



**REID WODICKA** )  
*(Sued in his official capacity)* )  
 )  
**Serve:** )  
*Reid Wodicka* )  
*900 Church St.* )  
*Lynchburg, VA 24504* )  
 )  
**Defendants.** )

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**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

COMES NOW your Plaintiff, Martin Misjuns, and propounds this Complaint against the City of Lynchburg, the Lynchburg Fire Department, Mary Jane Tousignant Dolan, Beau Wright and Reid Wodicka for discriminatory employment practices and constitutional violations. In support thereof, Plaintiff states as follows:

**I. INTRODUCTION**

1. This is an action alleging breach of contract and conspiracy to deprive Plaintiff of his constitutional rights, by (1) the defendant City of Lynchburg, (2) defendant Lynchburg Fire Department (“LFD”) or “the Department”), an agency of the City of Lynchburg acting by the authority of the City of Lynchburg, by and through its servants, agents and employees, and defendants (3) Mary Jane Tousignant Dolan (4) Beau Wright and (5) Reid Wodicka, against Plaintiff Martin Misjuns (“Misjuns”). Plaintiff alleges that he was subjected to a pattern of intimidation and harassment by superior officers of LFD, and arbitrarily and capriciously denied training required for promotions within LFD, and that the Defendants conspired to subject him to adverse employment actions because of political and religious speech engaged in by Plaintiff, in violation of the First Amendment to the United States Constitution, Article I, Section 12 of the

Constitution of Virginia, and the “Employment Policies and Procedures Handbook” of the City of Lynchburg, Virginia. The Department is an agency of the City of Lynchburg (“the City”). Plaintiff seeks damages pursuant to 42 U.S.C. Section 1983 for employment discrimination in violation of his First Amendment rights.

## II. PARTIES

2. Plaintiff Martin Misjuns is a natural person, a citizen of the United States and the Commonwealth of Virginia, a resident of the City of Lynchburg, a captain in the Lynchburg Fire Department, and a union representative with the IAFF Local #1146, the Lynchburg division of the International Association of Fire Fighters labor union.

3. The City of Lynchburg is an independent city and a municipal corporation under the laws of the Commonwealth of Virginia.

4. The Lynchburg Fire Department is an agency of the City of Lynchburg, which city is a municipal corporation within the Commonwealth of Virginia.

5. Mary Jane Tousignant Dolan (“Dolan”) is a natural person, a citizen of the United States and the Commonwealth of Virginia, a resident of the City of Lynchburg, and the Mayor of the City of Lynchburg.

6. Beau Wright (“Wright”) is a natural person, a citizen of the United States and the Commonwealth of Virginia, a resident of the City of Lynchburg, and the Vice-Mayor of the City of Lynchburg.

7. Reid Wodicka (“Wodicka”) is a natural person, a citizen of the United States and the Commonwealth of Virginia, a resident of the City of Lynchburg, and the City Manager of the City of Lynchburg.

### **III. JURISDICTION AND VENUE**

8. This Court has jurisdiction pursuant to § 17.1-513 of the Code of Virginia.

9. Venue is proper in this Court pursuant to § 8.01-262, as Plaintiff is a resident of the City of Lynchburg, the Defendants are the City of Lynchburg, an agency of the City of Lynchburg, and the Mayor, Vice-Mayor and City Manager of the City of Lynchburg, and the actions complained of occurred in the context of Plaintiff's work as an employee of an agency of the City of Lynchburg, and within the limits of the City of Lynchburg.

### **IV. BACKGROUND**

10. Plaintiff is a Fire Captain employed by the Defendant Lynchburg Fire Department.

11. Gregory Wormser is LFD's Fire Chief, and senior officer. Wormser is an agent of the Department, and the City of Lynchburg. In his duties as Fire Chief, Wormser acts under color of law.

12. Underneath Chief Wormser, LFD has a command structure of Deputy Chiefs. Jonathan Wright ("Wright") and Robert Lipscomb ("Lipscomb") are Deputy Chiefs.

13. Below the Deputy Chiefs in command are the Battalion Chiefs. Danny Williams ("Williams"), Allen Carwile ("Carwile") and Sean Regan ("Regan") are Battalion Chiefs.

14. Below the Battalion Chiefs are Fire Captains. Plaintiff Misjuns is a Fire Captain.

15. Misjuns is also an official with IAFF Local 1146, the Lynchburg chapter of the International Association of Fire Fighters.

16. In his capacity with the IAFF, Plaintiff has the responsibility of bringing complaints of alleged wrongful employment practices from individual union members to the attention of LFD.

17. At all relevant times, Dolan was Mayor, Wright was Vice-Mayor, and Wodicka was City Manager of the City of Lynchburg, charged with handling personnel matters and enforcing the laws and policies of the City.

**A. LFD's Discriminatory Training and Promotion Practices**

18. Plaintiff has continued his education within the Department, in hopes of future promotion to Battalion Chief. Fire Officer II ("FOII") training was the only class needed for Plaintiff to meet the requirements for promotion to Battalion Chief upon reaching the time in grade requirement.

19. On May 20, 2019, Deputy Chief Lipscomb issued a memorandum regarding 28 fire fighters who were receiving promotions. The memo did not include Plaintiff, although he was pending promotion to his current position of Fire Captain.

20. Plaintiff raised the omission to Regan. Upon receiving the complaint, Regan confirmed that the promotion was indeed pending.

21. In June of 2019, Wormser and Wright met informally with Plaintiff to discuss his upcoming promotion from Master Fire Fighter to Fire Captain.

22. Plaintiff asked to be promoted in time for the upcoming two-percent general City-wide wage increase to be applied to the higher rate of pay he would receive as a Fire Captain.

23. Wormser stated that he "would always do everything to put the most money in our people's pockets."

24. However, Plaintiff was not promoted to Fire Captain until after the general two-percent wage increase was received, preventing the two percent from applying to his higher pay as a Fire Captain.

25. Plaintiff continued to repeatedly follow up on the issue. Finally he spoke with Chief Wormser again on November 5, 2019.
26. Wormser told Plaintiff that he was continuing to work on the pay increase, and that it had not come through because Human Resources thought Plaintiff was making too much money.
27. Meanwhile, multiple fire fighters had addressed Plaintiff in his capacity with the IAFF, alleging bias in the selection of fire fighters for trainings required for promotions.
28. On December 24, 2019, Plaintiff sent an email from his IAFF email address to LFD leadership, addressing complaints from union members. Several members alleged unequal Department practices in offering training opportunities, which were required for promotion within the Department, to some firefighters and not others.
29. Plaintiff also filed a Freedom of Information Act (“FOIA”) request with the Department, seeking information to shed light on the allegations of bias in training selection.
30. Plaintiff himself was seeking approval to take the FOII training he needed for promotion to Battalion Chief.
31. On December 30, battalion chief Williams sent a reply, but sent it to plaintiff’s city fire department email address, not the private IAFF address from which Plaintiff had sent the FOIA request. The reply was evasive and did not include all documents responsive to the FOIA request.
32. On January 1, 2020, Plaintiff sent an emailed reply to Williams. Plaintiff advised that Williams’ response was incomplete, and that Williams’ decision to respond to Plaintiff as a subordinate in the Department when the request had been made on behalf of the IAFF appeared to be intended to intimidate Plaintiff for exercising his union responsibilities.

33. The next day, Williams sent an email listing names of firefighters approved for FOII certification training, for which Plaintiff had applied. Plaintiff's name was not on the list.
34. On January 7, 2020, Plaintiff spoke to his immediate supervisor inquiring as to the reason for his omission from FOII training. The supervisor promised to investigate.
35. On January 23, Plaintiff inquired of Deputy Chief Williams why he had been passed over for FOII training. He stated to Williams his belief that the omission appeared to be intimidation in response to Plaintiff's work on behalf of the union.
36. Plaintiff also reminded Williams of the promise from Wormser that he would be promoted in time to receive the two-percent increase, but he was not.
37. The following day, the FOII training occurred. Because he had not been approved, Plaintiff stayed home with his children so his wife could go to work.
38. IAFF Local 1146 President Jamie Maxwell, who was attending the training, confirmed with the instructor that Plaintiff's name was not on the approved list.
39. During the class, Wormser and Wright asked Maxwell where Plaintiff was. Maxwell responded that since he had not been approved for the class, he was probably at home.
40. Maxwell then observed a "tense" conversation between Wormser, Wright and Williams.
41. The following day, Wormser called Plaintiff and stated that he "thought everything had been worked out," and advised that the Department would engage an instructor to provide the class one-on-one.
42. The instructor was eventually engaged to provide the one-on-one training, but the missed session had to be made up before the next session was scheduled. On such short notice, Plaintiff was unable to obtain child care to get the session completed before the next scheduled session.
43. To date, the Department has not provided the class.

44. On information and belief, the Department has already provided the training class to every other fire captain who submitted a request to take the class.

45. In addition, the Department issued a laptop computer to every other Fire Captain except Plaintiff.

46. On July 5, 2019, when Plaintiff asked Wright how to get a laptop, Wright replied, “You’re the Captain now, you tell me.”

47. Plaintiff has repeatedly followed up, most recently by submitting a trouble ticket through the Department of Information Technology on March 3, 2020.

48. The Department still refuses to issue a laptop to Plaintiff, and Plaintiff has had to continue to use his personal laptop to conduct required business for the Department in the course of his employment.

49. The Department has made no explanation for the disparate treatment afforded between Plaintiff and the other Fire Captains.

## **B. Defendants’ Retaliation for Plaintiff’s Expression of Speech and Religion**

### **1. Defendants Punished Plaintiff due to Union Support of Republican City Council Candidates**

50. On March 13, 2020, at the instruction of Captain Jennifer Collins, Plaintiff and his fire crew began the task of removing furniture, carpentry and cabinets from a “shop” room at the fire station. The room was being prepared to receive fitness equipment for the use of firefighters while on duty.

51. In the spring of 2020, IAFF Local 1146 made the decision to support candidates for Lynchburg City Council who were affiliated with the Republican Party, against candidates

supported by the Democrat majority on City Council, which majority includes Dolan and Wright. Plaintiff, the Ward I Chair for the Lynchburg Republican City Committee, also supported the Republican candidates in his role with Local 1146.

52. Deputy Chief Wright immediately began a pattern of harassing behavior that created a hostile work environment for Plaintiff.

53. The same day, Wright sent Plaintiff a text message that he did not approve of Local 1146's post supporting the Republican-affiliated candidates, and that he expected it to be removed.

54. On April 21, Wright approached Plaintiff while on duty and asked angrily, "Did you get my text message?" Plaintiff replied, "Yes."

55. Wright stated, "that's all I needed to know. Have a great day. He then left the fire station, got into his vehicle, and left.

56. Wright's manner was so threatening that Fire Fighter Eric Smith, who was also present, asked Plaintiff, "Did he come here just to intimidate you?" Plaintiff replied that it certainly appeared so.

57. Plaintiff immediately sent an email to Battalion Chief Carwile to register a complaint.

58. Carwile emailed Chief Wormser to alert him that Plaintiff believed Wright was trying to "intimidate and bully him" for his political expression with IAFF.

59. Carwile stated, "The actions of Chief Wright must have been clear if a subordinate firefighter [Smith] found his actions to be bullying in nature. Captain Misjuns wants to ensure that his union activities are protected and that he will be free from any intimidation, bullying or retaliation from department administration or city staff. Any such activities could be perceived

by Captain Misjuns as creating a possible hostile work environment for him due to his union activities.”

60. In several personal conversations around the same time period, Carwile told Plaintiff that the City was preparing a “Counseling Report” related to Plaintiff’s work clearing the shop room at the fire station. During those conversations, Carwile stated that he had been ordered to write the report by Deputy Chief Lipscomb although he personally believed the report was unnecessary, and expressed displeasure that the City was preparing a Counseling Report independently of the standard LFD chain of command. He also stated multiple times to Plaintiff that Deputy Chief Wright was “on the warpath” against Plaintiff. Carwile stated that the City of Lynchburg “had never seen anything like” the negative reaction to Plaintiff’s support for the Republican candidates, and that he believed the order to prepare the Counseling Report could be retaliation for the political expression by Plaintiff and the union.

61. Shortly thereafter, on May 3, 2020, in response to Plaintiff’s good-faith report of workplace discrimination, the Department placed in Plaintiff’s personnel file a “Counseling Report” (“the Report”). The Report stated that the ceiling tile removal should have been cleared with senior Department staff before it was undertaken, and advised Plaintiff to clear any such work with superiors in the future. A copy of the Report is attached as Plaintiff’s Exhibit 1.

62. Plaintiff quickly responded to Carwile with a written objection to the filing of the Report in his personnel file, reminding Carwile of the personal discussion referenced in Paragraph 60 *supra*. A copy of Plaintiff’s Objection is attached as Plaintiff’s Exhibit 2.

63. Plaintiff expressed his belief that the Counseling Report, in effect a reprimand, had been placed in his personnel file by way of retaliation for his activities on behalf of Local 1146, related to the union’s support of Republican-affiliated City Council candidates.

64. Likewise, on June 8, 2020, in response to Plaintiff's good-faith report of workplace discrimination, when Plaintiff arrived at work, the Department instructed him to undergo questioning with attorney Jennifer Royer. After less than an hour's notice, Plaintiff was questioned for over three hours.

65. Following the interrogation, Chief Wormser gave Plaintiff a letter on November 2, 2020. In the letter, the City of Lynchburg alleged that Plaintiff's claims were unsupported and impliedly baseless. A copy of Chief Wormser's letter is attached as Exhibit 3.

## **2. Defendants Punished Plaintiff due to his Personal Political and Religious Statements on Matters of Public Concern**

66. Plaintiff maintains two Facebook social media pages. One is a "personal page" identifying him as "Marty Misjuns." The other is a "public figure" page, identifying Plaintiff as "Martin J. Misjuns, Ward I Chair - Lynchburg Republican City Committee." Neither page identifies Plaintiff as a Fire Captain or a city employee.

67. On both his "personal" and "public figure" pages, Plaintiff routinely posts political messages.

68. On February 1, Plaintiff posted a "meme" on his "public figure" page. The meme read, "In the beginning, God created Adam & Eve. Adam could never be a Madam. Eve could never become Steve. Anyone who tells you otherwise defies the one true God." A copy of the meme is attached as Plaintiff's Exhibit 4.

69. The meme expressed Plaintiff's deeply held religious beliefs.

70. On January 26, 2021, Plaintiff posted on his "public figure" page four editorial cartoons drawn by cartoonist A.F. Branco. Two of the cartoons depict a person with facial hair coming out of a women's bathroom to the consternation of female figures drawn nearby. One depicts a large

person with facial hair and dressed in women's clothing saying, "Hey federal government! Get out of our bedroom... We need you in the bathroom." The fourth depicts an exaggeratedly large person with an "Equality Act" t-shirt playing sports against an exaggeratedly small woman who yells, "Not fair!" Above the cartoons, Plaintiff posted the statement, "**#BidenErasedWomen** - Coming to your daughter's high school locker room in the near future." Copies of Plaintiff's Facebook post and the cartoons are attached as Plaintiff's Exhibit 5.

71. The post is clearly satirical, and clearly intended to express opposition to the "Equality Act," which would require an end to separate-sex bathrooms and locker rooms in school facilities, including public, private, and religious schools.

72. The advisability of the "Equality Act," or the lack thereof, is clearly a matter of public concern, which has generated massive opposition from participants in girls' sports programs and persons concerned about the effects of the Act on religious freedom.

73. The cartoons are protected free speech.

74. No less protected is Plaintiff's right to re-post the cartoons.

75. No less protected is Plaintiff's right to add his own personal comments which reveals his intent in reposting the editorial cartoons - his belief that the Act should be opposed out of concern that it will impose severe costs on women and girls in restroom facilities and sports programs.

76. However, on March 25, 2021 and, on information and belief, in response to instructions from one or more of Dolan, Wright and Wodicka, Wormser sent Plaintiff a letter ordering him to attend an "interrogation" on Monday, March 29, to discuss several "citizen complaints" attacking Plaintiff for posting the cartoons and the meme. A copy of Wormser's letter is attached as Plaintiff's Exhibit 6.

77. On information and belief, there were a relative handful of “citizen complaints,” and most of those came from individuals affiliated with the LGBTQ group “Hill City Pride.”

78. Wormser also informed Plaintiff that he was under investigation for social media statements making political criticism of Dolan, after Dolan sought to have city staff retaliate against Plaintiff for posting the cartoons.

79. Wormser cited language in the “complaints” calling Plaintiff “vile,” “hateful,” “bigoted,” “dehumanizing,” “hostile,” and “dangerous” for posting the cartoons and the meme.

80. In his letter, Wormser attempted to impose a gag order on Plaintiff, stating, “You are ordered not to discuss this matter in any manner with anyone other than: your religious leader, your counselor, your immediate chain of command, your observer..., and those assigned to conduct this investigation.”

81. Any time an employee of the Department is subjected to an “interrogation,” a report of the interrogation is placed in the employee’s file. All such reports are considered in determining whether the employee will be retained, fired, promoted or demoted.

82. Subjecting Plaintiff to an “interrogation” and placing a report on the interrogation in his employee file constitutes adverse employment action, all based exclusively on Plaintiff’s private, political speech on matters of public concern.

83. None of the “citizen complaints” alleged that Plaintiff had in fact exercised any partiality toward anyone in the conduct of his job as a firefighter, or questioned any acts or statements made by Plaintiff in the course of performance of his job duties.

84. In response to the “citizen’s complaints,” Mayor Mary Jane Tousignant Dolan (“Dolan”), City Manager Reid Wodicka, and Vice Mayor Beau Wright began to conspire together to deny

Plaintiff his constitutional rights to express his deeply held religious beliefs and political views on matters of public concern.

85. Dolan and Wright are partisan Democrats, while Plaintiff's "public figure" page identifies him as Ward I Chair for the Lynchburg Republican City Committee.

86. Wright served in the administration of Barack Obama as Senior Deputy Director of Operations and Director for Finance.

87. According to the Virginia Public Access Project ("VPAP"), Dolan has made over \$20,000 in Virginia political donations. Nearly all donations were to Democrats, including Governor Ralph Northam and Attorney General Mark Herring. A handful were to independents. None were to Republicans. A copy of the VPAP online page listing Dolan's donations is attached as Plaintiff's Exhibit 7.

88. On January 29, 2021, Dolan sent an email to Wodicka, stating, "This needs to be addressed! We need to have zero tolerance for this type of activity on the part of City employees. I know that this is not the first time this person has displayed questionable if not unconscionable rhetorical post [sic] on his social media platforms.... Please let's talk about a meeting to discuss." A copy of Dolan's email is attached as Plaintiff's Exhibit 8.

89. On February 3, 2021, Wodicka sent an email reply to "citizen complainant" Jennifer Staton. Wodicka wrote, "I have viewed the information that was posted online and I agree with you that this is not the sort of culture that the City intends to create or support... Please understand that this is a personnel matter that will be addressed appropriately...." A copy of Wodicka's email to Staton is attached as Plaintiff's Exhibit 9.

90. On February 4, 2021, Wodicka replied to Dolan by email, copying Dolan and Wright, “Mary Jane: Beau and I just spent some time talking this over. Maybe you and I can talk about it a little more tomorrow.” A copy of Wodicka’s email is attached as Plaintiff’s Exhibit 10.

91. Dolan has continued to press her campaign to convince other City leadership to retaliate against Plaintiff for expressing his deeply held religious beliefs. In an email to “citizen complainant” Michael Kittinger, Dolan wrote, “I was speechless when I saw what Mr. Misjuns posted. I am totally in agreement with you and do not support or will not tolerate this type of malicious rhetoric. No question his comments are unconscionable, and City Leadership needs to take action.”<sup>1</sup>

92. On information and belief, some or all of Defendants Dolan, Wodicka and Wright then directed Defendant Wormser to initiate an “interrogation” of Plaintiff for expressing his deeply held religious views and political speech.

93. Further, Defendants’ retaliation against Plaintiff stands in stark contrast to their treatment of Wormser, who attended and supported a protest put on by the group “Black Lives Matter” (“BLM”) on July 4, 2020, at Miller Park in Lynchburg.

94. Wormser attended and participated in the protest in full LFD uniform.

95. Unlike Plaintiff’s actions, which he took out of uniform and on personal time, Wormser’s actions were in violation of the City’s “Employment Policies & Procedures” handbook. The handbook states in Chapter 7, Article I, Section H.1, “City employees may participate in political activities while they are off duty, **out of uniform** and not on the premises or their employment with the City” (emphasis added).

96. A photograph of Wormser in uniform at the protest is attached as Plaintiff’s Exhibit 11.

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<sup>1</sup> See Lou Chibarro, Jr., “Washington Blade,” March 17, 2021, “Lynchburg fire captain denounced for transphobic Facebook post,” available at <https://www.washingtonblade.com/2021/03/17/lynchburg-fire-captain-denounced-for-transphobic-facebook-post/>

97. On information and belief, Defendants took no adverse employment action against Wormser, nor did they even question his attendance at a political rally in full uniform.

**COUNT ONE - BREACH OF CONTRACT**  
**(Against Defendants City of Lynchburg and Lynchburg Fire Department)**

98. Plaintiff hereby incorporates by reference Paragraphs 1 to 97 as if fully restated herein.

99. The City of Lynchburg's "Employment Policies & Procedures" handbook constitutes a binding contract between Plaintiff as employee, and Defendants as employers.

100. The Handbook details the behaviors and actions expected of City employees, and outlines the consequences for failure to follow the policies, up to and including termination by the City.

101. As the Handbook itself states on Page 1, "All employees of the City of Lynchburg ... are governed by these employment policies and procedures."

102. If an employee such as Plaintiff fails to follow the requirements of the Handbook, the City can terminate him.

103. The Handbook was drafted exclusively by and on behalf of the City, and accordingly must be construed against the City.

104. Given that the Handbook allows termination for rules violations, and commits the City to certain practices in the interest of its employees, there exist offer, acceptance and consideration such as to constitute a binding contract between Plaintiff and Defendants.

105. Even should the Court find that the Handbook creates no right to continued employment, it inarguably creates obligations for how Plaintiff and Defendants shall conduct themselves toward one another during the continuance of that employment.

106. On page 5, the Handbook states, “The City of Lynchburg will make all decisions regarding recruitment, hiring, promotions, reassignments, training and other terms and conditions of employment without unlawful discrimination” (emphasis added).

107. Yet, in violation of the clear language of the Handbook, Plaintiff was punished for exercising his political expressive rights under the First Amendment, constituting clearly “unlawful discrimination.”

108. The Handbook states, “Allegations of discrimination will be thoroughly investigated and disciplinary or corrective action taken as warranted.”

109. The Handbook states, “City employees are strongly encouraged to report any incident of discrimination or harassment to a supervisor, appropriate Department Director, the City Manager or the Human Resources Department.”

110. Yet the only apparent action taken to Plaintiff’s repeated and founded complaints of discriminatory behavior against himself and other fire fighters was the City’s retaliatory decision to place a Counseling Report for negative performance in Plaintiff’s personnel file.

111. On Page 7, the Handbook states, “A merit system is one in which selections, appointments and promotions in public service are based on qualifications and competence rather than political favoritism, seniority, or other non-job-related factors. Similarly situated individuals are treated comparably.”

112. Yet Wright and the City clearly breached the contract by discriminating on the basis of political favoritism against Plaintiff for his expressive political statements, done on personal time and in his capacity with the IAFF and not as a Fire Captain with LFD.

113. In addition, the Department clearly exercised disparate treatment between Plaintiff and the other Fire Captains, in promotion-related training, pay and provision of equipment, in breach of its responsibility to “treat similarly situated individuals comparably.”

114. On Page 98, the Handbook states, “City employees may participate in political activities while they are off duty, out of uniform and not on the premises of their employment with the City.”

115. On Page 99, the Handbook states, “No employee shall use his/her official authority to coerce or attempt to coerce a subordinate employee ... or to discriminate against any employee or applicant for employment based on political affiliations or political activities.”

116. The purpose of these policies is stated, on Page 98, as being to “protect[s] every employee’s right to vote and to keep this right free from interference, solicitation or dictation by any fellow employee, supervisor or officer.”

117. Yet when Plaintiff dared to express personal support for candidates challenging the party with majority rule on City Council, Deputy Chief Wright and the City breached the contract by retaliating against Plaintiff for exercising his First Amendment right, which was further explicitly protected by the Handbook.

118. On Page 79, the Handbook states that “performance feedback” shall “[b]e consistent and equitable across the organization.” Copies of the relevant pages of the Handbook are attached as Plaintiff’s Exhibit 12.

119. Yet although the City’s “Counseling Report” cited actions by [Plaintiff] and your crew,” on information and belief, no other crew member except Plaintiff received a “Counseling Report” for the cleanup of the shop room. Again, the City breached its responsibilities under the Handbook.

120. Accordingly, the City has breached its contract with Plaintiff, and he is entitled to have this Court enforce that contract according to its terms.

**COUNT TWO - VIOLATION OF RIGHT TO FREE SPEECH - 42 U.S.C. § 1983**

**(Against all Defendants)**

121. Plaintiff hereby incorporates by reference Paragraphs 1 to 120 as if fully restated herein.

122. Defendants' action to retaliate against Plaintiff for expressing his personal views, on personal time, on matters of public concern, offends the First Amendment to the Constitution. (See *Texas v. Johnson*, 491 US 397, 441 (1989) "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

123. Code of Virginia § 15.2-1512.2(B) states,

no locality shall prohibit an employee of the locality, including firefighters, emergency medical services personnel, or law-enforcement officers within its employment, or deputies, appointees, and employees of local constitutional officers as defined in § 15.2-1600, from participating in political activities while these employees are off duty, out of uniform and not on the premises of their employment with the locality.

124. Section (C) of the same statute states,

For purposes of this section, the term "political activities" includes, but is not limited to, voting; registering to vote; soliciting votes or endorsements on behalf of a political candidate or political campaign; **expressing opinions, privately or publicly, on political subjects** and candidates; displaying a political picture, sign, sticker, badge, or button; participating in the activities of, or contributing financially to, a political party, candidate, or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering; initiating, circulating, or signing a political petition; engaging in fund-raising activities for any political party, candidate, or campaign; acting as a recorder, watcher, challenger,

or similar officer at the polls on behalf of a political party, candidate, or campaign; or becoming a political candidate (emphasis added).

125. Political cartoons clearly fall within the protection of the First Amendment. (See *Hustler Magazine v. Falwell*, 485 US 46, 55-56 (1988) (“Despite their sometimes caustic nature, ... graphic depictions and satirical cartoons have played a prominent role in public and political debate. ... From the viewpoint of history it is clear that our political discourse would have been considerably poorer without them”).

126. Plaintiff’s speech was clearly on a “matter of public concern.” (See *Kirby v. City of Elizabeth City, North Carolina*, 388 F. 3d 440, 446 (4th Cir. 2004) “Speech involves a matter of public concern when it involves an issue of social, political, or other interest to a community. ... The public-concern inquiry centers on whether ‘the public or the community is likely to be truly concerned with or interested in the particular expression’”).

127. As such, Plaintiff’s speech was protected by the First Amendment, which protects him from retaliation by the City or the Department.

128. The fact that Wormser’s letter based the “interrogation” exclusively on “citizen complaints” from individuals who disagreed with Plaintiff’s political views, demonstrates that “transgender” bathroom access is indeed a matter of public concern.

129. Given that Plaintiff’s statements were undeniably on matters of public concern, they must be protected. (See *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 US 563, 574 (1968) “statements by public officials on matters of public concern must be

accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors”).

130. Accordingly, the adverse actions taken by Wormser, the Department and the City against Plaintiff were all taken in retaliation for his expression of politically protected speech, in violation of the First Amendment to the Constitution.

131. Wormser’s actions, as an agent of the City and the Department, and on information and belief under instruction from one or more of Dolan, Wright and Wodicka, in requiring Plaintiff to submit to the “interrogation” and attempting to place him under a gag order, were done under color of law, to the injury of Plaintiff’s rights.

132. The actions of Dolan, Wright and Wodicka, in attempting to retaliate against Plaintiff for expressing his deeply held religious views and his political speech were done under color of law, to the injury of Plaintiff’s rights.

133. Accordingly, Plaintiff seeks damages under 42 U.S.C. Section 1983 for the violations of his constitutional rights.

**COUNT THREE - VIOLATION OF FREE EXERCISE OF RELIGION - 42 U.S.C. § 1983**

**(Against all Defendants)**

134. Plaintiff hereby incorporates by reference Paragraphs 1 to 133 as if fully restated herein.

135. The First Amendment likewise protects against government infringement the right to citizens’ free exercise of religion.

136. Plaintiff's February 1 meme expressed his deeply held religious belief that God originally created humankind as male and female, and that this binary creation is immutable, regardless of the belief or desires of any person.

137. Plaintiff's meme expressed his deeply held religious belief that to treat someone as something other than their biological sex is a sin against God.

138. Plaintiff's meme was further an attempt to express his religious view to a wider audience.

139. Defendants' imposition of adverse employment actions was impermissible retaliation for Plaintiff's expression of his religious beliefs (See *Sherbert v. Verner*, 374 U.2. 398, 402 (1963) ("Government may [not] ... penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities....").

140. Because Plaintiff's religious beliefs were expressed in a public forum on a matter of public concern, they are entitled to a heightened level of protection as they involve a "hybrid" of his rights to religious exercise and political speech. (See *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 US 872, 1881 (1990) "The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press...").

141. Regardless, Plaintiff's comments on matters of public concerns did not violate any "generally applicable law," as they are in fact protected by the First Amendment's protection of free speech.

142. Defendants' retaliatory adverse employment actions against Plaintiff damaged Plaintiff in the exercise of his religious freedoms guaranteed to him by the First Amendment to the Constitution.

143. Accordingly, Defendants' retaliatory actions against Plaintiff are barred by the First Amendment, and Plaintiff seeks damages under 42 U.S.C. Section 1983 for the violations of his constitutional rights.

#### **COUNT FOUR - VIOLATION OF EQUAL PROTECTION CLAUSE- 42 U.S.C. § 1983**

##### **(Against all Defendants)**

144. Plaintiff hereby incorporates by reference Paragraphs 1 to 143 as if fully restated herein.

145. Plaintiff's political and religious speech occurred exclusively on personal time, in his personal capacity, and **out of uniform**, in accordance with the "Employment Policies & Procedures Handbook."

146. By contrast, Wormser appeared **in full city uniform** at a political rally, in violation of the handbook's command.

147. Yet Defendants ratified Wormser's conduct, and have instigated "investigation," "interrogation" and other adverse employment action against Plaintiff.

148. Defendants' disparate treatment of Wormser and Plaintiff cannot be explained by anything other than invidious discrimination, between Wormser's beliefs Defendants found "acceptable," and those of Plaintiff, which Defendants plotted to punish.

149. Black's Law Dictionary defines "invidious" as "arbitrary, irrational, and not reasonably related to a legitimate purpose."

150. The Fourteenth Amendment bars invidious discrimination on the basis of political beliefs. (See *Williams v. Rhodes*, 393 US 23, 39 (1968) "The Equal Protection Clause ...bans any "invidious discrimination." ... That command protects voting rights and political groups as well as economic units, racial communities, and other entities. When "fundamental rights and liberties" are at issue, a State has less leeway in making classifications than when it deals with economic matters" (Douglas, J., concurring)).

151. Invidious discrimination occurs when the government draws a classification "with an evil eye and an unequal hand." (See *New York City Transit Authority v. Beazer*, 440 U.S. 568, n. 40 (1979)).

152. There is no rational basis for Defendants' disparate treatment of Wormser and Plaintiff, aside from invidious viewpoint-based discrimination for the content of Wormser's speech, and against the content of Plaintiff's speech.

153. Content-based speech restrictions are presumptively invalid. (See *RAV v. St. Paul*, 505 US 377, 391 (1992) “The First Amendment does not permit [government] to impose special prohibitions on those speakers who express views on disfavored subjects”).

154. By their actions, Defendants have conclusively demonstrated their commitment to advancing speech of one political persuasion, and showing “zero tolerance” for a competing viewpoint.

155. Defendants’ adverse employment actions have damaged Plaintiff by denying him the equal protection of the laws vis a vis Defendant Wormser, constituting invidious discrimination on the basis of Plaintiff’s political and religious expression, in violation of the Fourteenth Amendment to the Constitution.

156. Accordingly, Defendants’ retaliatory actions against Plaintiff are barred by the First Amendment, and Plaintiff seeks damages under 42 U.S.C. Section 1983 for the violations of his constitutional rights.

**COUNT FIVE - CONSPIRACY TO DEPRIVE PLAINTIFF OF HIS CIVIL RIGHTS - 42 U.S.C. § 1985**

**(Against Defendants Dolan, Wright and Wodicka, in their official capacities)**

157. Plaintiff hereby incorporates by reference Paragraphs 1 to 155 as if fully restated herein.

158. 42 U.S.C. Section 1985 states, in relevant part:

If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws ... if one or more persons engaged therein do, or cause to be done, any act in

furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

159. The actions of Defendants Dolan, Wright and Wodicka (collectively “the individual defendants”) evince a conspiracy to retaliate against Plaintiff for his expression of his deeply held religious beliefs, and for expressing protected political speech on matters of public concern.

160. The individual defendants sent multiple emails, to each other and to outside third parties, held meetings and, in the case of Dolan, pressured other City officials to engage in retaliatory adverse employment action against Plaintiff, invidiously discriminating against him based on the viewpoint of his speech.

161. On January 29, 2021, Dolan wrote to Wodicka, “This [Plaintiff’s meme and reposting of cartoons] needs to be addressed! We need to have zero tolerance for this type of activity.... Please let’s talk about a meeting to discuss.”

162. On February 4, 2021, Wodicka replied, “Beau [Wright] and I just spent some time talking this over. Maybe you and I can talk about it a little more tomorrow.”

163. Dolan wrote to “citizen complainant” Kittinger, “I am totally in agreement with you and do not support or will not tolerate this type of malicious rhetoric. No question his comments are unconscionable, and City Leadership needs to take action.”

164. On February 3, 2021, Wodicka wrote to “citizen complainant” Staton, “I have viewed the information that was posted online and I agree with you that this is not the sort of culture that the

City intends to create or support... Please understand that this is a personnel matter that will be addressed appropriately...”

165. On information and belief, between their emails and their meetings, the individual defendants conspired to “address” Plaintiff’s exercise of free speech by commencing an “investigation” and requiring Plaintiff to submit to an “interrogation” over his speech.

166. On information and belief, one or more of the individual defendants caused Wormser to be instructed to initiate the adverse employment actions against Plaintiff, in furtherance of the conspiracy to deny Plaintiff’s civil rights.

167. Wormser followed the instructions, and on March 25, 2021, ordered Plaintiff to submit to an interrogation, and attempted to subject Plaintiff to a gag order.

168. On information and belief, one or more of the individual defendants caused Wormser to be instructed to impose a gag order on Plaintiff in furtherance of the conspiracy to deny him his civil rights.

169. On information and belief, the individual defendants were aware that Wormser had appeared at a BLM political protest on July 4, 2020.

170. Yet, on information and belief, no defendant sought any adverse employment action against Wormser.

171. At all relevant times, all three individual defendants actions in furtherance of the conspiracy were taken under color of law.

172. As a result of the conspiracy, and the adverse employment action perpetrated against Plaintiff by instructions in furtherance of the conspiracy, Plaintiff has been damaged in the exercise of his civil rights.

173. Accordingly, Plaintiff seeks damages against all three individual defendants, in their official capacities only, for the deprivation of his civil rights.

### **REQUEST FOR RELIEF**

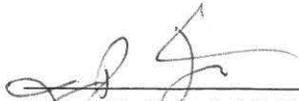
Accordingly, Plaintiff respectfully prays this Court for the following relief:

1. An Order granting Plaintiff back pay in the amount of the two-percent pay increase beginning July 7, 2020, with 6 percent (6%) interest as of the date of judgment.
2. An Order that the Department adjust Plaintiff's payroll taxes and Virginia Retirement System contributions to reflect the two-percent pay increase beginning July 10, 2019.
3. An Order granting Plaintiff a judgment against all defendants, in their official capacities, for \$450,000 for Defendants' violations of his religious and free speech rights under the First Amendment.
4. An Order that the City provide Plaintiff with a city laptop of like kind and quality as those provided to the other Fire Captains.
5. An Order that the "Counseling Report," any report stemming from the March 29, 2021 "interrogation," and any references thereto be immediately and permanently removed from Plaintiff's personnel file and destroyed.

6. An Order that the City implement “whistleblower” protections into its “Employment Policies & Procedures” handbook, to ensure protection of the First Amendment rights of Plaintiff and other employees.
7. An Order that the City conduct First Amendment training for all employees, ensuring that employees are advised of their rights to make statements on matters of public concern and to express their deeply held religious beliefs, without fear of retaliation by the City.
8. An Order that the City post notice copies of the “Fraud and Abuse Whistleblower’s Protection Act” in all City workplaces, and mandate annual employee training on the employee protections in the Act, to ensure that similar breaches toward Plaintiff and other employees will not continue.
9. An injunction preventing Defendants from taking any further adverse employment actions against Plaintiff on the basis of the personal political speech he made pursuant to his deeply held religious beliefs, on matters of public concern.
10. Pursuant to 42 U.S.C. Section 1983, an award of Plaintiff’s attorney’s fees in this matter.
11. Such other and further relief as may seem to this honorable Court to be just and reasonable.

Respectfully Submitted,

Martin Misjuns  
By Counsel



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