

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JAMES SQUICCIARINI,

Plaintiff,

-against-

**THE VILLAGE OF AMITYVILLE, FIRE CHIEF JEFFREY
ERATH, FIRST ASSISTANT CHIEF LELAND GREEY,
SECOND ASSISTANT CHIEF DAVID HEGARTY, THIRD
ASSISTANT CHIEF GAVIN BUDDE, WARDEN JAMES
JULIANO, WARDEN RONALD SMITH, WARDEN
ANTHONY SOARES, WARDEN WILLIAM REIN, and
SECRETARY ROGER SMITH,**

Defendants.
-----X

Docket No.:
17-cv-6768

COMPLAINT

**JURY TRIAL
DEMANDED**

Plaintiff, JAMES SQUICCIARINI, by his attorneys THE LAW OFFICE OF ANTHONY M. GRANDINETTE, alleges as follows:

NATURE OF THE ACTION

1. This action arises from the Village of Amityville Volunteer Fire Department's retaliation against James Squicciarini for his exercise of his rights to freedom of speech and political expression by publicizing his endorsement of a candidate for Village Mayor on social media, who opposed the mayoral candidate favored by the Fire Department and Fire Council.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the First and Fourteenth Amendments to the United States Constitution, the Constitution and laws of the State of New York, and 28 U.S.C. §§ 2201 and 2202.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs further invokes the supplemental jurisdiction of this Court to adjudicate pendant New York State law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

6. Plaintiff JAMES SQUICCIARINI, who is also known as “Jack” (“Squicciarini”) resides in the Village of Amityville, County of Suffolk, State of New York.

7. Defendant VILLAGE OF AMITYVILLE is a duly constituted municipality in the State of New York, and at all relevant times was the public employer of the individually-named Defendants, who at all relevant times herein acted under color of state law and within the scope of their employment. Additionally, the Village of Amityville Volunteer Department (“Fire Department”), whose officers’ conduct is at issue in this action, is a political subdivision of the Village of Amityville.

8. Defendant Fire Chief Jeffrey Erath (“Chief Erath”) resides in Amityville, New York. At all relevant times herein, Chief Erath was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Chief Erath is being sued in his official and individual capacities.

9. Defendant First Assistant Chief Leland Greey (“Chief Greey”) resides in Amityville, New York. At all relevant times herein, Chief Greey was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Chief Greey is being sued in his official and individual capacities.

10. Defendant Second Assistant Chief David Hegarty (“Chief Hegarty”) resides in Massapequa, New York. At all relevant times herein, Chief Hegarty was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Chief Hegarty is being sued in his official and individual capacities.

11. Defendant Third Assistant Chief Gavin Budde (“Chief Budde”) resides in Amityville, New York. At all relevant times herein, Chief Budde was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Chief Budde is being sued in his official and individual capacities.

12. Defendant Warden James Juliano (“Warden Juliano”) resides in Massapequa Park, New York. At all relevant times herein, Warden Juliano was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Warden Juliano is being sued in his official and individual capacities.

13. Defendant Warden Ronald Smith (“Warden Smith”) resides in Amityville, New York. At all relevant times herein, Warden Smith was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Warden Smith is being sued in his official and individual capacities.

14. Defendant Warden Anthony Soares (“Warden Soares”) resides in Amityville, New York. At all relevant times herein, Warden Soares was a member of the Fire Department’s Fire

Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Warden Soares is being sued in his official and individual capacities.

15. Defendant Warden William Rein (“Warden Rein”) resides in Amityville, New York. At all relevant times herein, Warden Rein was a member of the Fire Department’s Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Warden Rein is being sued in his official and individual capacities.

16. Defendant Secretary Roger Smith (“Secretary Smith”) resides in Amityville, New York. At all relevant times herein, Secretary Smith was the secretary to the Fire Department and its Fire Council, who acted under color of law and within the scope of his employment, as well as in his individual capacity. Secretary Smith is being sued in his official and individual capacities.

17. Plaintiff is placing Defendants on notice that should Plaintiff learn during the course of discovery of additional conduct committed by Defendants which may give rise to liability, or of the identities of additional individuals who committed acts which may give rise to liability, that Plaintiff will seek to amend his Complaint to allege additional claims and/or to name additional defendants, accordingly.

NEW YORK STATE NOTICE OF CLAIM REQUIREMENTS

18. Plaintiff served a timely Notice of Claim upon the Village of Amityville in compliance with General Municipal Law § 50-e. *See* Exhibit A.

19. At least thirty days have elapsed since the service of said Notice of Claim and the Village of Amityville has neglected or refused to adjust or pay the claims.

20. The Village of Amityville had Plaintiff examined regarding the extent of his emotional distress injuries pursuant to General Municipal Law § 50-h on June 28, 2017, in advance of Plaintiff commencing this action

21. The Village of Amityville examined Plaintiff pursuant to General Municipal Law § 50-h on July 11, 2017, in advance of Plaintiff commencing this action.

22. This action has been commenced within one year and ninety days after the happening of the events upon which these claims are based.

FACTUAL AND GENERAL ALLEGATIONS

23. Squicciarini resided in the Village of Amityville his entire life.

24. Squicciarini became a member of the Fire Department on June 13, 1993, over twenty-four years ago. He is a highly decorated, Class A Fireman, and achieved the ranks of member of the Board of Review, and Ex-Captain. In addition to being a fireman, Squicciarini was also an

Emergency Medical Technician, as well as a diver for the water rescue squad, within the Fire Department.

25. Squicciarini's second child was born in February 2017. Shortly thereafter, his family had professional photographs taken with the new baby. As Squicciarini had done when his first child was born, he also had photographs taken of himself dressed in his Fire Department bunker gear, holding his new baby who was dressed in a knitted makeshift bunker gear outfit.

26. Prior to taking the baby pictures, Squicciarini requested, and was granted, permission to take the pictures dressed in his Fire Department bunker gear, from Chief Budde.

27. On March 7, 2017, Squicciarini posted one of the photographs he had taken of himself dressed in his Fire Department bunker gear holding his newborn child, as his Facebook profile picture.

28. Squicciarini was Facebook friends with numerous members of the Fire Department, who upon information and belief, saw that he had posted that photograph on his Facebook account.

29. No individual, from the Fire Department or otherwise, complained about the fact that Squicciarini had posted a photograph on Facebook of himself dressed in his Fire Department bunker gear.

30. The Village of Amityville general elections, including the election for Village Mayor, were held on March 21, 2017.

31. The candidates for Village Mayor were Dennis Siry and Nick Lalota. They were both Amityville Trustees, and liaisons between the Village of Amityville and the Fire Department.

32. The mayoral election was highly publicized, and hotly contested. For example, it was the subject of numerous articles in *Newsday*, *Amityville Record*, and various other online publications. The Long Island Law Enforcement Foundation super PAC was heavily involved, as was Suffolk County Democratic Chair Richard Schaefer and County Legislator Duwayne Gregory, who all opposed Nick Lalota in the Village election.

33. The governing body of the Fire Department, including all four Fire Chiefs and the Fire Council Members, supported Dennis Siry for Village Mayor, Lalota's opponent.

34. For example, upon information and belief, the Fire Chiefs attended Siry's fundraisers, as well as his ultimate victory party, while dressed in their Fire Department attire which indicate "Amityville Fire Department Chief." They arrived at the fundraisers and victory party in official Fire Department vehicles which they parked outside the event locations.

35. There are several Companies within the Fire Department. A "GroupMe" chat group was created for Hose Company 4, titled "Strictly Hose 4 Business No BS!" which a Fire Department Captain utilized to remind Fire Department members from Hose Company 4 to attend a Dennis Siry fundraiser.

36. The Fire Department's Fire Council, which is comprised of the four Fire Chiefs and two Wardens from each Company, sent a unanimous letter to the Amityville Village Board requesting that Lalota be removed as liaison to the Fire Department. (Lalota was not removed until after Mayor Siry took office).

37. Unlike the large majority of the Fire Department, Squicciarini supported Lalota for Village Mayor. He spoke with Village of Amityville residents in support of Lalota, encouraged residents to vote for him, placed lawn signs on his property, and engaged in conversation regarding the Village Mayoral election on social media, including Facebook, by posting and commenting regarding the Village Mayoral election.

38. Certain members of the Fire Department expressed their dislike toward Squicciarini for supporting Lalota in opposition to Siry. For example, a Village of Amityville resident attacked Squicciarini's support for Lalota on a Facebook post, after which Chief Greey, Chief Hegarty, and Ex-Chief Robert Waegerle openly discussed their disdain for Squicciarini and his support of Lalota, and stated, in sum and substance, that they wished they could have attacked him online as the resident had. Their conversation took place in the Fire House, in an open office, a few steps away from a County First Instructor conducting a class which was attended by members and non-members. A Rescue Squad meeting was also in progress in the same room, with many Fire Department members within earshot of the conversation. Squicciarini was one of the many people who overheard this conversation while walking past the office.

39. On Election Day, Tuesday, March 21, 2017, Squicciarini captioned his Facebook profile picture, the photograph in his Amityville bunker gear holding his new baby, with the following: **"WE ARE VOTING NICK LALOTA FOR MAYOR,"** see Exhibit B, and re-posted that photograph to his Facebook wall along with an endorsement for the other two members on Lalota's ticket. In sum and substance, the post accompanying the photo stated 'Vote for the team that has the education, experience and proven track record, vote for the most qualified candidates, Nick, Jim, and Jessica. Keep the Village moving forward.'

40. Squicciarini utilized that photograph because it was his favorite photograph with his new baby, and it had a black background which was suitable for placing text over it.

41. Squicciarini acted as a citizen, and posted the photograph to his personal Facebook account.

42. Squicciarini was off-duty when he posted the photograph to Facebook.

43. On March 21, 2017, at 11:01 AM, approximately one hour after posting the photograph on Facebook, Squicciarini received an Order, which was conveyed by Hose Company 4 Captain and Fire Council Warden Darren McVeety ("Captain McVeety") via text message, which stated the following: "As per chiefs and village attorney please remove immediately the post on Facebook of you you [sic] in your amityville bunker gear endorsing a political candidate." See Exhibit C at 1.

44. Pursuant to the Order, Squicciarini immediately removed the photograph from Facebook, and at 11:02 AM advised Captain McVeety of the removal. *See id.*

45. In addition to removing the photograph at issue from Facebook, Squicciarini also removed other pro-Lalota posts in order to avoid further issues with the Fire Department.

46. At 8:56 PM later that day, Captain McVeety notified Squicciarini, again via text message, the following: “Don’t shoot the messenger. As per chiefs and fire couns[i] relieved of duty for 30 days. You will receive a certified letter stating your right witch [sic] I know you know them.” *See id.*

47. Captain McVeety confirmed that Squicciarini was suspended, and not merely placed on restricted duty. *See id.* at 2.

48. Captain McVeety also confirmed that the suspension was due to posting the photograph which Squicciarini had been ordered to remove. *See id.* at 1. Three days later he also confirmed, again via text message, that Squicciarini was suspended for violating “[t]he social media policy,” specifically for posting the photograph referenced above, on Facebook. *See id.* at 2.

49. However, Captain McVeety confirmed that written charges had not been presented at the Fire Council meeting when they met and voted to suspend Squicciarini for 30 days, and that “[t]he[y] didn’t go into detail of what part.” *See id.*

50. The minutes from the March 21, 2017 Fire Council meeting only provide, regarding Squicciarini, that “[a]fter a discussion Ex-Captain Jack Squicciarini was relieved of duty for not complying with the social Media policy.”

51. The Fire Department’s “Media and Social Media Policy,” Section 10.24 of the its Standard Operating Procedures (“Social Medial Policy”) states the following, in its entirety:

1. Photos taken of any Amityville Fire Department scene shall be limited to the approved members of the press, Public Information Officers and Training Committee of the Amityville Fire Department.
2. No member of the department should take pictures or use a picture of a scene without the expressed permission of the Chief’s Office.
3. No patient images shall be used by the department for any reason unless the said person gives permission or face is blocked out.
4. The use of Helmet Mounted Cameras and dissemination of all images produced from the use of Helmet Mounted Cameras will be at the approval of the Chief. The use of individually purchased Helmet Mounted Cameras is strictly forbidden.
5. Members shall not make public comments criticizing the Department or other members of the Department regarding matters relating to the Department or the performance of their

firematic duties via social media. (This is repeated from duties of a member Sec 10.3.19)

6. Photos of members in uniform, on apparatus or in any department setting that are used in any type of media should be done in a way that promotes a positive image of the Amityville Fire Department. (No alcohol containers, embarrassing situations, derogatory signs or posters may be in pictures.)

See Exhibit D.

52. Captain McVeety later explained that the suspension was for “posting a unauthorized edited picture without out permission.” *See Exhibit C* at 3.

53. Squicciarini did not violate any provision of the Social Medial Policy.

54. Given that the photograph Squicciarini posted did not depict a Fire Department scene or a patient, and was not taken by a helmet-mounted camera, sub-subsections 1, 2 or 3 of the Social Medial Policy could not have been used as a guise under which to suspend Squicciarini.

55. Accordingly, Squicciarini must have been suspended pursuant to sub-subsections 5 and/or 6 of the Social Medial Policy.

56. The members of the Fire Council who voted to suspend Squicciarini were Chief Erath, Chief Greey, Chief Hegarty, Chief Budde, Warden Juliano, Warden Smith, Warden Soares, and Warden Rein.

57. These individuals are high-ranking officials within the Fire Department who are ultimate decision-makers as to matters of Fire Department membership discipline, including suspension.

58. Captain McVeety, also a Warden, was present at the Fire Council meeting, and was the only individual who voted against suspending Squicciarini. *See id.* at 2.

59. The vote to suspend Squicciarini was not a random act.

60. The members of the Fire Council voted to suspend Squicciarini during a regularly-scheduled Fire Council meeting which takes place on the third Tuesday of each month.

61. Defendants recognized the applicable rules prior to suspending Squicciarini, because in the text message advising Squicciarini of the suspension, Captain McVeety advised him that “[y]ou will receive a certified letter stating your right witch [sic] I know you know them.” *See id.* at 1. Several minutes later he advised Squicciarini that “[y]ou have the right to a hearing. And nothing is final unless you don’t dispute it. It is all in the letter you will receive.” *See id.* at 2.

62. Squicciarini was not provided an opportunity to present his defense prior to the Fire Council voting to suspend him.

63. The Fire Council suspended Squicciarini in retaliation for his exercise of his First Amendment rights of freedom of speech and freedom of political expression, for supporting a political candidate who opposed their preferred candidate, Dennis Siry, for Village Mayor.

64. While suspended, Squicciarini was prohibited from being on Fire Department property. He was therefore prohibited from socializing within the Fire Department, and he could not bring his nephews to visit the fire trucks when they visited from out of state, as he had always done in the past, which caused him anguish.

65. While suspended, Squicciarini was also prohibited from responding to alarms, which further prevented him from accumulating points toward LOSAP benefits. For example, during his suspension, Squicciarini was prohibited from responding to a rescue call at the home of another Fire Department member, which he otherwise would have done.

66. On March 23, 2017, at approximately 6:45 PM, at Amityville Village Hall, Squicciarini informed the Amityville Village Attorney, Richard Handler, Esq., of the improper suspension, and advised him that this was blatant First Amendment retaliation. Squicciarini discussed the Supreme Court cases controlling the matter, and requested that on that basis, the suspension be immediately rescinded and a letter of apology be provided by the Fire Department within twenty-four hours or he would proceed as necessary.

67. On March 24, 2017 at 3:53 PM, the Village Attorney emailed Squicciarini the following:

Hello Jack:

I reviewed the Pickering and related cases. There is some strength there. I wrote to the Chiefs and noted that Dennis Siry had the Facebook entry. I saw it again myself. I was told that the situations are not analogues since Dennis is not a member of the Fire Dept. The Dept. has a point . I researched a bit and discovered that under GML § 209-1(5) the Counsel can suspend as long as they file charges, even before a hearing. Then it has to be followed up with a hearing.

Th[us]- they are not likely to lift the suspension. Regards,
Richard.

68. Squicciarini responded to the Village Attorney by e-mail on March 24, 2017 at 4:23 p.m., as follows:

Richard:

I will proceed as necessary. I wanted to provide a fair opportunity for the Village and Dept to mitigate my damages. It is clear that they have rejected that opportunity and that you may have advised them not to mitigate my damages.

I believe the law will support that their disciplinary action is an unlawful retaliation and a patent violation of my first amendment rights; moreover, the department's social media policy is unconstitutional. This could have been resolved quietly. They have chosen not to avail themselves of that opportunity. That is unfortunate for all involved and only causes further harm to me. I'm sure you presented them with the vulnerability of their position with regard to the strength of my First Amendment Violation claim and yet they still refuse to right their wrong. I'm deeply saddened by this. We will let the process yield the truth and the wrongs will be righted formally.

Like I told you yesterday, if you could convince me that the law does not solidly support my position, I would take the suspension and not say another word about it. As I'm sure you found in your research, my position has ample legal support. Otherwise, I'm positive your email would have been citation laden demonstrating support for the disciplinary action pursuant to the social media policy and the violation of my first amendment rights. The GML does not allow for violations of first amendment rights, and Siry's post simply adds to the ample available evidence that my speech was clearly a matter of public concern. It is incontrovertible that my speech was a matter of public concern, not part of my duties; moreover it was in fact off-duty speech and entitled to first amendment protection.

Please confirm the Village's position with regard to my good faith offer to mitigate my damages. I know the FD has no interest in this but the Village should.

Regards,

JAS

69. On March 24, 2017 at 4:30 p.m. The Village Attorney responded via email with the following:

Jack:

I gave no direct advi[c]e other than to advise them that there were due process issues based upon the case you provided me and others that I submitted to them to consider. I explained that this was not a workplace issue where the speech related to the workings of the department. I stated that this would be a large burden on the new administration and should be worked out. I also advised that Dennis Siry was had a similar picture and that this was a valid point. I have written to the Mayor-elect to discuss this, however, he has not gotten back to me. richard.

70. Squicciarini responded to the Village Attorney by e-mail on March 24, 2017 at 4:45 p.m., as follows:

Thank you for the prompt reply. I have been following up for a copy of the charges and my Captain tells me they are with you for review.

The SOPS require that my Captain was to interview me within 48 hours, that did not happen. Also the report/charges are required to be filed within 48 hours and we are well beyond that point and I still don't have formal charges to consider relative to my suspension.

The SOPs also dictate that a member is to be placed on restricted duty while charges are investigated. Not a suspension. Per the SOPS I could be placed on restricted duty during an investigation and that must be approved by council at the next meeting. I don't believe the SOPS support their determinate 30 day suspension.

Per my Captain who is also a council member, a final determination was made to suspend me for thirty days, based on a violation of the social media policy, by a vote of the fire council, in my absence, and without the legally required opportunity to be heard. That is a due process violation. This is going from bad to worse. Let me know what the Village's position is when and if you hear.

71. New York General Municipal Law § 209-1 provides that volunteer members of fire departments may be suspended “*after* charges are filed and pending disposition of the charges” (emphasis added).

72. Additionally, the Fire Department's Standard Operating Procedures provides that

[a] member can be placed on *restrictive duty* by the Chief's Office for actions deemed inappropriate to the good of the department while being investigated. This must be reported and approved by council at the next regular council meeting. This will restrict members to base station and non-public in house duties.

See Amityville Fire Department S.O.P. § 10.4(24) (emphasis added).

73. On March 21, Captain McVeety had advised that Squicciarini would be receiving a certified letter explaining the rights he had. See Exhibit C at 1.

74. By Friday morning, March 24, Squicciarini had still not received a letter explaining his rights, or explaining the basis of his suspension. Therefore at 11:01 AM, he asked Captain McVeety to follow up on the matter so that he could evaluate the charges that were the basis of his suspension in order to properly defend his civil rights. See *id.* at 1-2.

75. Captain McVeety spoke with Chief Erath, who advised that the letter with the charges would be emailed to Squicciarini per his request. Captain McVeety relayed this information to Squicciarini via text message at 11:08 AM. *See id.* at 2. He asked that Squicciarini notify him upon receipt of the email. However, Captain McVeety advised Squicciarini that based upon his conversation with Chief Erath, he did not believe that Chief Erath had even written the letter and charges yet. *See id.*

76. Later that afternoon, Chief Erath advised Captain McVeety that the charges were being reviewed by the Village Attorney. At 4:31 PM, Captain McVeety advised Squicciarini, that “I was told it’s under rev[ie]w with the village attorney.” *See id.* at 3.

77. Squicciarini contacted the Village Attorney by email at 4:45 PM as noted above, and again on March 25, 2017 at 2:20 AM, to ascertain the status and nature of his review of the charges, as follows:

Richard,

As you wrote, council can suspend pursuant to GML Section 209-1(5). However, charges had to be filed for council to suspend me on March 21, 2017. I again repeat my request for those charges as they were filed, on that day, as required by law. Per Captain McVeety you are “reviewing the charges” before they will be provided to me. I do not believe it is proper for you to be reviewing, amending, or editing them for Fire council. The charges, as filed, and voted on, are what must be provided. If they suspended me without filing charges please indicate same.

This whole situation is making me sick and I can’t sleep. The result is that I’ve found abundant precedent to demonstrate that the law applied to the facts of this case will result in a finding in my favor.

The Village has exposure under 42 U.S.C. Section 1983 for a Monell claim relative the deprivation of my first amendment rights caused by its own policy and as a result, they will not enjoy a qualified immunity defense. The various actors also have personal exposure for punitive damages as a result of the unconstitutional adverse action taken against me. The disregard with which this has been addressed by the fire department despite the clear error and the neglect by the Mayor-elect to make any effort to correct this is compounding the harm.

Please advise if there were charges filed as required and if so explain the delay and outright refusal to provide them to me by the Department. Hiding behind you will not do. Once again, please send me what if anything was filed on March 21, 2017. So I may properly address this suspension.

78. The Village Attorney responded via e-mail on March 25, 2017 at 8:24 PM, stating that “I haven’t seen any charges, nor have I been asked to review them.”

79. Squicciarini conveyed this information via text message to Captain McVeety at 8:40 AM, and asked him to confirm who stated that the charges were under review with the Village Attorney, whether written charges were presented at the Council Meeting when the vote to suspend him was taken, and whether Captain McVeety had seen written charges. *See id.* at 3. Captain McVeety Responded at 9:11 AM that Chief Erath told him the charges were under review with the Village Attorney, that no written charges were presented, and he did not see charges at the meeting. *See id.*

80. Squicciarini forwarded Captain McVeety’s responses to the Village Attorney via email at 9:20 AM.

81. The vote by Fire Council to suspend Squicciarini for 30 days was conducted without a hearing, and without formal charges being filed, contrary to GML § 209-L.

82. Article of IX of the Fire Department’s bylaws provides that “[i]n the event that written charges are brought against any officer or member of this Department, the procedure shall be in accordance with New York General Municipal Law § 209-1 : NY Code - Section 209-L, or any other applicable statues.”

83. The vote by the Fire Council to suspend Squicciarini for 30 days was also in violation of the Fire Department’s SOP’s which provide that a member be placed on “restrictive duty” while being investigated.

84. The Fire Department admitted that it violated Squicciarini’s due process rights. On March 25, 2017 at 1:42 PM, the Fire Department Secretary, Roger Smith, emailed Squicciarini a letter which stated the following:

85. Dear Ex-Captain James Squicciarini,

At this time your suspension has been rescinded and you can respond to alarms, participate in Company activities and be on Department properties. The Fire Council had suspended you not in accordance with NY State G M Law 209-L.

See Exhibit E.

86. The Fire Department conceded only that the method in which it suspended Squicciarini violated Squicciarini’s due process rights. However the Fire Department did not detract its false claims that Squicciarini violated the Fire Department’s Social Medial Policy.

87. The claim that Squicciarini violated the Fire Department’s Social Media Policy, was false and defamatory.

88. Despite that, the Fire Department widely disseminated the nature of the false charges against Squicciarini, and the discipline imposed, both orally and in writing, not only to members of the Fire Department, but also to individuals who were not members of the Fire Department.

89. For example, on March 25, 2017, at approximately 8:20 PM, a Village Resident, Robert D. Chester Jr., made a comment on a Facebook post which indicated he had actual knowledge of the nature and the details of the charges against Squicciarini and the disciplinary action imposed. Furthermore, the language he used on that Facebook post appeared to Squicciarini to be a warning and a threat that similar conduct would not be taken lightly. Mr. Chester is neither a member of the Fire Department nor the Fire Council. He is related to an Ex-Chief Charles Scudlo, as well as to a current officer, Clifford Scudlo. Mr. Chester's wife is a member of the Ladies Auxiliary of the Amityville Fire Department.

90. Additionally, on April 3, 2017 at 12:48 PM, Roger Smith, the secretary to the Fire Department and the Fire Council, emailed the minutes of the March 21, 2017 Fire Council meeting which references Squicciarini's suspension and the reason therefore, to numerous individuals, 18 of whom were not members of the Fire Council. *See* Exhibit F.

91. The Fire Council, and its secretary Roger Smith, also distributed hard copies of the March 21, 2017 Fire Council minutes, to the entire Fire Department membership at the Company meetings which took place in April 4, 2017, and, upon information and belief each company's Warden also read the March 21, 2017 Fire Council minutes to his respective Company, in its entirety.

92. The wide dissemination of the false allegations that Squicciarini violated the Social Media Policy, particularly given that it was related to, and followed, such a highly publicized and hotly contested mayoral election, caused irreparable harm to Squicciarini's standing within the Fire Department, as well as to his reputation and his ability to associate within the community in which he is a lifelong resident.

93. In taking disciplinary measures against Squicciarini, the Fire Department treated Squicciarini differently from other members.

94. Unlike immediately suspending Squicciarini from the Fire Department under the guise of enforcing the Social Media Policy when he did not in fact violate it, the Fire Department failed to take any disciplinary measures against other members who *did* violate the Social Media Policy, or those who engaged in acts similar to Squicciarini.

95. For example, the Fire Department did not take disciplinary action against Fire Department members who posted photographs on social media wearing Fire Department uniforms while holding various alcoholic beverages, which is a blatant violation of sub-section 6 of the Social Medial Policy. *See* Exhibit D. Examples include, but are not limited to, Fire Department member Chris Erath, the son of Chief Erath, posting a photograph of himself and his father, both wearing Fire Department uniforms, holding alcohol beverages, in a bar, and the photograph includes the hashtag "#budlight."

96. The Fire Department did not either take disciplinary action against Fire Department members who publically supported Dennis Siry for Mayor, or attended other political events, while dressed in Fire Department uniform. For example, no disciplinary measures were taken against Chief Erath who drove a Fire Department vehicle while dressed in Fire Department uniform to town hall for a political event which received media coverage.

97. Due to Defendants' actions, Squicciarini was unlawfully suspended from the Fire Department, his rights to free speech, political expression, and due process were violated, as were his civil rights. He was retaliated against for exercising his rights, and he was the subject of libelous and slanderous conduct.

98. Due to Defendants' actions, Squicciarini was ostracized within the Fire Department, he was made to fear for his safety while engaging in Fire Department duties and responsibilities, his reputation in the community he lived in his entire life was damaged, and he suffered embarrassment and emotional distress which further resulted in an inability to sleep and loss of weight.

99. Squicciarini was also removed as Chairman from the Amityville Village Planning Board. This position is obtained through an appointment by the Amityville Village Board of Trustees, including the Village Mayor. Squicciarini had been appointed to a five-year term. As of 2017, he was in the third year of his five-year term. On August 14, 2017, at the Village Board Meeting, Squicciarini learned from those in attendance at the meeting that he had been removed as Chairman. He had not been provided prior notice, and his mother was in the audience when it was announced that he had been demoted.

100. On the night Squicciarini's personal information pertaining to his suspension was released to the Fire Department membership, Squicciarini also lost an election for Warden of Fire Council. He only received two votes—his and his father's, who is also a member of the Fire Department.

CAUSES OF ACTION

ONE

42 U.S.C. § 1983 –1st Amendment Free Speech/Political Expression

101. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-100 as though fully set forth herein.

102. The Village of Amityville Mayoral election was a matter of public concern and public interest.

103. Squicciarini posted the photograph and speech at issue indicating his support for Lalota as Village Mayor, to his personal Facebook account.

104. In doing so, Squicciarini acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

105. Therefore, Squicciarini's speech and conduct were protected by the First Amendment.

106. Defendants directed Squicciarini to "immediately" remove the photograph at issue from Facebook.

107. Defendants also suspended Squicciarini because he posted the photograph on Facebook.

108. In doing so, Defendants restricted and chilled Squicciarini's speech and political expression. Defendants also chilled the speech and political expression of all other Fire Department members who are now afraid to openly support Lalota, or other candidates opposed by the majority of the Fire Department, for fear of retaliation.

109. Accordingly, Defendants (other than Secretary Smith) violated Squicciarini's right to free speech and political expression guaranteed to him by the First Amendment to the United States Constitution.

TWO
42 U.S.C. § 1983 –1st Amendment Retaliation

110. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-109 as though fully set forth herein.

111. Squicciarini had an interests protected by the First Amendment—the right to free speech, and the right to participate in the electoral process through political expression, which include the right to support a specific candidate for public office.

112. The Village of Amityville Mayoral election was a matter of public concern and public interest.

113. Squicciarini posted the photograph at issue indicating his support for Lalota as Village Mayor, to his personal Facebook account.

114. In doing so, Squicciarini acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

115. Therefore, Squicciarini's speech and conduct were protected by the First Amendment.

116. Defendants took an adverse action against Squicciarini—they suspended him from the Fire Department.

117. Defendants suspended Squicciarini from the Fire Department because he posted the photograph at issue indicating his support for Lalota as Village Mayor, to his Facebook account.

118. Defendants did not have an adequate justification for doing so.

119. Accordingly, Defendants (other than Secretary Smith) retaliated against Squicciarini for exercising his First Amendment rights to free speech and political expression, in violation of rights guaranteed to him by the First Amendment to the United States Constitution.

THREE

42 U.S.C. § 1983 –1st Amendment Viewpoint Discrimination

120. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-119 as though fully set forth herein.

121. Defendants restricted and chilled Squicciarini's speech and political expression because he posted the photograph at issue indicating his support for Lalota as Village Mayor, whereas Defendants supported Siry for Village Mayor.

122. Because Squicciarini publically expressed political views which differed from those held by the majority of the Fire Department, Defendants discriminated against him under the guise of enforcing the Fire Department's Social Media Policy.

123. Squicciarini did not violate the Fire Department's Social Media Policy.

124. The Fire Department failed to take disciplinary measures against members who blatantly violated the Social Media Policy.

125. The Fire Department also failed to take disciplinary measures against members who publically supported Siry for Mayor while dressed in Fire Department attire and utilized Fire Department-labeled vehicles and taxpayer-funded fuel to commute to political events.

126. Accordingly, Defendants (other than Secretary Smith) discriminated against Squicciarini based upon the viewpoint of his political expression, in violation of Squicciarini's right to free speech and political expression guaranteed to him by the First Amendment to the United States Constitution.

FOUR
42 U.S.C. § 1983 – 1st Amendment Municipal Liability

127. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-126 as though fully set forth herein.

128. Defendants violated Squicciarini's First Amendment rights pursuant to, and in furtherance of, subsections 5 and/or 6 of the Fire Department's Social Medial Policy.

129. The Fire Department's Social Medial Policy is part of the Village of Amityville Standard Operating Procedures, which were formally approved and adopted by the Fire Council.

130. The Fire Council has the final authority to establish municipal policy on this matter.

131. Subsections 5 and 6 of the Fire Department's Social Medial Policy operates as a prior restraint on speech.

132. Subsections 5 and 6 of the Fire Department's Social Medial Policy regulate, and prohibit, the Fire Department members' right to speech and expression on all speech critical of the Fire Department or its members, or which would tend to embarrass the Fire Department or its members.

133. Numerous matters which may be critical of, or embarrassing to, the Fire Department, are matters of public concern, including but not limited to misuse of department vehicles, misuse of fuel and resources, drinking alcoholic beverages while on duty, cyber bullying by Fire Chiefs while using taxpayer-funded cell phones, and practices or failures that endanger Fire Department members and the public at large.

134. Subsections 5 and 6 of the Fire Department's Social Medial Policy therefore regulate and prohibit the Fire Department members' right to speech and expression on matters of public concern

135. The Fire Department's Social Medial Policy is therefore unconstitutionally overbroad.

136. The Village of Amityville, and its Fire Council specifically, were on notice that the Social Medial Policy was unconstitutionally overbroad since at least March 5, 2015. On July 12, 2015, an incident report pertaining to photographs taken while off-duty as a civilian, was served on the Fire Council which stated that "SOP 10.24 does not and cannot prohibit the foregoing without violating the first amendment." However, the Fire Department failed to amend or withdraw the Social Media Policy.

137. Accordingly, the Village of Amityville is liable for the violations of Squicciarini's First Amendment rights, which were caused due to, and in furtherance of, the unconstitutionally overbroad Social Medial Policy.

FIVE

42 U.S.C. § 1983 –14th Amendment Denial of Procedural Due Process

138. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-137 as though fully set forth herein.

139. As a volunteer firefighter, Squicciarini was considered a public employee.

140. Squicciarini therefore had a property interest in his position as a volunteer firefighter with the Fire Department.

141. New York General Municipal Law § 209-1 provides that volunteer members of fire departments may be suspended “after charges are filed and pending disposition of the charges.”

142. Additionally, the Fire Department’s Standard Operating Procedures provides that a Fire Department member “be placed on restrictive duty,” and not that he be suspended, pending an investigation of alleged misconduct.

143. Squicciarini was therefore entitled to notice of the charges against him, and to be placed only on restrictive duty, prior to being suspended.

144. Defendants (other than Secretary Smith) are high-ranking officials within the Fire Department who are ultimate decision-makers as to matters of Fire Department membership discipline, including suspension.

145. Defendants recognized the applicable rules prior to suspending Squicciarini.

146. Squicciarini did not receive notice of the charges against him, either orally or in writing, prior to being suspended, and he was not placed on restrictive duty while the charges were being investigated.

147. Therefore, Squicciarini did not receive the process he was due prior to being suspended from the Fire Department.

148. Squicciarini was not able to receive post-deprivation remedies because Defendants rescinded the suspension prior to him having the ability to initiate an Article 78 proceeding.

149. Accordingly, Defendants (other than Secretary Smith) deprived Squicciarini of a property interest without the due process of law guaranteed to him by the Fourteen Amendment to the United States Constitution.

SIX

Pendent State Claim – Right to Free Speech/Political Expression

150. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-149 as though fully set forth herein.

151. The Village of Amityville Mayoral election was a matter of public concern and public interest.

152. Squicciarini posted the photograph at issue indicating his support for Lalota as Village Mayor, to his personal Facebook account.

153. In doing so, Squicciarini acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

154. Therefore, Squicciarini's speech and conduct were protected by Article I, Section 8, of the New York State Constitution.

155. Defendants directed Squicciarini to "immediately" remove the photograph at issue from Facebook.

156. Defendants also suspended Squicciarini because he posted the photograph on Facebook.

157. In doing so, Defendants restricted and chilled Squicciarini's speech and political expression.

158. Accordingly, Defendants (other than Secretary Smith) violated Squicciarini's right to free speech and political expression guaranteed to him by Article I, Section 8, of the New York State Constitution.

SEVEN

Pendent State Claim – Free Speech Retaliation

159. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-158 as though fully set forth herein.

160. Squicciarini had interests protected by Article I, Section 8, of the New York State Constitution—the right to free speech, and the right to participate in the electoral process through political expression, which include the right to support a specific candidate for public office.

161. The Village of Amityville Village Mayoral election was a matter of public concern and public interest.

162. Squicciarini posted the photograph at issue indicating his support for Lalota as Village Mayor, to his personal Facebook account.

163. In doing so, Squicciarini acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

164. Therefore, Squicciarini's speech and conduct were protected by Article I, Section 8, of the New York State Constitution.

165. Defendants took an adverse action against Squicciarini—they suspended him from the Fire Department.

166. Defendants suspended Squicciarini from the Fire Department because he posted the photograph at issue indicating his support for Lalota as Village Mayor, to his Facebook account.

167. Defendants did not have an adequate justification for doing so.

168. Accordingly, Defendants (other than Secretary Smith) retaliated against Squicciarini for exercising the right to free speech and political expression guaranteed to him by Article I, Section 8, of the New York State Constitution.

EIGHT

Pendent State Claim – Procedural Due Process

169. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-168 as though fully set forth herein.

170. New York General Municipal Law § 209-1 provides that volunteer members of fire departments may be suspended “after charges are filed and pending disposition of the charges.”

171. Additionally, the Fire Department's Standard Operating Procedures provides that a Fire Department member “be placed on restrictive duty,” and not that he be suspended, pending an investigation of alleged misconduct.

172. Squicciarini was therefore entitled to notice of the charges against him, and to be placed only on restrictive duty, prior to being suspended.

173. Defendants recognized the applicable rules prior to suspending Squicciarini.

174. Squicciarini did not receive notice of the charges against him, either orally or in writing, prior to being suspended, and he was not placed on restrictive duty while the charges were being investigated.

175. Therefore, Squicciarini did not receive the process he was due prior to being suspended from the Fire Department.

176. Squicciarini was not able to receive post-deprivation remedies because Defendants rescinded the suspension prior to him having the ability to initiate an Article 78 proceeding.

177. Accordingly, Defendants (other than Secretary Smith) violated Squicciarini's due process of law guaranteed to him by New York State General Municipal Law § 209-L.

NINE
Pendent State Claim – Civil Rights Violation

178. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-177 as though fully set forth herein.

179. New York Civil Rights Law § 50-a deems the personnel records of firefighters confidential, and not subject to inspection or review without the express written consent of such firefighter.

180. The members of the Fire Council, as well as its secretary Roger Smith, disseminated the minutes of the March 21, 2017 Fire Council meeting which contained personnel information pertaining to Squicciarini's charge and suspension, without his consent.

181. Accordingly, Defendants violated Squicciarini's rights pursuant to New York Civil Rights Law § 50-a.

TEN
Pendent State Claim – Civil Rights Violation

182. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-181 as though fully set forth herein.

183. New York Public Officers Law § 96 prohibits an agency from disclosing any record or personal information, subject to several exceptions which do not apply in this case.

184. The members of the Fire Council, as well as its secretary Roger Smith, disseminated the minutes of the March 21, 2017 Fire Council meeting which contained personnel information pertaining to Squicciarini's charge and suspension, without his consent.

185. Accordingly, Defendants violated Squicciarini's rights pursuant to New York Public Officers Law § 96.

ELEVEN

Pendent State Claims – Libel and Slander

186. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-185 as though fully set forth herein.

187. Defendants falsely claimed that Squicciarini failed to comply with the Fire Department's Social Media Policy.

188. Defendants widely disseminated this false information regarding Squicciarini, upon information and belief, orally at Mayor Siry's victory party on the evening of March 21, 2017, in writing in an email Roger Smith sent to numerous individuals who were not members of the Fire Council on April 3, 2017 at 12:48 PM which included the entire minutes of the March 21, 2017 Fire Council meeting, and both orally and in writing to the entire Fire Department membership at the all Companies' meetings held on April 4, 2017.

189. Based upon Defendants' wide dissemination of this false information, Squicciarini was ostracized within the Fire Department, his reputation in the community he lived his entire life was damaged, and he suffered embarrassment, emotional distress, inability to sleep, and weight loss.

190. Accordingly, Defendants libeled and slandered Squicciarini.

TWELVE

Pendent State Claim – Respondeat Superior/Vicarious Liability

191. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-190 as though fully set forth herein.

192. Defendants were at all times acting under color of State law and within the scope of their employment as members of the Fire Department's Fire Council and Secretary when they violated Squicciarini's constitutional rights and committed the various torts against him, as outline above.

193. As their employer, the Village of Amityville is vicariously liable for their actions pursuant to the doctrine of respondeat superior.

WHEREFORE, Plaintiff requests the following relief jointly and severally as against all Defendants:

1. A trial by jury on all issues;
2. An award of compensatory damages in the amount of \$300,000;
3. An award of punitive damages in the amount of \$200,000;
4. A declaratory judgment that the Social Media Policy is unconstitutional on its face;
5. Disbursements, costs, and attorneys' fees pursuant to 42 U.S.C. § 1988; and
6. Such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
November 20, 2017

Respectfully,

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By:



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