

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LINDA K. O'TOOLE,)	
)	
Plaintiff,)	
)	
v.)	No. 6:16-CV-3332
)	
CITY OF WALNUT GROVE, MISSOURI, and)	
)	JURY TRIAL DEMANDED
JIM COLE, in his individual capacity,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Linda K. O'Toole, alleges as follows:

INTRODUCTION

1. On September 24, 2014, Walnut Grove Mayor Jim Cole shot and killed a stray Border Collie that was caring for her newborn puppies. Walnut Grove resident Linda O'Toole expressed her displeasure with Mayor Cole's actions as a public figure by publicly describing them and opining that they demonstrate that he is unfit to remain as Mayor. Her expressive activity included speaking at a city meeting and starting an online petition that urges people to call and email Walnut Grove City Hall demanding that the Mayor resign and city officials become educated on modern methods of animal rescue.
2. In retaliation for O'Toole's expressive activity and in an attempt to silence her, on April 14, 2015, the Mayor sued O'Toole. In his lawsuit, the Mayor claims O'Toole's speech is slanderous. As a result of the Mayor's retaliatory action, O'Toole has been forced to endure the burdens of suit—such as the costs of litigation—and is reasonably chilled

from expressing her opinion about the Mayor and his fitness for office without fear of retaliation.

3. O'Toole challenges the Mayor's retaliation and effort to silence her criticism of him.

PARTIES

4. Plaintiff, Linda K. O'Toole, is a citizen of Walnut Grove and Greene County, Missouri.
5. Defendant City of Walnut Grove, Missouri, is a municipal corporation and political subdivision of the State of Missouri. It is situated in Greene County.
6. Defendant Jim Cole is the Mayor of Walnut Grove. Each of his actions described herein was taken as a public official for Walnut Grove. He is sued in his individual capacity.

JURISDICTION AND VENUE

7. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, which is incorporated as against States and their municipal divisions through the Fourteenth Amendment to the United States Constitution.
8. This Court has jurisdiction under 28 U.S.C. § 1331 over Plaintiff's claim because it arises under the Constitution of the United States.
9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) because Defendant is located in Greene County, Missouri, and its actions giving rise to the claim in this suit occurred in Greene County.
10. Venue is proper in the Southern Division pursuant to Local Rule 3.1(a)(3)(a).

FACTS

11. Since April 20, 2012 and at all times relevant to this action, Defendant Cole has served as the Mayor of Walnut Grove.

12. As Mayor of Walnut Grove, Defendant Cole is ultimately responsible for all municipal issues.
13. As Mayor of Walnut Grove, Defendant Cole is a final policy maker for the municipality.
14. As Mayor of Walnut Grove, Defendant Cole is a public official.
15. On September 27, 2014, acting on behalf of Walnut Grove, Defendant Cole shot and killed a stray dog.
16. Defendant Cole shot and killed the dog in his capacity as Mayor of Walnut Grove.
17. Defendant Cole admits shooting and killing the dog in his capacity as Mayor of Walnut Grove and as policy maker over animal-control issues for the municipality.
18. Defendant Cole claimed to investigating authorities that he shot and killed the dog because he feared for his safety.
19. Based on witness accounts, Plaintiff has learned and believes that the Mayor shot the dog with a shotgun at a distance of thirty feet, the dog then went behind bush, and the Mayor then shot the dog with a pistol, killing the dog.
20. Based on information from others, Plaintiff also has learned and believes that the Mayor and police have made threats against people who spoke out against the Mayor's killing of the dog.
21. Plaintiff was familiar with the dog, had personal contact with her, does not believe she was aggressive, and believes that the dog was caring for her puppies.
22. Plaintiff believes that killing the dog was unnecessary. Moreover, she believes that the manner in which Defendant Cole killed the dog demonstrated cruelty.
23. Plaintiff expressed her disagreement with Defendant Cole's actions as Mayor of Walnut Grove by engaging in expressive activity, including posting on Facebook and starting an

online petition, that criticized the Mayor's official conduct in shooting and killing the dog.

24. In response to Plaintiff's expressive activities, Defendant Cole sued Plaintiff on April 14, 2015, claiming that her expressive activity criticizing his official conduct was slanderous.
25. Defendant Cole is represented in his lawsuit against Plaintiff by the City Attorney of Walnut Grove.
26. Plaintiff's expressive activity relevant to this action is protected criticism of a public official.
27. Defendant Cole's lawsuit against Plaintiff is an adverse action that would chill a person of ordinary firmness from continuing in her criticism of Defendant Cole's actions as the Mayor of Walnut Grove.
28. Defendant Cole's lawsuit is motivated by Plaintiff's expressive activity.
29. Plaintiff reasonably fears that Defendants will take additional adverse actions against her in retaliation for her expressive activity criticizing Defendant Cole for his official conduct.
30. At all times relevant to this suit, Defendant Cole acted under color of law and as policymaker for Defendant City of Walnut Grove.

COUNT I: FIRST AMENDMENT RETALIATION

31. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
32. Plaintiff's expressive activity regarding the Mayor of Walnut Grove is protected by the Free Speech Clause of the First Amendment because it is criticism of his official conduct as a public official.

33. Neither factual error nor defamatory content suffices to remove the constitutional protection from criticism of official conduct.
34. A defamation lawsuit against a resident by the Mayor in response to the resident's criticism of the Mayor's official conduct is an adverse action.
35. A defamation lawsuit in response to criticism of the Mayor's official conduct is the type of adverse action that would chill a person of ordinary firmness from continuing to engage in criticism of the Mayor's official conduct.
36. Defendant Cole's lawsuit against Plaintiff was motivated at least in part by Plaintiff's exercise of expressive activity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- a. Upon motion, grant a preliminary injunction preventing Defendants from taking retaliatory action against Plaintiff, including by continuing to prosecute the defamation suit against her;
- b. Grant a permanent injunction preventing retaliatory actions against Plaintiff;
- c. Award Plaintiff compensatory damages against both Defendants;
- d. Award Plaintiff punitive damages against Defendant Cole;
- e. Award costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- f. Allow such other and further relief as this Court finds just.

Respectfully submitted,

/s/ Anthony E. Rothert

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