

CAUSE NO. D-1-GN-12-002004

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Amalia Rodriguez-Mendoza  
District Clerk  
Travis District  
D-1-GN-12-002004

F. MICHAEL McMILLEN

§ IN THE DISTRICT COURT OF

*Plaintiff,*

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V.

TEXAS HEALTH & HUMAN  
SERVICES COMMISSION and  
THOMAS M. SUEHS, *in his official  
capacity.*

TRAVIS COUNTY, TEXAS

*Defendants.*

§ 261ST JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

COMES NOW Plaintiff, F. Michael McMillen, complaining of the conduct of defendants. For causes of action, plaintiff respectfully shows as follows:

1

Plaintiff intends for this suit to be conducted under Discovery Level 2, pursuant to TEX. R. CIV. P. 190.

II

Plaintiff requests that defendants serve upon plaintiff, within 50 days of receipt of this petition, disclosure of information required by TEX. R. CIV. P. 194.2.

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Plaintiff, *F. Michael McMillen*, was an employee of defendant, Texas Health and

Human Services Commission. Plaintiff was, at all relevant times, a “public employee,” as defined in TEX. GOV. CODE §554.001.

IV.

Defendant, *Texas Health and Human Services Commission* (“THHSC”) is an agency of the state of Texas located in Austin, Travis County, Texas. Defendant, THHSC, is a “state governmental entity,” as defined by TEX. GOV. CODE §554.001. Defendant, THHSC, may be served with process by serving its Executive Director, at his usual place of business, P.O. Box 13247, Austin, TX 78711, or its physical address, 4900 N. Lamar Blvd., Austin, Travis County, Texas, 78751.

Defendant, *Thomas M. Suehs* is the Executive Commissioner of THHSC, and is sued in his official capacity. Defendant Suehs may be served with process at his usual place of business, P.O. Box 13247, Austin, TX 78711, or at the physical address of THHSC, 4900 N. Lamar Blvd., Austin, Travis County, Texas, 78751.

V.

Venue is proper in Travis County, Texas.

FACTS  
VI.

Plaintiff, Mike McMillen, worked for defendant, THHSC, or its predecessor agency, for over two years as a lawyer and had a good work record when he was wrongfully terminated in April 2012.

VII.

Commencing in approximately June of 2011, plaintiff spoke out on topics of public concern and/or what he believed in good faith to be a violation of law by THHSC . Since that time, plaintiff then commented upon topics of public concern in a manner protected by the Texas Constitution. The content, form, context, and other indicia all demonstrate that plaintiff was speaking on topics of public concern, as a citizen, and/or in a manner that constitutes protected free speech activity under the Texas Constitution.

VIII.

In December 2011, plaintiff against spoke out and reported what he believed in good faith to be violations of law at THHSC, this time to THHSC's Inspector General's Office and to its Chief Counsel. These reports include communications in late December 2011, immediately before Christmas and New Years' holidays. Then, on or about January 2, 2012, plaintiff was relieved of his duties and told that he has being barred from the office and being placed on administrative leave. Plaintiff remained on administrative leave until he was terminated from his job, effective on or about April 27, 2012.

CAUSES OF ACTION

IX.

Defendants' termination of, and retaliation against, plaintiff was violative of TEX. Gov. CODE, Chapter 554, which provides that a public employee may not be retaliated against for reporting a violation of law to an appropriate authority in good faith. Plaintiff's reports were, in good faith, concerning violations of law and were to appropriate law

enforcement authorities and/or to authorities he believed in good faith to be appropriate. By retaliating against plaintiff for reporting violations of law, defendant THHSC violated plaintiff's rights pursuant to Chapter 554.

X.

Defendants' termination of, and retaliation against, plaintiff was violative of his rights protected by Article I, §8, of the Texas Constitution, which protects the free speech rights of citizens and public employees. By retaliating against plaintiff for speaking out on topics of public concern, defendant violated plaintiffs' free speech rights under the Texas Constitution.

RELIEF SOUGHT  
XI.

Plaintiff is entitled to appropriate declaratory relief and/or injunctive relief requiring defendants to reinstate him to his former position of employment, with all benefits and emoluments of his position which he would have received if defendants' retaliation had not occurred, and further injunctive relief prohibiting any future acts of retaliation or harassment and otherwise making plaintiff whole, as if defendants' illegal acts of harassment and termination had not occurred.

XII.

As a proximate result of defendant THHSC's improper and illegal actions under Chapter 554 of the Texas Government Code, plaintiff has suffered damages. In this connection, plaintiff has suffered and will continue to suffer loss of wages and/or earning capacity, as a result of defendant's harassment and retaliation. Plaintiff has also endured

considerable suffering and other compensable injuries as a result of their termination, in the past, and will continue to suffer such in the future. Plaintiff has also suffered mental anguish, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary damages in the past and will continue to suffer such in the future. Plaintiff's damages are in excess of the minimum jurisdictional limits of this Court.

XIII.

Plaintiff is also entitled to the maximum amount of pre- and post-judgment interest, as permitted by law.

XIV.

As a result of defendants' illegal actions, plaintiff has been forced to retain legal counsel to remedy defendants' wrongful and illegal acts. Plaintiff is entitled to recover all reasonable and necessary attorney's fees and expenses incurred in preparing and maintaining this action including but not limited to reasonable and necessary attorney's fees and expenses occasioned by any appeal taken or necessitated by defendants' conduct.

XV.

Plaintiff has met all jurisdictional prerequisites to pursue these claims.

XVI.

Plaintiff requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully prays that defendants be cited to appear and answer herein, and that upon final trial hereof, plaintiff be accorded appropriate declaratory and/or injunctive relief, including but not limited to reinstatement, and a prohibition on further acts of retaliation; damages as set out herein, reasonable and necessary attorney's fees and expenses; court costs; pre- and post-judgment interest, and any and all other relief, at law or in equity, to which he may be entitled.

*Respectfully submitted,*  
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