

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

DANIEL SMITH
PLAINTIFF,
V.

EDWARD MITCHELL IN HIS OFFICIAL
AND INDIVIDUAL CAPACITY
AND NELSON OCASIO, IN HIS
OFFICIAL AND INDIVIDUAL
CAPACITY, JOHN DOE 1-10, IN HIS
OFFICIAL AND INDIVIDUAL
CAPACITY
DEFENDANTS

No. _____

CIVIL RIGHTS COMPLAINT
WITH JURY DEMAND

COMES NOW Daniel Smith, plaintiff herein, by and through his undersigned counsel,
The Vigilante Law Firm, P.C., and files this complaint for damages as follows:

I. INTRODUCTION

1. Plaintiff Daniel Smith brings this action for damages against the Borough of Upland, Edward Mitchell, and Nelson Ocasio in their official and individual capacities, for political retaliation and oppression, all in violation of the First, Second and Fourteenth Amendments to the U.S. Constitution which constitute violations of 42 U.S.C. § 1983. Plaintiff seeks an award of compensatory damages against Defendants for his losses including lost opportunity, income, reputational injuries and the emotional distress he suffered. Plaintiff also seeks back pay and equitable relief and reimbursement for all costs and attorney’s fees incurred in the prosecution of this litigation. Plaintiff also seeks punitive damages against the individual Defendants in their individual capacities.

II. JURISDICTION AND VENUE

2. This action is initiated pursuant to 42 U.S.C. § 1983. This Court may properly maintain personal jurisdiction over Defendants because Defendants’ contacts with this state and this

judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

3. The United States District Court for the Eastern District of Pennsylvania may properly maintain original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of civil rights. The Court may also maintain supplemental jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. § 1367(a) and Rule 18(a) of the Federal Rules of Civil Procedure because they are sufficiently related to the claim(s) within the Court's original jurisdiction that they form part of the same case or controversy.

4. Venue is properly laid in the Eastern District of Pennsylvania Court under 28 U.S.C. §§ 1391(b)(1) and (b)(2), because all Defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district. Plaintiff was working in the District at the time of the unlawful actions set forth herein.

III. PARTIES

5. Plaintiff, Daniel Smith, is an adult individual residing in the Brookhaven, Delaware County, Commonwealth of Pennsylvania and is subject to the jurisdiction of this Court.

6. Defendant Edward Mitchell is an adult citizen of the United States, a resident of the Delaware County and was, during all times relevant herein, employed by Defendant Upland Borough as its Council President and is subject to the jurisdiction of this Court.

7. Defendant Nelson Ocasio is an adult citizen of the United States, a resident of the

Delaware County and, during all times relevant herein, employed by Defendant Upland Borough as the Chief of the police department and is subject to the jurisdiction of this Court.

8. Defendant, Officer John Doe 1-10 are a fictitiously named Officer(s) of the Upland Borough Police Department. They are each sued individually and in their official capacity.

IV. **FACTUAL BACKGROUND**

9. Plaintiff has served as the Chief of Upland Borough Volunteer Fire Department since January 1, 2006.

10. In 2012, Plaintiff was appointed to fill a vacant seat as a councilperson for the Borough of Upland.

11. Thereafter, Plaintiff was elected to a seat on council for the term 2013 through the end of 2015.

12. At the time of Plaintiff's appointment, Defendant Mitchell served as the Council President and continued in that position until December 31, 2015.

13. During the same period of time, Defendant Ocasio was appointed to the position of Chief of Police.

14. In 2013, the Borough of Upland Council approved an expenditure of funds for improvements to the fire house.

15. At all times, Plaintiff abstained from votes which affected the fire company.

16. In order to expend the funds for the fire company improvements, the Borough was required to seek bid proposals.

17. The Township's engineer, Catania Engineering, also employed Defendant Mitchell as a full-time employee.

18. During the course of construction, Plaintiff became aware that the Borough Council

President, Defendant Mitchell, was seeking to have the Fire Company pay a portion of the project above and beyond the amount it was legally required to because, inter alia, the contract was bid at prevailing wage rates and the Fire Company was no required to pay prevailing wage rates.

19. When Plaintiff confronted Defendant Mitchell and refused on behalf of the Fire Company to pay the amount demanded by Mitchell, Plaintiff noted that the mistake which led to the discrepancy was caused by Catania Construction which approved changes to the project without a signed change order.

20. Plaintiff complained to councilpersons and others that the attempts by Mitchell to force the Fire Company to pay were unlawful and intended to cover for the failures of his third party employer.

21. Plaintiff complained that Defendant Mitchell was in violation of the ethics code and had a conflict of interest, which should have precluded him from involvement in the transaction.

22. In retaliation for Plaintiff's complaint that Mitchell had engaged in unlawful and unethical conduct with respect to the project, Mitchell surreptitiously issued a change order claiming it was issued by Plaintiff which resulted in the Fire Company paying more than \$10,000 in project costs for which it was not responsible.

23. In further retaliation for Plaintiff's disclosure of Mitchell's unethical and unlawful conduct, Mitchell began a public smear campaign against Plaintiff, falsely accusing Plaintiff of mismanagement of the fire company and of stealing public funds.

24. Mitchell conspired with Defendant Ocasio to harass plaintiff by instructing Borough police officers to target Plaintiff.

25. In further retaliation for Plaintiff's complaints, Defendant Mitchell ordered that Plaintiff

be stripped of his Chief's vehicle which had been assigned to him full-time since he became Chief.

26. In an effort to humiliate, embarrass and interfere with Plaintiff's employment defendants caused a letter restricting plaintiff's use of the fire company vehicle to be served personally by a Borough Police Officer and Detective on Plaintiff as his place of employment in Broomall outside the jurisdiction of Upland.

27. In further retaliation Defendants Mitchell and Ocasio conspired to coerce Plaintiff to resign from his position as Councilman by alleging and threatening false criminal charges, and telling Plaintiff he had a choice to resign or be arrested, while at all times knowing there was no probable cause to arrest Plaintiff.

28. Defendant Ocasio confronted, threatened and coerced Plaintiff to resign by alleging that Plaintiff had violated gun laws by carrying a weapon Plaintiff was fully licensed to carry.

29. Defendant Ocasio used his position as police chief to interfere with Plaintiff's Second Amendment rights to threaten Plaintiff with criminal charges despite plaintiff's valid license to carry a weapon.

30. The conduct of Ocasio and Mitchell to force Plaintiff to resign from his council position was designed to retaliate against Plaintiff for his complaints and to oppress Plaintiff as a political adversary.

31. Defendant Mitchell with the intent to deprive Plaintiff of his constitutionally protected rights:

a. conspired with Ocasio to force plaintiff to resign and to unlawfully threaten Plaintiff with criminal charges;

b. unlawfully interfered with Plaintiff's position as Fire Chief;

c. conspired with others to harm Plaintiff's good name and public profile;
d. acted unlawfully to demean Plaintiff and to undermine his authority
e. acted in concert with and conspired with other defendants to terminate Plaintiff's employment unlawfully and in violation of his civil rights.

32. Defendant Ocasio with the intent to deprive Plaintiff of his constitutionally protected rights:

a. falsified official reports;
b. violated police policy and procedure;
c. provided false information;
d. conspired with Mitchell to force plaintiff to resign and to unlawfully threaten Plaintiff with criminal charges;
e. unlawfully interfered with Plaintiff's position as Fire Chief;
f. conspired with others to harm Plaintiff's good name and public profile;
g. acted unlawfully to demean Plaintiff and to undermine his authority
h. acted in concert with and conspired with other defendants to terminate Plaintiff's employment unlawfully and in violation of his civil rights.

33. Defendants acted in concert and conspired

a. to undermine plaintiff,
b. to humiliate plaintiff
c. to harm Plaintiff's good name and reputation.

34. As a result of Defendants' unlawful conduct, plaintiff suffered damages.

**COUNT I
VIOLATION OF PLAINTIFF'S FIRST AMENDMENT RIGHTS**

**TO FREE SPEECH AND POLITICAL ASSOCIATION UNDER 42 U.S.C § 1983
AGAINST DEFENDANTS IN THEIR INDIVIDUAL CAPACITY**

35. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
36. Defendants conspired to force plaintiff to resign from his elected position.
37. The threats to file false charges of criminal misconduct against plaintiff were politically motivated and/or motivated by Plaintiff's protected speech complaining that Mitchell's conduct violated the ethics and conflict of interest rules.
38. Plaintiff's actions of complaining about the Mitchell's unlawful and unethical conduct refusal dealt with a matter of public concern.
39. Additionally, his interest in the speech outweighed any interest Defendants had in promoting the efficiency of the public service. Plaintiff's complaints therefore constituted protected activity under the First Amendment to the U.S. Constitution.
40. Defendant s' act of forcing Plaintiff's resignation was motivated, at least in part, by plaintiff's protected activity.
41. As a the Chief of Police for the Borough of Upland all of Ocasio's actions as taken toward plaintiff were taken under color of state law.
42. As the council president for the Borough of Upland, all of Mitchell's actions as taken toward plaintiff were taken under color of state law.
43. By subjecting Plaintiff to threats of false charges of criminal misconduct based upon political motivation and in retaliation for Plaintiff's complaints of unlawful and unethical conduct, Defendants violated Plaintiff's right as guaranteed by the First Amendment to the U.S. Constitution.
44. Defendants' actions were taken in deliberate indifference to plaintiff's well established rights under the law. Defendants knew or should have known that their conduct, including but

not limited to contriving false allegations and threatening plaintiff with criminal charges to force his resignation was illegal and that their actions were not reasonable under the law as established at the time he took said actions.

45. As a result of Defendants' actions, Plaintiff has suffered pecuniary losses, and emotional pain and suffering, as set forth herein.

46. Defendants' actions as complained of above were willful, wanton, malicious, and/or were made in reckless disregard of plaintiff's civil rights and plaintiff is entitled to receive an award of punitive damages.

WHEREFORE, plaintiff respectfully requests that this court enter a judgment in his favor:

- (a) awarding him compensatory damages;
- (b) awarding him punitive damages;
- (c) awarding him attorneys' fees and costs of this action: and
- (d) granting other such relief as the Court deems necessary and appropriate.

COUNT II

VIOLATION OF PLAINTIFF'S SECOND AMENDMENT RIGHTS TO BEAR ARMS UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS IN THEIR INDIVIDUAL CAPACITY

47. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

48. Despite Plaintiff's duly issued license to carry a firearm, Defendants conspired to threaten Plaintiff with false charges that he unlawfully carried a firearm in an attempt limit, curtail or otherwise interfere with Plaintiff's license to carry a firearm.

49. Defendant s' act of forcing Plaintiff's resignation was motivated, at least in part, by plaintiff's protected activity.

50. As a the Chief of Police for the Borough of Upland all of Ocasio's actions as taken toward plaintiff were taken under color of state law.

51. As the council president for the Borough of Upland, Mitchell's actions toward plaintiff were taken under color of state law.

52. By subjecting Plaintiff to threats of false charges of criminal misconduct based upon political motivation and in retaliation for Plaintiff's complaints of unlawful and unethical conduct, Defendants violated Plaintiff's right as guaranteed by the Second Amendment to the U.S. Constitution.

53. Defendants' actions were taken in deliberate indifference to plaintiff's well established rights under the law. Defendants knew or should have known that their conduct, including but not limited to contriving false allegations and threatening plaintiff with criminal charges to force his resignation was illegal and that their actions were not reasonable under the law as established at the time he took said actions.

54. As a result of Defendant's actions, Plaintiff has suffered pecuniary losses, and emotional pain and suffering, as set forth herein.

55. Defendants' actions as complained of above were willful, wanton, malicious, and/or were made in reckless disregard of plaintiff's civil rights and plaintiff is entitled to receive an award of punitive damages.

WHEREFORE, plaintiff respectfully requests that this court enter a judgment in his favor:

- (a) awarding him compensatory damages;
- (b) awarding him punitive damages;
- (c) awarding him attorneys' fees and costs of this action: and
- (d) granting other such relief as the Court deems necessary and appropriate.

**COUNT III
VIOLATION OF PLAINTIFF'S PROCEDURAL DUE PROCESS RIGHTS**

**UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS IN THEIR INDIVIDUAL
CAPACITY**

56. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
57. Plaintiff had a liberty interest in his continued employment as a Borough Council person.
58. The Defendants made false statements about alleged criminal charges against Plaintiff.
59. Defendants threatened to arrest Plaintiff on the alleged criminal charges, unless Plaintiff resigned from his elected office.
60. The nature of the false allegations and the forced resignation from office caused reputational harm.
61. The false statements were publicly disseminated.
62. Plaintiff was denied notice, an opportunity to be heard and name clearing hearing.
63. As a the Chief of Police for the Borough of Upland all of Ocasio's actions as taken toward plaintiff were taken under color of state law.
64. As the council president for the Borough of Upland, all of Mitchell's actions as taken toward plaintiff were taken under color of state law.
65. By subjecting Plaintiff to threats of false charges of criminal misconduct based upon political motivation and in retaliation for Plaintiff's complaints of unlawful and unethical conduct, Defendants violated Plaintiff's rights to procedural due process.
66. Defendants' actions were taken in deliberate indifference to plaintiff's well established rights under the law. Defendants knew or should have known that their conduct, including but not limited to contriving false allegations and threatening plaintiff with criminal charges to force his resignation was illegal and that their actions were not reasonable under the law as established at the time he took said actions.

67. As a result of Defendant's actions, Plaintiff has suffered pecuniary losses, and emotional pain and suffering, as set forth herein.

68. Defendants' actions as complained of above were willful, wanton, malicious, and/or were made in reckless disregard of plaintiff's civil rights and plaintiff is entitled to receive an award of punitive damages.

WHEREFORE, plaintiff respectfully requests that this court enter a judgment in his favor:

- (a) (a) awarding him compensatory damages;
- (b) awarding him punitive damages;
- (c) awarding him attorneys' fees and costs of this action: and
- (d) granting other such relief as the Court deems necessary and appropriate.

COUNT IV
VIOLATION OF PLAINTIFF'S SUBSTANTIVE DUE PROCESS RIGHTS
UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS IN THEIR INDIVIDUAL
CAPACITY

69. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

70. Plaintiff had a property interest in his continued employment as a Borough Council person.

71. Defendants had no right to remove plaintiff from his elected office or to force Plaintiff to resign from elected office.

72. The Defendants conspired to make false statements about alleged criminal charges against Plaintiff and to threaten to arrest Plaintiff on the alleged criminal charges, unless Plaintiff resigned from his elected office.

73. As a the Chief of Police for the Borough of Upland all of Ocasio's actions as taken toward plaintiff were taken under color of state law.

74. As the council president for the Borough of Upland, all of Mitchell's actions as taken toward plaintiff were taken under color of state law.

75. By subjecting Plaintiff to threats of false charges of criminal misconduct based upon political motivation and in retaliation for Plaintiff's complaints of unlawful and unethical conduct, Defendants violated Plaintiff's substantive due process rights as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

76. Defendants' actions were taken in deliberate indifference to plaintiff's well established rights under the law. Defendants knew or should have known that their conduct, including but not limited to contriving false allegations and threatening plaintiff with criminal charges to force his resignation was illegal and that their actions were not reasonable under the law as established at the time he took said actions.

77. As a result of Defendant's actions, Plaintiff has suffered pecuniary losses, and emotional pain and suffering, as set forth herein.

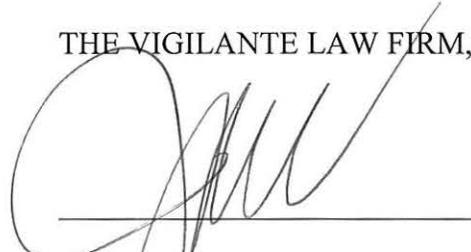
78. Defendants' actions as complained of above were willful, wanton, malicious, and/or were made in reckless disregard of plaintiff's civil rights and plaintiff is entitled to receive an award of punitive damages.

79. WHEREFORE, plaintiff respectfully requests that this court enter a judgment in his favor:

- (a) awarding him compensatory damages;
- (b) awarding him punitive damages;
- (c) awarding him attorneys' fees and costs of this action: and
- (d) granting other such relief as the Court deems necessary and appropriate.

DEMAND IS HEREBY MADE FOR A TRIAL BY JURY ON ALL COUNTS

THE VIGILANTE LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'JM', is written over a horizontal line. The signature is stylized and cursive.

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