UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Larry McDowdell,

Plaintiff,

-against-

S.D.N.Y. Dkt. No.:

JURY TRIAL DEMANDED

The City of Mount Vernon, Darren M. Morton, Commissioner, Department of Recreation and Mayor Richard Thomas,

Defendants.

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Plaintiff, Larry McDowdell, (hereinafter "McDowdell"), submits the following Complaint, through his counsel, Noah A. Kinigstein, as follows:

JURISDICTION

1. Plaintiff brings this action to redress violations by defendants of plaintiff's rights under the Constitution and laws of the United States and State of New York.

2. This is an action brought pursuant to 42 U.S.C. §1983 to redress deprivation under color of statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured to plaintiff by the fourteenth amendment to the

Constitution of the United States, namely the right to exercise freedom of speech under the first amendment.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343 (3), which confer original jurisdiction on Federal District Court in suits to redress the deprivation of rights, privileges and immunities as stated in paragraph 2 above. Supplemental jurisdiction of the state law claims is conferred by 28 U.S.C. §1367.

4. At all times relevant to the complaint, defendants acted under color or pretense of law, to wit: under color of statutes, ordinances, regulations, customs and usages of the State of New York and the rules, regulations, customs and usages of the State of New York and the rules, regulations and customs of the City of Mount Vernon, State of New York.

5. At all times relevant to the complaint, defendants engaged in the illegal conduct herein mentioned to the injury of the plaintiff, and deprived plaintiff of his rights, privileges and immunities secured to him by the fourteenth amendment to the Constitution of the United States and the laws of the United States and he State of New York .

NOTICE OF CLAIM

6. Plaintiff, McDowdell, filed a notice of claim within 90 days of the events

complained of herein . More than 90 days have elapsed since the filing of the notice of claim and adjustment or payment has been neglected or refused.

PARTIES

7. Plaintiff , McDowdell, is a citizen of the United States ad of the State of New York and the City of Mount Vernon, and has been such at all times relevant to this complaint.

8. Plaintiff, McDowdell, prior to the action complained of herein was employed as a Nutrition Aide with The Department of Recreation, City of Mount Vernon.

9. Upon information and belief, the defendant, City of Mount Vernon is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to create and maintain a Department of Recreation, which acts as its agent and for which it is ultimately responsible.

10. Upon information and belief, defendant Richard Thomas, (hereinafter "Thomas") is the Mayor of the City of Mount Vernon. Thomas is being sued in his official and individual capacity.

11. Upon information and belief, defendant, Darren M. Morton, (hereinafter "Morton"), is the Commissioner of the City of Mount Vernon Department of Recreation. Morton is being sued in his official and individual capacity.

FACTS

12. In or about 2011, the plaintiff began working for the defendant City of Mount Vernon as a Nutrition Aide with the Mount Vernon Department of Recreation.

13. In or about December 27, 2016, McDowdell attended a meeting of the defendant City of Mount Vernon City Council, in which the City Council was considering whether to place a roof over the a tennis center at Memorial Field in the City of Mount Vernon.

14. McDowdell was accompanied to the City Council meeting with the ex-Mayor of the City of Mount Vernon, Ernie Davis, (hereinafter "Davis"), who had run against the current mayor Thomas, who was elected in 2015.

15. McDowdell came into the City Council meeting and sat next to Davis other during the meeting.

16. Upon information and belief, the discussion regarding whether a roof should be placed over the tennis court was contentious, with Thomas seeming to be upset that ex-Mayor Davis was present and that he was in support of the proposed roof being placed over the tennis court.

17. Upon information and belief Thomas was against placing the roof on the tennis center and was upset to see both ex-Mayor Davis and McDowdell in attendance with Davis, both in support of the roof.

18. Upon information and belief, defendant Morton, was appointed Commissioner of Recreation by Thomas.

19. During the Council meeting, and upon information and belief , Thomas made verbal and non-verbal gestures, communications and indications, indicating his displeasure with Davis support of placing the roof on the tennis center.

20. At the conclusion of the City Council meeting, the plaintiff, McDowdell, exited with ex-Mayor Davis.

21. On December 28, 2016, the next day, Thomas wrote a letter to the members of the Mount Vernon City Council in which he stated, inter alia, that he was surprised to see Mayor Davis in attendance at the previous night's City Council meeting and that he was more surprised to see the City Council's "shared

concerns over placing a roof over the tennis center at Memorial Field as the focus of the meeting."

22. Thomas also stated, in sum and substance, that the City Council was remiss in supporting the tennis center roof because it did not generate enough revenue to

cover its costs and that obeying Davis apparently was the Council's priority.

23. Thomas ended his letter by stating:

> There are just a few examples of the immediate needs that should be addressed instead of focusing so much time and taxpayer money on pet projects of Ernie Davis. I am listening to the people of Mount Vernon and I implore you to do the same. It's time for you to come to the table and let's get down to real business of the city. Enough is enough.

24. One day later, on December 29, 2016, the plaintiff, McDowdell, received a letter from the defendant Morton, Commissioner of the Department of Recreation, City of Mount Vernon, who notified him, "that effective immediately your employment as a Nutrition Aide with the Department of Recreation is hereby terminated."

25. At all times relevant to this complaint, McDowdell was a good and loyal employee of the Department of Recreation, City of Mount Vernon receiving many compliments from seniors and others that he served and assisted.

26. Upon information and belief, Mr. McDowdell was summarily terminated because of his association with and implied support and relationship with the ex-Mayor Davis and support of the tennis roof, which was supported by Davis, as demonstrated by his appearance with Davis at the City Council meeting of December 27, 2016, and as such his rights were violated in being discharged from his position as a Nutrition Aide.

FIRST CAUSE OF ACTION

27. The actions and omissions of the defendants were, upon information and belief, done to punish the plaintiff, McDowdell for his support and association with Davis and/or support of the issue of placing the roof on the tennis center in the City of Mount Vernon and as such the acts of the defendants in summarily terminating him two days after the meeting violated McDowdell's First Amendment as these rights are secured to the plaintiff by provisions of the due process clause of the fourteenth amendment to the Constitution of the United States and by 42 U.S.C.

§1983 and the Constitutions , statutes and laws of the state of New York and as such was damaged.

SECOND CAUSE OF ACTION

28. Plaintiff repeats and realleges paragraphs one (1) through twenty-seven (27) and restates them as paragraph twenty-eight (28) herein.

29. The actions and omissions of the defendants in terminating the plaintiff violated the plaintiff rights under New York Labor Law 201-d in that he was discriminated against and terminated because of his political activities outside of his working hours and as such has been damaged .

WHEREFORE, plaintiff demands judgment against defendants for the following:

A. Judgment vacating the termination of the plaintiff, McDowdell, and restoring him to the position of Nutrition Aide with the City of Mount Vernon Department of Recreation with full back pay and benefits;

B. Judgment expunging plaintiff's termination and all references thereto in the records of the City of Mount Vernon Department of Recreation;

C. Judgment awarding plaintiff compensatory and punitive damages and costs of this action, and

D. Judgment awarding such other relief as this court may deem just and proper.

Dated: New York, New York
April 18, 2018

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