

his direct supervisor several times. This supervisor told Mr. Gately that the instruction to remove the press release was coming from the “higher ups.” When Mr. Gately refused to remove the press release, based upon his First Amendment Free Speech rights, he was subsequently fired in violation of those very rights.

II. VENUE AND JURISDICTION

1. This Court has jurisdiction of this action pursuant to USCS Cons. Art. III §2, Cl. 1 and 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1367, which confers supplemental jurisdiction upon this Court for all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.
3. This Court has subject matter jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201.
4. Venue is also proper in this Court pursuant to U.S.C. 28 § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

III. PARTIES

A. Plaintiff

5. Plaintiff, John Gately, was a resident of Texas at all times relevant to this matter.

B. Defendant

6. Defendant, the State of Texas, acting by and through the Texas Military Department, may be served with process by serving MG Thomas Suelzer, the Texas Adjutant General of the Texas

Military Department by personal delivery at 2200 W 35th St., Austin, Travis County, Texas 78703.

7. Defendant, MG Thomas Suelzer, is the Texas Adjutant General of the Texas Military Department and may be served by personal delivery at 2200 W 35th St., Austin, Travis County, Texas 78703.
8. Defendant, Mike W. Gorby, is the Director of the Office of State Administration of the Texas Military Department and may be served by personal delivery at 2200 W 35th St., Austin, Travis County, Texas 78703.
9. Defendant(s), John Doe(s) were employees of the Texas Military Department and at all relevant times were involved in the decision to fire Plaintiff in violation of his rights. The identity of these individuals is unknown to the Plaintiff despite the Plaintiff's best efforts to identify them.

IV. FACTS

10. Plaintiff, John Gately, has been a member of the Texas State Guard (hereinafter, the "State Guard") since July 1, 2010. The Texas State Guard is the state defense force branch of the TMD. According to the State Guard's website:

The purpose of the TXSG is to provide mission-ready military forces to assist state and local authorities in times of state emergencies; to conduct homeland security and community service activities under the umbrella of Defense Support to Civil Authorities, and to augment the other branches of the TXMF as required.

The State Guard operates under the command of the Adjutant General of Texas and the Governor as Commander-in-Chief of all state military forces. The TXSG is authorized by the U.S. and Texas Constitutions, codified by statute under 32 U.S.C. Section 109 and Texas Government Code (Chapters 431, 432, and 437).¹

11. Mr. Gately is currently a Master Sergeant in the State Guard and remains in good standing.

¹ <https://tmd.texas.gov/texas-state-guard-faq>. Last viewed, April 27, 2026.

12. While in the State Guard, Mr. Gately became acquainted with Corporal Kelly Hall as well as the fact that Corporal Hall had separated from the State Guard.
13. On June 15, 2015, Mr. Gately was hired as a Programmer by the Texas Military Department (hereinafter, the “TMD”). In this job capacity he was expected to perform “computer programming work involving analyzing system specifications to develop software for computer applications; developing solution software; documenting the methods and procedures used in software development; and testing, correcting, and revising software.” See, Exhibit 1 (State Classification Job Description). He also worked “under minimal supervision, with considerable latitude for the use of initiative and independent judgment.” See, *id.*
14. Sometime in late 2025 or early 2026 former Corporal CPL. Kelly Hall came into the Texas State Guard (hereinafter, the “TXSG”) office, where Mr. Gately’s TMD office was located. Mr. Gately was surprised to see him and asked Hall if he needed assistance. Hall responded that he was looking to speak with First Sergeant, Damon Williams to discuss rejoining the State Guard. Given his experience, and having assisted over 135 individuals with enlistment, Mr. Gately asked Hall about his discharge status. After clarifying the question, Hall stated that he did not receive an honorable discharge. During a short conversation, Mr. Gately told Hall that reentry would likely be difficult under those circumstances. Mr. Gately also told Hall that the Commanding General would need to approve reentry. Hall left shortly thereafter and Mr. Gately had no further interaction with Hall after that brief exchange.
15. On December 1, 2025, Mr. Gately received a text message, from the Governor’s Office, asking if he would serve as a Republican Precinct Chair for Precinct 338. After verifying the request was genuine, Mr. Gately discussed the potential appointment with his immediate TMD supervisor, Charlie Fern, and several coworkers. The responses regarding this appointment

were generally positive, which allowed Mr. Gately to feel comfortable that he would be able to balance the duties for both his work with the TMD and the precinct, and that he could accept the precinct chair position in good faith. Mr. Gately accepted the position and was sworn in on January 27, 2026. After being sworn in, Mr. Gately shared photos of the ceremony with his supervisor and the Public Affairs Office and again received positive feedback. Based on these interactions with his supervisors, coworkers, and the Public Affairs Office, Mr. Gately had no reason to believe that his participation as a precinct chair would negatively impact his position with the TMD. Mr. Gately's position as precinct chair was entirely separate and apart from his employment with the Texas Military Department and they had no authority over his activities in that position.

16. In general, precinct chairs represent the party in the precinct, identify and register voters in the precinct, help encourage voting within the precinct, serve on the County Executive Committee, work the elections, and organize the precinct convention. As part of these duties, Mr. Gately was expected to help keep precinct area citizens informed regarding political issues and candidates in the precinct.
17. Sometime in February, Mr. Gately learned that Hall was simultaneously running for Texas House District 19² and mayor of Round Rock, Texas. Texas House District 19 encompasses Blanco County, Burnet County, Gillespie County, Kendall County, and a small portion of Travis County. Notable cities within this district include Fredericksburg, Marble Falls, and Burnet. Importantly, Round Rock is not one of these cities and is not in Texas House District 19. Rather, Round Rock is in Texas House Districts 53 and 136. According to statements made by Hall:

² On March 3, 2026, Mr. Hall won the primary election for HD19 with about 60.2% of the votes. [https://ballotpedia.org/Kelly_Hall_\(Texas\)](https://ballotpedia.org/Kelly_Hall_(Texas)); Last viewed April 28, 2026.

...he originally filed to run for HD19 but later believed he had successfully withdrawn. He said he rents a place in Cedar Park and also started renting another place in Round Rock about a year ago. When Round Rock became his primary address — which is outside HD19 — Hall said he attempted to drop out of the HD19 race.

See, Exhibit 2 (Round Rock mayoral candidate wins Texas House primary he didn't know he was in).

18. In his capacity as precinct chair, for Precinct 338, Mr. Gately believed it was his duty to inform area voters of the underlying issues in the Round Rock mayoral race. Given his prior knowledge of Hall's conduct within the State Guard, Mr. Gately began reviewing *publicly available records*. These included filings in lawsuits which had been filed, in which Hall's actions were documented, including *San Juanita Medeles v. Jeanette Jimmerson of the Texas Military—Texas State Guard*, *Darren Fitzgerald of the Texas Military—Texas State Guard*, *Joe Cave of the Texas Military Department—Texas State Guard*, and *Texas Military Department—Texas State Guard* in the 459th District Court of Travis County (Case No. D-1-GN-24-000896). After reviewing the pleadings in this lawsuit and other publicly available information, Mr. Gately posted the following press release post on the Texas Precinct 338 website/blog on March 12, 2026:

FOR IMMEDIATE RELEASE

Date: March 12, 2026

Statement on Leadership, Honesty, and Service to Texas

Round Rock, Texas — As the elected Republican Precinct Chair for Precinct 338 in Williamson County, and as a current member of the Texas State Guard, I believe strongly that those who seek public office must demonstrate honesty, integrity, and loyalty to the people they intend to serve.

It has come to my attention that Kelly Hall, who has reportedly won the race for Texas House District 19 while also running for Mayor of the City

of Round Rock, is representing on his campaign website that he has served in the Texas State Guard from 2016 to Present.

His website currently states:

"2016 – Present

Texas State Guard

Serving in emergency response, disaster relief, and community outreach. A commitment to protecting and serving Texans."

This claim is not accurate.

I served in the Texas State Guard with Mr. Hall and can confirm that he has not served in the Texas State Guard for several years. Mr. Hall was discharged from the Texas State Guard, and his service did not conclude with an honorable discharge.

During his service, Mr. Hall admitted to forging official government documents, which resulted in his discharge from the organization.

Despite this, his website currently represents his Texas State Guard service as continuing to the present.

In addition, Mr. Hall's website presents him as a veteran. While the Texas State Guard performs an important mission supporting disaster response and emergency operations within the State

of Texas, service in the Texas State Guard does not confer federal veteran status, as members are not part of the federal armed forces unless separately serving in those branches.

The men and women who serve in the Texas State Guard dedicate themselves to protecting Texans during disasters and emergencies. Their service represents loyalty, honor, and commitment to the State of Texas. That service should never be misrepresented.

Leadership requires honesty and accountability. When individuals seek positions of public trust—whether in the Texas Legislature or as Mayor of the City of Round Rock voters deserve transparency regarding their background and service.

The people of Texas, and especially the citizens of Round Rock, deserve leaders who demonstrate integrity and respect for the truth. In my view,

honesty and loyalty to the State of Texas must remain the foundation of public service.

Respectfully,

John J. Gately

Republican Precinct Chair – Precinct 338

Williamson County Republican Party

Round Rock, Texas

See, Exhibit 3 (Press Release) (hereinafter, the “Press Release”). Mr. Gately ensured this press release included only publicly available information and did not mention his employment with TMD, any information he had acquired during his employment with TMD or his position within the Texas State Guard, or state that this was an official position held by the TMD.

19. Shortly after publishing the Press Release, on March 13, 2026 at about 2:14 P.M., Mr. Gately received a call from TXSG Chief of Staff, Colonel Dan McCarroll. Colonel McCarroll told Mr. Gately that Hall had called TMD and threatened legal action if the Press Release was not taken down. Colonel McCarroll further requested that Mr. Gately remove the Press Release immediately. Mr. Gately declined to remove the Press Release, stating that it had been made in his capacity as a precinct chair, and he believed it was protected speech under both the US and Texas Constitutions.

20. Later that same day, Mr. Gately received a second call from Colonel McCarroll. During this call, Colonel McCarroll told Mr. Gately that he had spoken with the Government Affairs Office (hereinafter, the “GAO”) and that the GAO had confirmed the Press Release made in his personal capacity as a precinct chair was protected speech. The GAO’s confirmation demonstrates TMD was aware that clearly established law regarding the First Amendment and protected speech applied to the Press Release. Colonel McCarroll also confirmed that Mr.

Gately had previously informed his supervisor, GAO, and TMD legal representatives that Public Information Act requests might be forthcoming.

21. Early that evening, Mr. Gately spoke directly to Major Phil Fountain, in the GAO, who confirmed that the Press Release was protected speech and that TMD could not direct Mr. Gately to remove it.
22. About an hour and a half later, Mr. Gately received a call from his TMD supervisor, Charlie Fern, who officially directed him to remove the Press Release. When Mr. Gately refused to do so, Ms. Fern stated that failure to comply could result in termination and “the higher ups want you fired.” Although Mr. Gately requested written confirmation regarding this none was provided to him.
23. Roughly an hour after this call, Ms. Fern called Mr. Gately again and again directed him to remove the Press Release. Mr. Gately again refused to do so based on his right to free speech.
24. Mr. Gately later spoke with Ms. Fern on March 17, 2026. During that discussion Ms. Fern confirmed that there would be no negative results from the Press Release or Mr. Gately’s refusal to remove it.
25. On March 18, 2026, Mr. Gately filed a Texas Public Information Act request with the TMD requesting all records, documents, reports, communications or materials related to Hall concerning the investigation of forging documents and administrative or disciplinary actions regarding the outcome of the investigation, as well as any and all communications discussing Hall, including those referencing Gately. This request was sent from Gately’s Precinct Chair email address. At the time of this filing, Mr. Gately has not received a response to this request. See, Exhibit 4 (PIA Request).

26. Notwithstanding the previous reassurances, on March 19, 2026 Mr. Gately was called to the human resources department. This department is headed by the Director of State Administration, Mike W. Gorby. Mr. Gorby is ultimately responsible for all employment decisions. During this meeting, Mr. Gately was informed that his employment with the Texas Military Department was being terminated, effective immediately. When Mr. Gately asked why he was being terminated and who had directed the termination he was given no response other than that it was directed by the “higher ups.” At no point was Mr. Gately asked questions about the Press Release, the underlying information, or anything else regarding Hall’s claims. Mr. Gately left the HR office, turned over his state-issued laptop to his subordinate, Orrin Spence, and left Camp Mabry.
27. Mr. Gately was subsequently placed on suspension from the State Guard on March 20, 2026, pending an investigation. The investigation was completed and Mr. Gately was reinstated on April 1, 2026 after the investigation showed that all information used in the Press Release was publicly available and unrelated to any information Mr. Gately would have had access to through either his enlistment with the State Guard or his work with the TMD.
28. Throughout his tenure with the TMD, Mr. Gately had performed his work in an exemplary fashion. Until the events precipitating his wrongful termination, Mr. Gately never received disciplinary action or negative evaluations and his evaluations for the last 10 years were all excellent. In fact, his annual employee performance reviews were all “4” and indicated that he “Exceeds Job Expectations” in all areas in both 2023 and 2025³. See, Exhibit 5 (Performance Reviews).

³ Mr. Gately did not have an evaluation in 2024 because he was on military orders at the time evaluations took place.

29. In addition, Mr. Gately received the following awards during his tenure with the TMD and the State Guard:

- a. the Texas Outstanding Service Medal (6 times),
- b. the Texas Medal of Merit (5 times),
- c. the Adjutant Generals Individual Award (3 times),
- d. the Texas State Guard Exemplary Service Medal (2 times),
- e. the Texas State Guard Meritorious Service Ribbon Commanding General Individual Award (3 times),
- f. the Texas Faithful Service Medal (3 times),
- g. the Texas Humanitarian Service Medal (2 times),
- h. the Texas State Guard Good Conduct Medal (7 times),
- i. the Texas Homeland Defense Service Medal,
- j. the Texas State Guard Service Medal,
- k. the Texas State Guard NCO Professional Development Ribbon,
- l. the Texas State Guard Recruiting Ribbon,
- m. the Texas State Guard PD Ribbon With 7 FEMA Courses,
- n. the Texas Border Security and Support Service Ribbon,
- o. the Texas State Guard Physical Fitness Ribbon,
- p. the Meritorious Service Ribbon,
- q. the SGAUS Commendation Medal,
- r. the SGAUS Recruiting Achievement Medal, as well as
- s. other Awards
- t. a Unit Award, and

u. a Meritorious Unit Award.

30. There was no performance related reason for Mr. Gately to have been terminated. Upon information and belief, Mr. Gately's position was not eliminated, nor were there budgetary issues requiring Mr. Gately's immediate termination. The only logical explanation, despite assurances to the contrary, is that Mr. Gately was terminated for refusing to remove the Press Release in violation of his right to free speech.

V. **VIOLATION OF FIRST AMENDMENT FREE SPEECH RIGHTS**
U.S. Constitution, Amendment 1

31. Plaintiff incorporates, by reference, each and every preceding paragraph as if fully restated herein.

32. The First Amendment to the United States Constitution clearly protects our right to free speech, stating the following:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or ***abridging the freedom of speech***, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(emphasis added) See, USCS Const. Amend. 1.

33. In fact, it has long been held that “the First Amendment prohibits a public employer from retaliating against an employee for exercising his right to speak on a matter of public concern.” See, *Tompkins v. Vickers*, 26 F.3d 603, 606 (5th Cir. 1994). The United States Supreme Court has also found that “‘the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected.’ Indeed, that theory was expressly rejected in a series of decisions.... [where] we said: ‘It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.’” See, *Keyishian v. Bd. of*

Regents, 385 U.S. 589, 605-06, 87 S. Ct. 675, 685 (1967) (quoting, *Keyishian v. Board of Regents*, 345 F.2d 236, 239.).

34. To establish a claim for violation of constitutionally protected freedom of speech under the First Amendment, Plaintiff must demonstrate the following elements: “(1) he suffered an adverse employment decision; (2) his speech involved a matter of public concern; (3) his interest in commenting on matters of public concern outweighs his employer's interest in promoting efficiency; and (4) his speech motivated the adverse employment decision.” See, *Stotter v. Univ. of Tex.*, 508 F.3d 812, 825 (5th Cir. 2007).

a. Public Concern: To begin, “Whether the speech at issue is on a matter of public concern is a question of law that must be determined by the court.” See, *Salge v. Edna Indep. Sch. Dist.*, 411 F.3d 178, 184 (5th Cir. 2005). When deciding this, “one approach is to consider whether the ‘public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest.’ In such a case we typically conclude that the speech does not involve a matter of public concern.” See, *Blackwell v. Laque*, 275 F. App'x 363, 369 (5th Cir. 2008) (quoting *Stotter v. Univ. of Tex. at San Antonio*, 508 F.3d 812, 825 (5th Cir. 2007).) Plaintiff's Press Release was about a current political candidate and made in his capacity as the precinct chair. This type of speech is inherently a matter of public concern.

b. Employer Efficiency versus Employee's Interest in Commenting: When balancing the right to free speech with public employment, a public employee's interest in commenting on matters of public concern must be weighed against the government's interest in promoting the efficiency of public services. The balancing test was described

by the US Supreme Court, in *Pickering v. Bd. of Educ.* when they noted “[t]he problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” See, *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568, 88 S. Ct. 1731, 1734-35 (1968). In general, speech on matters of public concern is protected unless the government employer can demonstrate that the speech disrupts workplace efficiency or discipline. Here, Plaintiff’s Press Release did not disrupt workplace efficiency or discipline. Further, “[w]here nonpolicymaking, nonconfidential employees are discharged solely because of their private political views, little, if any, weighing of an employee’s First Amendment rights against an employer’s right to loyal and efficient service is necessary, and the employee’s rights will usually prevail.” See, *Gentry v. Lowndes Cty.*, 337 F.3d 481, 486 (5th Cir. 2003).

- c. *Employer’s Decision Based on Employee’s Speech*: Plaintiff must show that his protected conduct “was a motivating factor in [his] discharge.” See, *Beattie v. Madison Cty. Sch. Dist.*, 254 F.3d 595, 601 (5th Cir. 2001). Plaintiff had worked for Defendant TMD for ten years without incident and with commendable annual reviews. Further, Plaintiff had no worries regarding job security until he began receiving demands from his supervisors that he remove the Press Release. Absent proof to the contrary, the only logical reason for his termination was Plaintiff’s protected speech.

35. Plaintiff engaged in speech protected by the First Amendment to the United States Constitution. When publishing the Press Release, Plaintiff was acting in his personal capacity as a precinct chair—not in any way related to TMD.

36. The information used in the Press Release was all gleaned from publicly available sources.

The press release did not describe Plaintiff as being employed by the TMD nor did it state this was an opinion held, or endorsed, by the TMD. In total, the Press Release was in no way related to Plaintiff's position as computer programmer for the TMD.

37. The Press Release discussed matters of public concern, specifically information about a candidate for (multiple) public office(s). This is a matter relevant to the public electorate.

38. No performance related concerns had been communicated to Plaintiff regarding his employment with TMD prior to being called to the human resources office on March 19, 2026.

39. Plaintiff was not on probation, or any similar status with TMD.

40. Plaintiff's annual evaluations were all excellent and did not note performance related concerns that would give him notice that he might be terminated.

41. Without any other plausible underlying reason, and based on the demands and threats made to Plaintiff, Plaintiff's protected speech was a substantial, or motivating factor, in Defendant's decision to terminate Plaintiff's employment with them.

42. The human resources personnel who communicated Plaintiff's termination to him did not discuss performance related reasons for firing Plaintiff. The human resources personnel member, did however, state the decision had been made by the "higher ups." These "higher ups" were likely the Executive Director of State Administration and the Adjutant General of Texas. Other supervisory employees may also have been involved in the decision. These administrative and supervisory positions can create departmental policy. The Supreme Court has stated that "it is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances." See, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S. Ct. 1292, 1298 (1986).

43. Defendant TMD is a state agency.
44. Defendant, Thomas M. Suelzer is the Adjutant General of Texas. He is the commander in chief and executive officer of the TMD. As such he is a final decisionmaker for the TMD.
45. Defendant Mike W. Gorby is the Executive Director of State Administration and is in charge of the human resources department.
46. Defendant(s) John Doe(s) are unknown at this time but may have been involved in the decision to fire Plaintiff.
47. All employees of TMD acted under the color of state law.
48. As a direct and proximate result of Defendants' violation of Plaintiff's First Amendment rights, Plaintiff has suffered damages including lost wages, lost benefits, emotional distress, and damage to his reputation.
49. Accordingly, Defendants are liable to Plaintiff pursuant to 42 U.S.C. § 1983 for their deprivation of Plaintiff's constitutional rights and damaging him as alleged herein and below.
50. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to his attorney's fees incurred in bringing this action.

VI. CAUSE OF ACTION: FREE SPEECH UNDER THE TEXAS CONSTITUTION
Tex. Constitution, Article 1

51. Plaintiff incorporates, by reference, each and every preceding paragraph as if fully restated herein.
52. Article I, Section 8 of the Texas Constitution states:

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.
53. Texas courts have recognized that the Texas Constitution “‘article one, section eight . . . provides greater rights of free expression than its federal equivalent.’” See, *Ex parte Tucci*,

859 S.W.2d 1, 5 (Tex. 1993) (quoting *Davenport v. Garcia*, 834 S.W.2d 4, 12 (Tex. 1992)). See also, *Kaczmarek v. State*, 986 S.W.2d 287 (1999).

54. Traditionally, “to bring a valid claim for violating a plaintiff’s constitutionally protected right to engage in free speech, a plaintiff must allege facts showing that (1) the speech that is the subject of the case involves a matter of public concern, (2) the employee’s interest in commenting on the matter was greater than the employer’s interest in efficiently managing its affairs, and that (3) the employee’s speech motivated the employer to take the adverse employment action that lies at the heart of the plaintiff’s action.” See, *Jefferson Cty. v. Jackson*, 557 S.W.3d 659, 675 (Tex. App.—Beaumont 2018, no pet.).

a. Public Concern: Plaintiff’s Press Release was inherently political, and political speech is protected more than other types of speech. See, *Young v. Am. Mini Theatres*, 427 U.S. 50, 61, 96 S. Ct. 2440, 2448 (1976). See also, *Kaczmarek v. State*, 986 S.W.2d 287 (1999). The Press Release was an attempt to ensure that voters in Plaintiff’s precinct would have the information necessary to make an informed vote in a local mayoral race. Discussion of whether a candidate for local public office is fit for the office is exactly what the Courts have found to be an issue of public concern and “it is essential that they [public employees] be able to speak out freely on such questions without fear of retaliatory dismissal.” See, *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572, 88 S. Ct. 1731, 1736 (1968).

b. Employer Efficiency versus Employee’s Interest in Commenting: In Texas, “[a] government employees’ First Amendment rights depend on the ‘balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public

services it performs through its employees.” See, *Upton Cty. v. Brown*, 960 S.W.2d 808, 825 (Tex. App.—El Paso 1997) (quoting, *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 116 S. Ct. 2342, 2348 (1996)). Here, where Plaintiff’s Press Release was a matter of political speech, “the court... must balance the employee's first amendment rights against the governmental employer's countervailing interest in promoting the efficient performance of its normal functions. In assessing the strength of the governmental interest, the court should consider such factors as ‘whether the statement impairs discipline by superiors or harmony among coworkers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.’” See, *Scott v. Flowers*, 910 F.2d 201, 211 (5th Cir. 1990) (quoting, *Rankin v. McPherson*, 483 U.S. 378, 388, 107 S. Ct. 2891, 2899 (1987)). Plaintiff’s Press Release discussed a political candidate who was not an employee of Defendant TMD and would not have a negative impact on working relationships or interfere with his job performance.

- c. *Employer’s Decision Based on Employee’s Speech*: As noted above, all of Plaintiff’s performance reviews, prior to his Press Release, were excellent and there was no indication that his position would be terminated. It was only after Plaintiff’s Press Release that he was threatened with termination and subsequently received the Notice of Termination. Plaintiff was not given any other reasons for his termination—logically, the only reason for the termination was Plaintiff’s protected speech.

55. As an underlying matter, the plaintiff must establish that their speech was not made as a part of their official duties. If the speech was a part of the plaintiff’s official duties, then the speech

is not protected. See, *Davis v. McKinney*, 518 F.3d 304, 312 (5th Cir. 2008). Here the Press Release was made as part of Plaintiff's duties as a precinct chair, not as part of his programming duties for the TMD. Therefore, the Press Release was protected speech.

56. Plaintiff engaged in speech protected by the First Amendment to the United States Constitution. When publishing the Press Release, Plaintiff was acting in his personal capacity as a precinct chair—not in any way related to TMD.

57. The information used in the Press Release was all gleaned from publicly available sources. The press release did not describe Plaintiff as being employed by the TMD nor did it state this was an opinion held, or endorsed, by the TMD. In total, the Press Release was in no way related to Plaintiff's position as computer programmer for the TMD.

58. The Press Release discussed matters of public concern, specifically information about a candidate for (multiple) public office(s). This is a matter relevant to the public electorate.

59. No performance related concerns had been communicated to Plaintiff regarding his employment with TMD prior to being called to the human resources office on March 19, 2026.

60. Plaintiff was not on probation, or any similar status with TMD.

61. Plaintiff's annual evaluations were all excellent and did not note performance related concerns that would give him notice that he might be terminated.

62. Without any other plausible underlying reason, and based on the demands and threats made to Plaintiff, Plaintiff's protected speech was a substantial, or motivating factor, in Defendant's decision to terminate Plaintiff's employment with them.

63. The human resources personnel who communicated Plaintiff's termination to him did not discuss performance related reasons for firing Plaintiff. The human resources personnel member, did however, state the decision had been made by the "higher ups." These "higher

ups” were likely the Executive Director of State Administration and the Adjutant General of Texas. Other supervisory employees may also have been involved in the decision. These administrative and supervisory positions can create departmental policy. The Supreme Court has stated that “it is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances.” See, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S. Ct. 1292, 1298 (1986).

64. Defendant TMD is a state agency.

65. Defendant, Thomas M. Suelzer is the Adjutant General of Texas. He is the commander in chief and executive officer of the TMD. As such he is a final decisionmaker for the TMD.

66. Defendant Mike W. Gorby is the Executive Director of State Administration and is in charge of the human resources department.

67. Defendant(s) John Doe(s) are unknown at this time but may have been involved in the decision to fire Plaintiff.

68. All employees of TMD acted under the color of state law.

69. As a direct and proximate result of Defendants’ violation of Plaintiff’s First Amendment rights, Plaintiff has suffered damages including lost wages, lost benefits, emotional distress, and damage to his reputation.

70. Accordingly, Defendants are liable to Plaintiff pursuant to 42 U.S.C. § 1983 for their deprivation of Plaintiff constitutional rights and damaging him as alleged herein and below.

71. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to his attorney’s fees incurred in bringing this action.

VII. CAUSE OF ACTION: WRONGFUL TERMINATION & RETALIATION FOR EXERCISE OF FIRST AMENDMENT RIGHTS

72. Plaintiff incorporates, by reference, each and every preceding paragraph as if fully restated herein.
73. Plaintiff was an at-will employee of Defendant, TMD, in Texas.
74. Defendant terminated Plaintiff's employment based on a statement Plaintiff made in Plaintiff's capacity as a precinct committee chair. The statement was unrelated to Plaintiff's work.
75. Terminating Plaintiff for political speech violates a clear public policy of both the United States and Texas. As the United States Supreme Court stated, they have "made clear that public employees do not surrender all their First Amendment rights by reason of their employment. Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." See, *Garcetti v. Ceballos*, 547 U.S. 410, 417, 126 S. Ct. 1951, 1957 (2006). Similarly, the Texas Supreme Court noted, "[p]olitical liberty is the bedrock of our democracy, and the right of citizens to choose their public officials and political associations is deeply rooted in our constitutional firmament. The vast breadth of the freedoms 'We the People' enjoy moved Alexis de Tocqueville to write '[t]here is only one country on the face of the earth where the citizens enjoy unlimited freedom of association for political purposes.'" See, *King St. Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 731 (Tex. 2017).
76. In the Fifth Circuit, "[t]o succeed in a First Amendment retaliation claim under § 1983, a public employee must show: '(1) he suffered an adverse employment action; (2) he spoke as a citizen on a matter of public concern; (3) his interest in the speech outweighs the government's interest in the efficient provision of public services; and (4) the speech precipitated the adverse

employment action.” See, *Wilson v. Tregre*, 787 F.3d 322, 325 (5th Cir. 2015) (quoting *Nixon v. City of Houston*, 511 F.3d 494, 497 (5th Cir. 2007)).

77. Here, Plaintiff published the Press Release, speaking as a citizen regarding an election—a clear matter of public concern.

78. Plaintiff’s Press Release was published prior to any adverse employment actions being taken by Defendant.

79. Plaintiff was a model employee and there is no evidence showing that there was any reason other than his protected speech for firing him. Further, “[s]everal cases have found that a substantial and motivating factor for termination can be shown by the close proximity in time between the exercise of First Amendment rights and retaliatory action.” See, *Upton Cty. v. Brown*, 960 S.W.2d 808, 827 (Tex. App.—El Paso 1997).

80. Plaintiff’s interest in the protected speech outweighs Defendant’s interest in the efficient provision of public services.

81. Plaintiff suffered damages as a result of the termination. As a direct and proximate result of Defendant's wrongful termination, Plaintiff has suffered lost wages, lost employment benefits, damage to professional reputation, and emotional distress.

82. Plaintiff engaged in speech protected by the First Amendment to the United States Constitution. When publishing the Press Release, Plaintiff was acting in his personal capacity as a precinct chair—not in any way related to TMD.

83. The information used in the Press Release was all gleaned from publicly available sources. The press release did not describe Plaintiff as being employed by the TMD nor did it state this was an opinion held, or endorsed, by the TMD. In total, the Press Release was in no way related to Plaintiff’s position as computer programmer for the TMD.

84. The Press Release discussed matters of public concern, specifically information about a candidate for (multiple) public office(s). This is a matter relevant to the public electorate.
85. No performance related concerns had been communicated to Plaintiff regarding his employment with TMD prior to being called to the human resources office on March 19, 2026.
86. Plaintiff was not on probation, or any similar status with TMD.
87. Plaintiff's annual evaluations were all excellent and did not note performance related concerns that would give him notice that he might be terminated.
88. Without any other plausible underlying reason, and based on the demands and threats made to Plaintiff, Plaintiff's protected speech was a substantial, or motivating factor, in Defendant's decision to terminate Plaintiff's employment with them.
89. The human resources personnel who communicated Plaintiff's termination to him did not discuss performance related reasons for firing Plaintiff. The human resources personnel member, did however, state the decision had been made by the "higher ups." These "higher ups" were likely the Executive Director of State Administration and the Adjutant General of Texas. Other supervisory employees may also have been involved in the decision. These administrative and supervisory positions can create departmental policy. The Supreme Court has stated that "it is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances." See, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S. Ct. 1292, 1298 (1986).
90. Defendant TMD is a state agency.
91. Defendant, Thomas M. Suelzer is the Adjutant General of Texas. He is the commander in chief and executive officer of the TMD. As such he is a final decisionmaker for the TMD.

92. Defendant Mike W. Gorby is the Executive Director of State Administration and is in charge of the human resources department.

93. Defendant(s) John Doe(s) are unknown at this time but may have been involved in the decision to fire Plaintiff.

94. All employees of TMD acted under the color of state law.

95. As a direct and proximate result of Defendants' violation of Plaintiff's First Amendment rights, Plaintiff has suffered damages including lost wages, lost benefits, emotional distress, and damage to his reputation.

96. Accordingly, Defendants are liable to Plaintiff pursuant to 42 U.S.C. § 1983 for their deprivation of Plaintiff's constitutional rights and damaging him as alleged herein and below.

97. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to his attorney's fees incurred in bringing this action

VIII. DECLARATORY RELIEF

98. Plaintiff incorporates, by reference, each and every preceding paragraph as if fully restated herein.

99. Plaintiff requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Defendant's termination of Plaintiff violated Plaintiff's rights under the First Amendment to the United States Constitution and the Texas Constitution Article I, Section 8.

IX. DAMAGES

100. Plaintiff has actual incurred damages, including the loss of future wages; payment of COBRA premiums for medical insurance for both him and his wife; the loss of future retirement fund contributions, the loss of life insurance and AD&D coverage benefits; difficulty in filing his taxes due to loss of access to the CAPPS system, and the loss of other

benefits due to Plaintiff under his employment agreement. In addition, Mr. Gately has suffered emotional distress, reputational harm, and had to hire the undersigned attorney to protect his rights.

X. ATTORNEY'S FEES AND COSTS

101. Plaintiff requests judgment for reasonable attorney's fees and costs under 42 USCS § 1988.

XI. JURY DEMAND

102. Plaintiff demands a trial by jury on all issues so triable.

XII. PRAYER

Plaintiff prays that citation be issued commanding Defendant to appear and answer herein and that Plaintiff be awarded judgment against Defendant for:

1. All declaratory relief requested above.
2. An order reinstating Plaintiff to his former position with Defendant with all rights, privileges, and benefits of employment and correction of related personnel records.
3. Back pay from the date of termination through the date of reinstatement or judgment, including all wages, salary, bonuses, and other compensation Plaintiff would have earned.
4. Front pay in the event reinstatement is not feasible, representing future lost earnings.
5. Compensatory damages for emotional distress, mental anguish, humiliation, and damage to reputation suffered by Plaintiff as a result of Defendant's unlawful conduct.
6. Nominal damages for the violation of Plaintiff's constitutional rights.
7. Attorney's fees and costs pursuant to 42 USCS § 1988 and other applicable law.
8. Pre-judgment and post-judgment interest as allowed by law.
9. Such other and further relief as the Court deems just and proper in equity and at law.

Respectfully submitted,

DAVID K. SERGI AND ASSOCIATES, P.C.

By: /s/ David K. Sergi

David K. Sergi—Attorney in Charge

State Bar No: 18036000

david@sergilaw.com

Jessica L. Cousineau

OSB No. 012374

jessica@sergilaw.com

329 S Guadalupe Street

San Marcos, TX 78666

Phone: (512) 392-5010

Fax: (512) 392-5042

Attorneys for Plaintiff, JOHN GATELY