

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TERRY WALKER	)
Plaintiff	)
	)
V.	)
	)
TOWN OF MONTEREY, MELISSA NOE, in	)
her Official and Individual capacity, DONALD	)
COBURN, in his Official and Individual capacity	)
and STEVEN WEISZ in his Official and	)
Individual capacity	)
Defendants	)

COMPLAINT

INTRODUCTION

The Plaintiff, Terry Walker (“Ms. Walker”), brings this action seeking redress for substantial violations of her rights pursuant to the Federal and Massachusetts Civil Rights acts as well as under the Massachusetts Whistleblower Act, M.G.L. c. 149, § 185, and violations of the common law. The Plaintiff brings these actions against the named Defendants for retaliating against her for exercising her rights of free speech as a citizen and by reporting, objecting to, and filing complaints about what she reasonably believed to be ongoing violations of law in the Town of Monterey and the Monterey Board of Selectman, specifically by Defendant Melissa Noe.

JURISDICTION

The Plaintiff asserts federal jurisdiction under 42 U.S.C. § 1983, and pendent jurisdiction of his state law claims under 28 U.S.C. § 1367.

PARTIES

1. The Plaintiff, Terry Walker, is an individual residing in the Town of Tolland, Hampden County, Commonwealth of Massachusetts.
2. Defendant Town of Monterey, is a municipality duly incorporated under the laws of the Commonwealth of Massachusetts
3. The Defendant, Melissa Noe, at all times relevant to this Complaint, served as Town Administrator for Defendant Town of Monterey, with a place of business located in Berkshire County, Commonwealth of Massachusetts.
4. The Defendant, Steven Weisz, at all times relevant to this Complaint, served as a member of the Monterey Select Board, with a place of business located in Berkshire County, Commonwealth of Massachusetts.
5. The Defendant, Donald Coburn, at all times relevant to this Complaint, served as a member of the Monterey Select Board, with a place of business located in Berkshire County, Commonwealth of Massachusetts.

FACTS

6. Plaintiff, Terry Walker (Hereinafter “Plaintiff” or “Ms. Walker”), has been employed as Town Clerk for the Town of Monterey (“the Town”), for approximately six (6) years.
7. Plaintiff is and has always been a dedicated, energetic and hard-working employee. She has no prior disciplinary history and has at all times performed her duties in an appropriate manner.
8. Ms. Walker is an excellent public employee who has served the interests of the Town of Monterey diligently and honestly.
9. Despite her best efforts, Ms. Walker has been repeatedly retaliated against for her objections to and refusals to engage in conduct, which she reasonably believed to be illegal, a threat to public safety and/or in violation of the Massachusetts State Ethics laws as well as Town’s Departmental Rules and Regulations.
10. Ms. Walker’s initial complaints and objections include, but are not limited to, allegations of voter fraud by Defendant Melissa Noe, who insisted that voter ballots be destroyed and/or not counted in a local election.
11. Additionally, the Plaintiff refused to participate when Ms. Noe altered, amended or manipulated voter documents on multiple occasions constituting a violation of MGL. c. 56, section 11, for defacement of a ballot petition.

12. Specifically, Ms. Walker accused Defendant Noe of tampering with names on the citizens' petition. This complaint was forward to the Berkshire District Attorney's Office, after a state election official said the allegation could result in criminal charges and recommended that the claim be investigated.
13. In May of 2021, the Plaintiff resigned from her work as the Town of Monterey's lead Grant Writer. The Plaintiff had held that position for the previous five years. The Plaintiff's resignation from the position of Grant Writer was based upon the repeated harassment and unwarranted criticism by Defendant Melissa Noe.
14. In June of 2021, shortly after her resignation, Ms. Walker's complained to the Town and the Select Board regarding allegations of ongoing intimidation, retaliation and harassment by Defendant Melissa Noe.
15. On July 21, 2021, following a Select Board meeting, Defendant Noe made complaints to Select Board member Justin Makuc regarding the Plaintiff's physical appearance and that Plaintiff should not be allowed to work when no one was in Town Hall.
16. When the Plaintiff responded, Defendant Noe angrily threatened and berated Plaintiff further, causing her to fear for her personal safety.
17. Ms. Walker, filed a police report with Monterey Police Sgt. Brian Fahey and contacted the Massachusetts State Police regarding this incident.
18. The Town of Monterey and its Select Board took little action to curtail or discipline Defendant Noe, and her harassment of the Plaintiff increased, with friends of Defendant Noe joining in the attempts to intimidate the Plaintiff.
19. These Select Board's lack of action was coercive and designed to silence the Plaintiff's objections and complaints about Defendant Noe's conduct and her retaliation of the plaintiff.
20. The Plaintiff's complaints eventually resulted in the Town's decision to hire an independent law firm to investigate these allegations.
21. On or about March 17, 2022, Corinne Hood Greene, of the law firm of Greene & Hafer was hired by the Town of Monterey to investigate complaints made by Ms. Walker. The firm specialized in issues of employment law.
22. The investigation conducted by Attorney Greene, focused on whether Defendant Noe engaged in a misuse of power through "a pattern of conduct" that was retaliatory and manipulative.
23. The subsequent report of the investigation conducted by Attorney Greene stated, "Ms. Walker made a timely report concerning an incident that occurred July 21, 2021, following a Select Board ("SB") meeting."

24. According to the Greene and Hafer report:

“SB member Justin Makuc witnessed Noe and Highway Superintendent Shawn Tryon angrily confront Walker. Accounts of the altercation do not vary significantly, as set forth in the reports of both Chief Backhaus and Sergeant Fahey. The only dispute seems to concern the intensity of the argument and whether Walker could have reasonably feared for her safety. In that regard, we note that Walker was aware of a prior incident involving Tryon allegedly assaulting another employee. Therefore, whether this prior incident occurred as alleged or even if it did not occur at all, it informed Walker’s reaction. We credit Makuc’s recollection of the events, given his status as the newest member of the SB at the time of the incident and his reaction. Acting in the moment, he judged the situation of such intensity that he needed to immediately check in on Walker and escort her to her vehicle. From there, however, Walker re-entered the building and sought the assistance of the Police Sargent immediately following the incident. He did not take her report at that time, but later described her as upset. Both the Chief and Sergeant made later reports of the incident, despite concluding that it was not a police matter. The Chief admits that he sought the advice of Town Counsel, who purportedly agreed with him that it was a personnel matter. The Chief’s categorization of this incident is curious in that he equates this incident with an earlier dispute between Noe and former SB member John Coburn, yet he contends that that incident should have been investigated. The conduct of each of the employees involved in this incident may be considered violative of several sections of the Town’s Employee Manual cited above. At least one employee alleges an assault occurred, but the police declined to take action. As set forth at the conclusion of this report, the failure of the Town to promptly make any investigation as to the policy violations or to take any remedial personnel actions has likely contributed to the Town’s inability to move on from this incident.” (Exhibit 1)

25. Attorney Greene also investigated and validated another complaint made by Ms. Walker against Defendant Noe for making false statements about the performance of the Plaintiff’s work during a September 1, 2021, Select Board meeting.

26. As Town Administrator, Defendant Noe had the ability to place the purported issue of Ms. Walker’s work performance into a public forum. This was done by Defendant Noe in an effort to publicly discredit and disparage Ms. Walker in the eyes of the public.

27. Attorney Green’s report concluded that the *“...complaints are only actionable to the extent that they shed light on the underlying issue of retaliation by Noe. Noe’s control over the agenda provides an avenue for her to raise alleged performance issues in a public forum in an attempt to disparage, whereas such issues should be addressed in the workplace between a supervisor and employee.”*

28. After making the above complaints, Ms. Walker continued to be subjected to an overt pattern of retaliation and hostile treatment by Defendant Noe, who seemed emboldened by the lack of action taken by the Select Board.

29. Defendant Noe's attempts to silence and discredit the Plaintiff extended beyond her interactions with the Plaintiff. Select Board member Justin Makuc also filed a complaint with the Select Board regarding inappropriate conduct on the part of Defendant Noe.

30. In his complaint Mr. Makuc stated that on September 19, 2021, he received an email from Defendant Noe in which Noe suggested that it was in the Town's best interests for Mr. Makuc to meet with Noe regarding negative information Defendant Noe claimed to possess about Ms. Walker.

31. Defendant Noe informed Mr. Makuc, that in Noe's opinion, if the Select Board agreed to an investigation of the Plaintiff's complaints, it was likely to expose the Town of Monterey to additional claims by Ms. Walker.

32. Defendant Noe continued to urge Mr. Makuc as well as the Select Board to dismiss the Plaintiff's complaints concerning the July 21, 2021 (see paragraph 14 above) incident involving the threats made by Defendant Noe and Highway Superintendent Tryon to the Plaintiff.

33. With regard to this particular issue, the Greene and Hafer investigative report also concluded:

"Noe has also personally urged Walker to drop her claims, both individually and in concert with Weisz. Taken alone, the fact that Noe would reach out to a single member of the SB in an attempt to dissuade him from pursuing an investigation of claims made by any Town employee is troubling. We consider this complaint in tandem with other attempts to intimidate Walker or threaten her reputation and livelihood (taken by Noe alone or in tandem with others) and to retaliate against her for pursuing claims. As set forth above (with regard to the Makuc email) and below (in the context of other complaints), we find that Noe has undertaken several actions intended to retaliate, intimidate or otherwise coerce Walker. Moreover, based on the findings concerning our investigations of Sylbert and Banducci's complaints, we find there is a pattern of behavior whereby Noe has taken action against employees or individuals whom, in her estimation, have undermined her authority or otherwise challenged her." (Exhibit 1)

34. On August 22, 2021, the Plaintiff filed a complaint against Highway Superintendent Tryon for making an obscene gesture to the Plaintiff. Tryon is a personal friend and ally of Defendant Noe and had previously threatened the Plaintiff during the confrontation with Defendant Noe on July 21, 2021.

35. After the Plaintiff had continued to object and complaint about Defendant Noe, both Noe and Select Board member Donald Coburn threatened they would 'dig up dirt' on Plaintiff dating back forty (40) years if she continued to pursue her complaints against them.

36. Attorney Greene did not specifically investigate the obscene gesture complaint because it was considered a dispute between two coworkers, neither with authority over the other.

37. However, the Greene and Hafer report concluded that despite the legitimacy of the Plaintiff's accusations of harassment and retaliation by Tryon and Noe, the Town took no remedial action or steps to prevent future abuse.

"Nonetheless, the Town as their employer had previously been notified of a negative interaction between these same two employees the prior month. Given the other findings, detailed herein (concerning harassment against Walker in the wake of her July complaint) it is reasonable to conclude that Walker is experiencing harassment in her workplace of which the Town is aware and therefore could be liable if remedial action is not taken. Our investigation revealed no efforts being undertaken by the Town to prevent harassment or retaliation." (Exhibit 1)

38. In an effort to document her mistreatment Ms. Walker filed a complaint with the Select Board against Defendant Noe for another incident that had occurred at another Select Board meeting on September 22, 2021. It is clear from the statements from eyewitnesses to this event that Ms. Noe's conduct was sufficiently aggressive to place the Plaintiff in fear for her personal safety.

39. The Greene and Hafer report investigated the complaint and concluded the following:

"Multiple witnesses support a finding that a disagreement occurred during the September 22, 2021, SB meeting, which then carried over into the hallways of Town Hall. Like the July incident, there is no meaningful dispute that the event occurred in generally the manner alleged. Noe admits that she yelled at Walker. Gary Shaw, former Assistant Town Clerk and assistant to Walker, witnessed the conduct at the meeting and after, describing Noe's behavior as belligerent toward both Walker and the SB members. We credit his description, given Noe's admission. The only disagreement about these events is whether it escalated such that Noe's conduct could be considered threats of violence. Walker and Shaw claim Noe's behavior caused Walker to reasonably fear for her safety, on one hand, and Weisz and Noe contend that Walker could not have reasonably been in fear of violence. We find that if Weisz and Shaw were both compelled to intervene, Walker's fear was reasonable."

40. During the above described interaction, Gary Shaw attempted to intervene. Upon seeing Mr. Shaw's effort to deescalate the situation, Defendant Noe stated "Are you here to protect Terry (the Plaintiff) so I won't beat her up?"

41. As egregious as Defendant Noe's threat of physical violence toward the Plaintiff was, the Town, through its Select Board took no corrective, let alone any disciplinary action against Defendant Noe.

42. With regard to this incident, the Greene and Hafer report concluded:

"As set forth at the conclusion of this report, we cannot offer an opinion as to whether Noe's behavior, which we find to have reasonably put Walker in fear, amounts to

a terminable offense under her Employment Agreement. However, acts of violence is noted in the employee manual as one of the egregious behaviors that may warrant immediate dismissal. Where this was the second such incident admitted by Noe, we find disciplinary action was warranted, but no such disciplinary procedure exists under Noe's contract and the SB failed to follow the Disciplinary Action clause set forth in the Employee manual. By the time this incident occurred, the SB was on notice of Walker's first complaint in which she made specific allegations, including fear of physical violence. We find that for Weisz to allow this second interaction to escalate as far as it did without more intervention or immediate disciplinary action is potentially problematic for the Town. Even were his inaction excusable, Weisz then orchestrated and participated in efforts to get Walker to retract her Complaint, as set forth below."

43. As a result of the Plaintiff's complaints to these events and others, Ms. Walker has been subjected to ongoing and multiple adverse employment actions including, but not limited to, subjecting her to an overtly aggressive and hostile work environment, including, but not limited to verbal abuse and retaliation.
44. After raising her complaints to multiple individuals, including members of the Select Board and to investigators, the Plaintiff continued to be threatened, coerced and intimidated by other supporters of Defendant Noe.
45. These threats and acts of coercion were done to force and compel the Plaintiff to withdraw her complaints against Defendant Noe, including Select Board member Donald Coburn, his wife Ellen Coburn and Select Board Chairman Steven Weisz.
46. Defendant Coburn also contacted the Town of Peru, where Plaintiff was employed as the Administrative Assistant to the Board of Selectmen. Defendant Coburn did so in an attempt to disparage Plaintiff to her other employer and coerce the Plaintiff from continuing to complain about her ongoing harassment by Defendant Noe.
47. In an email dated November 24, 2021 at 5:40 AM, Select Board member Defendant Coburn sent the following to the Plaintiff, with the subject line, **"Perhaps it's time to apologize and pray."**

"Terry,

Remember when I alerted you to the risks of precipitating an investigation? Well, now you are most likely about to face them.

However, before acting to bring your work history to the public's attention, I thought I'd give you one last chance to publicly apologize for all the complaints you've filed against Melissa, Shawn, Steve, Ellen and me, and to formally withdraw them permanently. Perhaps then the Select Board will allow you to continue to work until your planned retirement.

As you well know, and now I know, you've been playing the victimhood game in town after town, leaving a trail of anger, to put it mildly. I have your complaint filed with the Mass. Commission Against Discrimination and your signed withdrawal of it. You seem to want to forget you worked in CHESTER, but what's done cannot be undone.

In town after town, the writings, including your own letters of resignation, and newspapers, show you making the same complaints, using the same phrases, and then quitting or being "fired."

The full details of the PATTERNS of your behavior will now be made public. And any investigator hired by Monterey will be able to review your present claims in the light and context of your other claims in other towns.

I suggest that if you think a fully informed review of your work history will turn out well for you, you are seriously mistaken. If you apologize and permanently withdraw your complaints BEFORE the end of TODAY'S SELECT BOARD MEETING, the information I have will be kept private. Otherwise, it will be used to inform all of the truth." (Exhibit 1)

48. Ms. Walker filed a complaint against Kevin Fitzpatrick dated October 4, 2021. In said complaint, Ms. Walker alleged she was subjected to sexually suggestive messages and unwanted touching by Kevin Fitzpatrick, who was then a co-worker.
49. The investigation by Attorney Greene concluded that *"...it does not appear the Town harassment policy was followed in this instance, given the Chief of Police contends that his first notice of the allegation came from a State Police Detective, not internally, and given that he took no action. The policy demands a prompt investigation, including a hearing by the member of the Select Board, one female and one male employee. A prompt and appropriate response may have been managed if the Town had better reporting policies or had even followed existing policies. It is unclear whether the Town offered the hearing mandated and, to the contrary, we heard evidence that SB member Weisz suggested to Walker that she meet privately with him and Fitzpatrick (her alleged harasser) so that the latter could apologize. Moreover, we found no evidence that any effort has been made to further the policy's promise that "No employee shall be retaliated or discriminated against in any way for making a complaint of sexual harassment for cooperating in the investigation of such a complaint."*
50. On October 16, 2021, Select Board member Makuc made another complaint to the Select Board that Defendant Noe had engaged in further intimidation and retaliation against the Plaintiff.
51. The Greene and Hafer report investigated the complaint by SB member Makuc and concluded the following:

"We find that, by her own admission, Noe confronted Walker about her complaints in a hostile manner, as described above, during an incident on September 22, 2021. Noe also

directed sweeping public record requests to Walker as the Town's records officer, which concerned Walker herself. The requests were made subsequent to Walker initiating complaints against Noe. We find the intent of each of these actions was to discourage, intimidate or otherwise dissuade Walker from pursuing her claims. Our investigation also revealed that similar requests for information about Walker's employment history have been made by other individuals (who have aligned themselves with Noe) and that Noe, herself, shared with us a public records request she made, personally, to the Massachusetts Commission Against Discrimination asking for records related to Walker. The documentation she obtained was shared with us by her (and by others) in an effort to discredit Walker. This same information was the subject of threats (made by a former SB member) directly to Walker demanding that she stop pursuing her complaints or have this information (which he intended to be damaging to her reputation) exposed. See Note 6, above. The actions she has taken, highlighted in this Makuc complaint, may be considered retaliatory if they amount to an adverse employment action against Walker. The most recent documents shared by Walker appear to show that her budget is being reviewed and that the SB is publicly considering what the impact of some of the information from her past should have on her current employment. Any adverse employment action which can be directly related to her complaints may expose the Town to liability." (Exhibit 1)

52. Ms. Walker also filed a complaint against Select Board member Defendant Weisz dated October 16, 2021 claiming that she was coerced into apologizing for her role in the June incident and that Select Board member Weisz has made several efforts to get her to withdraw her complaints against Noe, Tryon and Fitzpatrick.

53. The Greene and Hafer investigation revealed:

"Weisz admits to attempting to negotiate a sort of truce between Walker, Noe and Tryon in October, as well as evidence that Walker apologized for her role in the incident. A corresponding apology from Noe was reportedly conditioned on the retraction of Walker's complaint, by letter to be authored with Weisz.

These actions were taken by Weisz before any independent investigation of the underlying dispute (which most witnesses identify as the MassWorks grant) was undertaken. Further, these requests for retraction came from two individuals in positions of authority over Walker. The Chief of Police confirmed that he was also asked by Weisz to intervene, but he did not (because he felt Tryon and Noe did not seem to him to be interested in resolution).

Like many of Noe's actions taken in response to Walker's complaints highlighted herein, the actions of Weisz may be considered the actions of the Town, as Walker's employer. While we credit Weisz's claim that he acted with the goal of achieving some level of harmony in Town hall, he failed to acknowledge that he was doing so while holding a position of supervisor to Walker. He also failed to acknowledge that his actions, attempting to influence Walker, were undertaken while she was also being barraged with

additional coercive efforts (by Noe, by former SB members and others) that are well documented and must have been known to him.” (Exhibit 1)

54. The Green and Hafer report independently concluded that Noe and others were engaging in a misuse of power through “a pattern of conduct” that was retaliatory and manipulative and that there was “a failure of leadership” by Select Board members and a breakdown between the board and Town Administrator Melissa Noe.
55. Despite the Greene & Hafer reports’ finding that Ms. Noe has engaged in a misuse of power through “a pattern of conduct” that was retaliatory and manipulative toward Ms. Walker, the Select Board refused to conduct or take any meaningful corrective action against the Town employees and public officials.
56. Ms. Noe and others, including Select Board members Stephen Weisz and former board member Donald Coburn, have repeatedly attempted to coerce Ms. Walker to withdraw her harassment complaint and Whistleblower claims made regarding Ms. Noe.
57. In retaliation against the Plaintiff, Ms. Noe filed three complaints, wrongfully accusing Ms. Walker of making false statements against her.
58. Ms. Noe continued her harassment of the Plaintiff by conducting her own personal unauthorized investigation of Ms. Walker's past employment history which was clearly done as a means to attempt to silence and coerce Ms. Walker from continuing her objections to Ms. Noe’s unethical and illegal behavior.
59. In the report filed by Greene and Hafer, they concluded that investigating Ms. Walker's past was an attempt by Ms. Noe and others, including former board member Donald Coburn, to discredit Walker.
60. It is patently clear that the retaliation and hostile treatment inflicted on Ms. Walker was done as a direct consequence for her ongoing complaints about and refusals to be a part of what she reasonably believed to be, at a minimum, unethical and discriminatory conduct in violation of the Town of Monterey’s Departmental rules and regulations.
61. The Town continues to refuse to take any meaningful remedial action while Defendant Noe, and others, who repeatedly and systematically engaged in a pattern of harassment and retaliation designed to make Ms. Walker’s employment situation untenable.
62. The sole remedial accommodation provided to Ms. Walker, was to amend her work schedule. This “accommodation” was subsequently rescinded after Ms. Walker placed the Town of Monterey on formal notice of her intention to pursue civil litigation.
63. On June 1, 2022, the Monterey Board of Selectmen, Susan Cooper and Chairman Justin Makuc voted and approved an amended working schedule, implemented for Ms. Walker’s safety so as to not be forced to interact with Ms. Noe who, the Greene & Hafer

report's concluded, had been engaging in a misuse of power through "a pattern of conduct" that was retaliatory and manipulative toward Ms. Walker.

64. The agreed upon schedule for Ms. Walker's working hours was set for Thursday 4:30-8:30 p.m, Friday 12-8 p.m., with the balance of the 19.75 hours worked left as 'discretionary hours.' 7.75 hours would be worked Saturdays and Sundays.
65. The voted on "accommodation" was designed so that Ms. Walker would be able to perform her duties when Ms. Noe was not in Town Hall.
66. Subsequently, after the Town and its employees learned of Ms. Walker's intention to pursue civil litigation, the Town removed the previous accommodations put in place to provide a safe and harassment free environment for Ms. Walker.
67. The temporal proximity of the Town's adverse actions and retaliation following Ms. Walker's notice of intent to pursue litigation is obvious.
68. Despite the clear recommendation and conclusions reached by the investigation conducted by Greene and Hafer, the Town's recent actions, as well as those taken by Town Administrator Melissa Noe, are clearly designed to further retaliate and harass Ms. Walker for her reporting of unethical and illegal conduct and her intention to litigate.
69. Additional retaliation including, but not limited to, the Defendants' taking away Plaintiff's town issued credit cards, removing her computer and/or printer access, harassing behavior, disparaging emails and further attempts to coerce Plaintiff to violate various Massachusetts General Laws have all transpired after placing the town on notice of her intention to pursue claims under 151B and the Massachusetts Whistleblower Act.

COUNT ONE - WHISTLEBLOWER (M.G.L. c. 149, § 185)
v. TOWN OF MONTEREY

70. The Plaintiff incorporates herein the previous allegations set forth in this Complaint.
71. The Plaintiff, through various means and measures, has reported, objected to, filed written complaints and oral reports about ongoing violations of law in the Town of Monterey and by the Select Board including, but not limited to, violations by Defendants of Town bylaws, Ethical violations and voter protection laws including, MGL. c. 56, section 11.
72. The Defendants retaliated against Plaintiff for disclosing, objecting to and/or refusing to participate in an activity, policy or practice which the Plaintiff reasonably believed was in violation of a law and/or a rule or regulation promulgated by law, in violation of the Massachusetts Whistleblower statute, G.L.c.149 §185.
73. Plaintiff has been retaliated against for reporting and objecting to such actions and as a result of raising these issues was subsequently subjected to disparate treatment, a hostile

work environment, retaliatory acts, and attempts to interfere with her rights protected under both the U.S. Constitution and the Massachusetts Declaration of Rights.

74. As a consequence of the Defendants' actions, Plaintiff suffered and continues to suffer damages, including, but not limited to: loss of income, loss of employment benefits, other financial losses, loss of professional opportunities, loss of personal and professional reputation, loss of community standing, and emotional and mental distress.

WHEREFORE, Plaintiff demands judgment against the Defendant on Count One, plus interest and costs of this action, and reasonable attorneys' fees as provided under G.L.c.149, Section 185.

COUNT TWO – MASSACHUSETTS CIVIL RIGHTS (M.G.L. ch. 12, §§ 11H, I)
v. Defendants Town of Monterey, Monterey Select Board and Melissa Noe, Donald Coburn and Steven Weisz in their official and individual capacities

75. The Plaintiff incorporates herein the previous allegations set forth in this Complaint.

76. Defendants, in their official and individual capacities have attempted to interfere with, and did interfere with Plaintiff's exercise and enjoyment of rights secured by the constitution and laws of the United States, and the constitution and laws of the Commonwealth, by threats, intimidation and coercion, including her right to free speech and equal protection of the laws and to seek redress from government misconduct without retaliation.

WHEREFORE, Plaintiff demands judgment against the Defendant on this Count plus interest and costs of this action, and reasonable attorneys' fees as provided under M.G.L. c. 12, Section 11I.

COUNT THREE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
v. Melissa Noe, Donald Coburn and Steven Weisz in their official and individual capacities

77. The Plaintiff incorporates herein the previous allegations set forth in this Complaint.

78. The conduct of the Defendants toward the Plaintiff was extreme in degree and outrageous in character, resulting in the intentional and reckless infliction of emotional distress upon plaintiff.

79. Defendants intended to inflict emotional distress on Plaintiff or knew or should have known that emotional distress was a likely result of defendant's conduct.

80. Defendants conduct as alleged above was extreme and outrageous, beyond all possible bounds of decency and was utterly intolerable.

81. The outrageous actions of the Defendants was the cause of plaintiff's distress and the emotional distress sustained by the Plaintiff is of a nature that no reasonable person could be expected to endure.
82. As a result of the outrageous actions of Defendant Noe, Plaintiff was caused to suffer emotional injuries and damages.

COUNT ONE –VIOLATION OF CIVIL RIGHTS and RETALIATION
42 U.S.C., §1983

v. Melissa Noe, Donald Coburn and Steven Weisz in their official and individual capacities

83. The Plaintiff incorporates herein the previous allegations set forth in this Complaint.
84. Defendants, in their official and individual capacities, while acting under the color of law, attempted to interfere with, and interfered with, Plaintiffs exercise and enjoyment of rights secured by the constitution and laws of the United States, including, but not limited to, her right to free speech.
85. Plaintiff complained regarding instances of voter fraud by Defendant Melissa Noe, who insisted that voter ballots be destroyed and/or not counted in a local election.
86. Additionally, the Plaintiff refused to participate when Ms. Noe altered, amended or manipulated voter documents on multiple occasions constituting a violation of MGL. c. 56, section 11, for defacement of a ballot petition.
87. Plaintiff was speaking as a citizen on legitimate matters of inherent public concern (*i.e.*, official malfeasance and public safety), thus her speech was protected under the First Amendment to the United States Constitution.
88. Although the First Circuit has emphasized that “no one contextual factor is dispositive,” it has set forth a list of non-exclusive factors to guide courts in their evaluation. Those factors include:
- “...whether the employee was commissioned or paid to make the speech in question; the subject matter of the speech; *whether the speech was made up the chain of command*; whether the employee spoke at her place of employment; whether the speech gave objective observers the impression that the employee represented the employer when she spoke (lending it “official significance”); whether the employee's speech derived from special knowledge obtained during the course of her employment; and whether there is a so-called citizen analogue to the speech.” *Decotiis v. Whittemore*, 635 F.3d 22, 32 (1st Cir. 2011)
89. Specifically, Ms. Walker accused Defendant Noe of tampering with names on the citizens' petition. Plaintiff went outside of her chain of command as Town Clerk to report her concerns to a separate public body. Her complaint was forward to the Berkshire

District Attorney's Office, after a state election official said the allegation could result in criminal charges and recommended that the claim be investigated.

90. The Plaintiff's (and the public's) interest in becoming aware of above-referenced illegal activity were a substantial or motivating factor in the adverse employment actions taken against her by Defendants and they would not have taken such adverse employment actions absent the protected conduct.
91. The Plaintiff has suffered significant damages, including loss of employment opportunities; lost wages, benefits and other economic damages; costs and attorney's fees required to remedy the legal wrongs done to her; damages to her personal and professional reputation; and emotional distress.
92. The Plaintiff is also entitled to punitive damages because the Defendants acted with evil motive or intent, recklessly or with callous indifference to Plaintiff's federally and state protected rights.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted,
For Plaintiff,
By his attorney,

/s/ Timothy M. Burke

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Dated: 09/09/2022

CERTIFICATE OF SERVICE

I hereby certify that this document filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on this date. Email copies will be sent to those listed as non-participants on the ECF system.

Dated: 09/09/2022

/s/ Timothy M. Burke