.

In short, the jury could find that Judge Brumley’s statement of reasons for terminating Ms. Hector contains mere pretext for retaliation. That, in addition to all the other evidence discussed above, precludes summary judgment for Defendants.

## **II. Defendants are not entitled to judgment on Plaintiff’s attainder claim.**

The Court previously determined that the complaint adequately alleges that the ordinance granting Judge Brumley authority to fire Ms. Hector is an unconstitutional bill of attainder. *See* ECF No. 14, Order at 6 (“[A] jury can 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.”). Discovery has bolstered the facts in support of this claim, and the law is the same. Just as they were not entitled to judgment on the pleadings, Defendants are not entitled to summary judgment.

The bill of attainder clause applies to “legislative acts, no matter what their form.” *United States v. Lovett*, 328 U.S. 303, 315 (1946). An attainder claim contains three elements: “specificity in identification, punishment, and lack of a judicial trial.” *United States v. O’Brien*, 391 U.S. 367, 384 n.30 (1968). There is no dispute as to the third element. Defendants nominally contest the punishment element, but it is settled that “punishment” includes the loss of a job for purposes of the attainder clause. *See Crain v. City of Mountain Home*, 611 F.2d 726, 729 (8th Cir. 1979); *cf.* ECF No. 14, Order at 6. Their real contention goes to the first element, but Defendants add nothing to their earlier argument on this point.

The Court has already rejected Defendants’ argument that the ordinance is not a bill of attainder because it does not specifically name Ms. Hector and because it relies on executive action. There is no precedent precluding the application of the attainder clause to executive action in appropriate circumstances, and an “argument can be made for analyzing each case functionally rather than structurally.” *Dehainaut v. Pena*, 32 F.3d 1066, 1070–71 (7th Cir. 1994) (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S.123, 143 (1950) (Black, J., concurring)). That is the approach the Eighth Circuit has taken, as in *Crain v. City of Mountain Home*, where the ordinance in question was written in generally

applicable language but where the facts showed that “as a practical matter” it targeted a specific city employee. *See Crain*, 611 F.2d at 729. Defendants’ references to Amendment 55 and Ark. Code § 14-14-601 are thus inapt. There is no factual basis for concluding that those provisions, unlike this one, were aimed at a specific person.

Defendants also articulate a four-part test for determining whether the ordinance is a bill of attainder. *See Br.* at 11–12. They do not cite any authority for this test; all that the jury needs to find is that, “as a practical matter, [the ordinance’s intent was to punish [Ms. Hector].” *Crain*, 611 F.2d at 729; *cf.* ECF No. 14, Order at 6 (stating that jury could find that “the reason the quorum court passed the ordinance was to get rid of [Ms. Hector] as Director of the Saline County Library”).

The facts here, already cited and supported above, would allow the jury to conclude that the Quorum Court passed the ordinance to get rid of Ms. Hector. Ms. Hector opposed the resolution to censor books. The Quorum Court possessed no authority to fire her for this. The library board, which did possess that authority, did not agree to fire her. After Ms. Hector publicly opposed the resolution, Judge Brumley met individually with library board members, at least one of whom told him that the board was not going to fire Ms. Hector. Then on May 22, Judge Brumley addressed the whole library board at a public meeting to criticize Ms. Hector’s leadership and comments. Still, the library board did not fire her. On June 5, the Finance Committee of the Quorum Court introduced the ordinance. Before

the formal vote introducing the ordinance, Judge Brumley criticized Ms. Hector specifically and said he had lost confidence in her. JP Jim Whitley—who had attacked Ms. Hector as “schizo” in an earlier text exchange with JP Everette Hatcher—singled out Ms. Hector in urging the Quorum Court to vote for the ordinance: “I would ask each one of you before the next Quorum Court meeting, do you personally, have you also, lost confidence in the Director and the leadership of the Saline County Library?” At the meeting where the Quorum Court ultimately passed the ordinance, another JP, Clint Chism, made plain that the intent was to get rid of Ms. Hector by saying, “If the books had been moved, we wouldn’t be going through all this tonight.” Then Judge Brumley fired Ms. Hector as soon as he had legal authority. And though the library has fired three other employees since the ordinance passed, Judge Brumley was not involved in any of those terminations.

From all this evidence, the jury could conclude that the Quorum Court passed the ordinance to get rid of Ms. Hector, not to give Judge Brumley general authority over library staff. The Court should deny summary judgment on this claim.

### **CONCLUSION**

Defendants are not entitled to judgment as a matter of law. Ms. Hector engaged in protected speech. A jury could find that Judge Brumley fired Ms. Hector because of her speech and that the ordinance giving him authority to do so was an unconstitutional bill of attainder. The Court should deny Defendants’ motion for summary judgment.

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Respectfully submitted,

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