

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CATHERINE McNEILLY,

Plaintiff,

v.

THE CITY OF PITTSBURGH,

and

NATHAN HARPER, both in his official
capacity as the Chief of the Pittsburgh
Bureau of Police and in his individual
capacity,

and

LUKE RAVENSTAHL, both in his
official capacity as the Mayor of the
City of Pittsburgh and in his individual
capacity,

Defendants.

C.A.

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

I. Introduction

For trying to protect the public from wrongdoing as she has done throughout her 28 year distinguished career as a decorated City of Pittsburgh police officer, Catherine McNeilly has been retaliated against, publicly punished, humiliated and demoted from her position as the City's senior-most police Commander to the rank of lieutenant. This lawsuit contends that such retaliatory conduct is not only unjustified, and unconscionable, but also violates the fundamental right of every citizen as protected under the First Amendment to the

United States Constitution to speak out on important matters of public concern without fear of retaliation. Accordingly, this lawsuit seeks not only to vindicate Catherine McNeilly's rights protected under the First Amendment, and under Pennsylvania's Whistleblower law, but to send a clear signal that punishing "whistleblowers" in these crucial times is unacceptable. McNeilly seeks a declaratory judgment that her civil rights were violated by the City of Pittsburgh, the City's Chief of Police, and the City's Mayor; an injunction requiring that her demotion be rescinded and appropriate monetary damages for the harm she has suffered.

II. Jurisdiction

1. The Court has direct jurisdiction to address the First Amendment claim under 28 U.S.C. Section 1343, a statute that grants federal courts the authority to decide cases and controversies rooted in alleged violations of the United States Constitution. It has jurisdiction over the state Whistleblower claim under the doctrine of pendent jurisdiction.

III. Parties

2. The plaintiff, Catherine McNeilly, is an adult resident of the City of Pittsburgh and an officer in the City's Bureau of Police.

3. Defendant City of Pittsburgh is a municipality located in the Western District of Pennsylvania.

4. Defendant Nathan Harper is the Police Chief of Pittsburgh Bureau of Police, the highest administrative official within the Bureau.

5. Defendant Luke Ravenstahl is the Mayor of the City of Pittsburgh, the highest administrative official in the City's executive branch.

6. When engaging in the acts and omissions that culminated in Catherine McNeilly's demotion in rank from a commander in the Pittsburgh Bureau of Police to a lieutenant, the defendants acted under color of state law within the meaning of Section 1983 of the Civil Rights Act.

IV. The Facts

7. On December 6, 2006, Catherine McNeilly was notified by defendant Harper that she had been demoted from a Commander in the Pittsburgh Bureau of Police to a lieutenant's position.

8. Prior to her demotion, Catherine McNeilly had twenty-eight years of distinguished service in the Bureau, fourteen of which had been in the capacity of a Commander, a position immediately below those of the Chief, Deputy Chief, and Assistant Chiefs of Police in the Bureau's hierarchy. At the time she was demoted, Catherine McNeilly was the senior most Commander within the City of Pittsburgh Bureau of Police.

9. As a Commander, Catherine McNeilly had been in charge of a Police Zone (where she supervised a series of lieutenants and lower echelon officers); had responsibilities in the area of homeland security for the City; was involved in the implementation of comprehensive reforms within the Police Bureau stemming from the "Consent Decree" entered into between the City of Pittsburgh and the United States Justice Department. The "Consent Decree" addressed serious abuses inflicted by police officers against citizens and material

deficiencies in the monitoring and disciplining of Bureau employees who engaged in wrongdoing.

10. On or about October 2, 2006, Pittsburgh Mayor Luke Ravenstahl nominated Dennis Regan to become the City's Public Safety Director, subject to the confirmation of City Council.

11. The City's Public Safety Director has executive supervision over the City's Police Bureau ,in addition to the City's Fire Bureau, Emergency Medical Services Bureau, and two other City bureaus. Among other significant responsibilities, the Director has final decisionmaking authority over police officer discipline, including instances involving alleged police abuse of citizens. As such, the position of the Director of Public Safety is vitally important to the protection of citizens' constitutional rights.

12. At the time such nomination was made McNeilly had a good faith and reasonable basis to believe that she had information that was critical to an important public issue, namely, the fitness of Mayor Ravenstahl's candidate to serve in the position of the City's Director of Public Safety.

13. Commander McNeilly also had a good faith and reasonable basis to believe that the information she possessed should be disseminated to appropriate persons, especially decisionmakers, before a decision was made regarding the approval of a person to serve in the Public Safety Director's position.

14. At the time such nomination was made, McNeilly also had information, upon which she reasonably relied, that Regan had allegedly

threatened a fellow Commander with adverse personnel action if such Commander enforced criminal statutes against a purported political supporter of the Administration.

15. On October 6, 2006, McNeilly sent a personal e-mail message to Mayor Ravenstahl, containing information that she believed the Mayor was entitled to know concerning Regan's suitability to fill the position of Director of Public Safety. Attached to her e-mail was a copy of a Disciplinary Action Report (DAR) which she also reasonably believed was necessary documentation of Regan's improper interference into a serious police disciplinary matter.

16. Upon information and belief, at or about the time that McNeilly sent her e-mail to Mayor Ravenstahl, the Mayor had also received information that Regan had inexplicably overturned a unanimous Bureau of Police Command Staff decision to terminate the employment of a City of Pittsburgh police officer for serious misconduct, reducing the discipline to a mere five-day suspension and immediate return to duty.

17. The texts of the e-mails squarely presented the question of whether a pending disciplinary proceeding involving the recommended termination of a police officer for a pattern of serious misconduct had been interfered with (and in fact quashed) for improper and perhaps personal reasons. If true, the information McNeilly supplied raised serious concerns about Regan's fitness for the position to which he had been nominated.

18. Indeed, one of the practices which led to the entry of the "Consent Decree" between the United States State Department Justice and the City of

Pittsburgh was the inappropriate interference, by political appointees in the Mayor's office, into police-officer discipline, the very conduct Commander McNeilly now had reason to believe was committed by Mr. Regan and which she believed should be reported

19. McNeilly informed the Mayor in her October 6, 2006 e-mail that she would send the exact information that she supplied to him to City Council by October 9, 2006.

20. As of October 9, 2006, McNeilly had not received any response from the Mayor.

21. Believing that a vote by City Council on Reagan's nomination was imminent, Commander McNeilly, on October 9, 2006, sent an e-mail similar to the one sent to the Mayor clearly marked "confidential" to members of City Council with copies to the Chief of the Fire and Emergency Medical Services Bureaus (which, as noted, are part of the Department of Public Safety as well as to her husband (the Pittsburgh Chief of Police until January 3, 2006) and her brother (the Police Bureau's current Chaplain).

22. Commander McNeilly did not distribute copies of the e-mails or DAR attachment to any newspapers, other media outlets or non-City or police officials.

23. At all times relevant hereto, McNeilly had no reason to believe that the persons to whom she sent the information regarding Regan's nomination -- given their respective positions, duties and responsibilities -- would disseminate the information to the public.

24. When McNeilly prepared and sent the e-mails it was not part of her official duties at the Police Bureau.

25. On October 10, 2006, after an unidentified person leaked Commander McNeilly's e-mail to the news media and widespread reporting of the matter ensued, Mayor Ravenstahl withdrew Regan's nomination to the Public Safety position. On October 12, 2006, Mayor Ravenstahl suspended Commander McNeilly indefinitely, supposedly pending an investigation into the issues raised by the information supplied by McNeilly concerning Regan.

26. At all times relevant hereto, no other Commander on the City of Pittsburgh police force has ever been suspended pending the outcome of an investigation into another person's alleged wrongdoing and/or suspended to conduct an investigation into whether the allegations of wrongdoing were reasonably based. Similarly no other Commander, or police officer has been suspended for allegedly disclosing confidential information.

27. On November 28, 2006, Chief Harper notified Commander McNeilly that a decision had been made to demote her to the rank of lieutenant.

28. On December 1, 2006 the City of Pittsburgh held a press conference -- in which Mayor Ravenstahl, Chief Harper, and Dennis Regan participated -- where Dennis Regan was purportedly "exonerated" of any wrongdoing based on the alleged lack of any so-called "conclusive evidence", intentionally conveying a message to the public that it was Commander McNeilly who had engaged in wrongful conduct.

29. A local newspaper reported the following about the press conference: "The investigation revealed no conclusive evidence that Dennis Regan committed any wrongdoing with regard to the accusations made by Catherine McNeilly," the mayor said. He said Mr. Regan never made a personnel decision without the involvement of the mayor." Rich Lord, *City Clears Regan Who Quits*, Pittsburgh Post-Gazette, December 2, 2006.

30. McNeilly was given five days to respond to the decision to demote her. On December 4, 2006 a written response was submitted.

31. Commander McNeilly explained that her actions were prompted by a "good-faith belief that wrongdoing had occurred"; that she reasonably believed that "time was of the essence ..."; that she felt it was necessary to bring to the attention of the appropriate persons her good-faith belief that official police matters had been interfered with; and that "it was imperative to bring this information to the attention of decisionmakers poised to make a crucial decision about who would be appointed as the City's Public Safety Director and to other directors affected by any such decision."

32. On December 6, 2006, Chief Harper, despite the information supplied to him by Commander McNeilly, notified her that the demotion decision was final.

33. Subsequently on December 6, 2006, the City of Pittsburgh, through the Office of its Chief of Police, publicly disseminated, the fact that Commander McNeilly had been disciplined, and demoted from the rank of Commander to lieutenant.

34. Although, at all times relevant hereto, the defendants have had credible information that a high-ranking official and one of its police officers engaged in serious misconduct, the person who reported the alleged wrongdoing is the only one who has been punished.

35. At all times relevant hereto on account of and in retaliation for her protected speech the defendants have engaged in a concerted public campaign to damage Commander McNeilly's standing and reputation within the City of Pittsburgh Bureau of police and within the community at large.

36. Although, at all times relevant hereto, the defendants have had credible information that a high-ranking official and one of its rank-and-file police officers may have engaged in serious misconduct, the person who reported such alleged wrongdoing -- Catherine McNeilly -- is the only person who has been punished.

37. On information and belief, Mayor Ravenstahl directed, participated in and/or was aware of, approved and/or acquiesced in the decision to demote McNeilly to the rank of lieutenant.

38. The decision to demote Commander McNeilly to the rank of lieutenant would not have occurred in the absence of her protected speech related to Regan's nomination to the position of Director of Public Safety.

39. In conjunction with Commander McNeilly's demotion, she was assigned to the Police Bureau's Warrant Office, in effect an exile to a tedious, backwater operation signaling the death knell of her police career.

40. The demotion to lieutenant effectively precludes McNeilly from ever again becoming a Commander in the Police Bureau or attaining a position of even higher rank.

41. Catherine McNeilly's demotion has resulted in a reduction in pay and will result in a reduction in pension benefits when she retires from the Police Bureau.

42. Commander McNeilly's demotion has caused her great embarrassment, humiliation, emotional pain and suffering and damage to her reputation.

V. Irreparable Harm

43. The retaliation for speech and whistleblower activities that lies at the heart of this case creates a profound chill on expression within the Pittsburgh Police Bureau, sending a message that communications by officers outside the Bureau critical of a public official's interference with internal police matters will be punished, thereby creating irreparable harm. There is no legal remedy available to timely obviate this chill of free speech, a matter that has a substantial impact on the public's interest in having a police department that is not unduly influenced by third parties. Expeditious injunctive relief, under the circumstances of this case, is both necessary and appropriate.

VI. Claims

44. The conduct of the defendants as hereinbefore described, violated the plaintiff's rights under the first and fourteenth amendments to the United States Constitution as made actionable against such defendants pursuant to the

Civil Rights Act of 1871, as amended 42 USC subsection 1983. Similarly, the defendants' conduct violated the plaintiff's rights under Pennsylvania's Whistleblower Law, as amended, 43 P.S.1423.

VII. Relief

On the basis of the foregoing, Catherine McNeilly requests the following:

1. The issuance of a temporary restraining order to restore her to the position of Commander pending a preliminary injunction hearing;
2. The issuance of preliminary and permanent injunctions;
3. Awards of compensatory damages against the respective defendants;
4. Awards of punitive damages against Chief Harper and Mayor Ravenstahl;

5. Awards of reasonable attorneys' fees, costs and expenses engendered by this litigation; and
6. Any further relief that is warranted.

Date: December 21, 2006

s/Timothy P. O'Brien
Timothy P. O'Brien
I.D. No. 22104
tpob@icubed.com
1705 Allegheny Building
Pittsburgh, PA 15219
412-232-4400

Jere Krakoff
I.D. No. 13701
jkrakoff@stemberfeinstein.com
Stember Feinstein
1705 Allegheny Building
Pittsburgh, PA 15219
412-338-1445

Wiltold Walczak
I.D. No. 62976
VWlaczak@aclupgh.org
Sara J. Rose
D.C. Bar No. 494577
SRose@aclupgh.org
American Civil Liberties Union
313 Atwood Street
Pittsburgh, PA 15213
412-681-7864

Attorneys for Plaintiff