2019 WL 383635
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See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals, Eleventh Circuit.

Mallory C. JONES, Troy A.
Moses, Plaintiffs-Appellants,
v.
Ramone LAMKIN, Individually, and In his
official capacity as Marshal of the Civil and
Magistrate Courts of Richmond County, Georgia,
Augusta, Georgia, Defendants-Appellees.

No. 18-14111
|
Non-Argument Calendar
|
(July 16, 2019)

Attorneys and Law Firms

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Appeal from the United States District Court for the Southern District of Georgia, D.C. Docket No. 1:17-cv-00003-JRH-BKE

Before WILLIAM PRYOR, JILL PRYOR and GRANT, Circuit Judges.

Opinion

PER CURIAM:

Mallory Jones and Troy Moses, both former deputy marshals of the Civil and Magistrate Courts of Richmond County, Georgia, appeal the district court's grant of summary judgment in favor of their former employer, marshal Ramone Lamkin, and Augusta, Georgia in their action raising First Amendment claims under 42 U.S.C. § 1983 and retaliation claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). Their claims stem from their termination after they supported Lamkin's opponent in the election for the position of marshal. On appeal, they argue that the court erred in granting summary judgment on their 42 U.S.C. § 1983 claims because they, as deputy marshals, were not Lamkin's alter egos. In addition, they argue that we should reverse the grant of summary judgment on their retaliation claims. After careful review, we affirm.

I. BACKGROUND

A. Factual History

The Richmond County[1] marshal's office is a law enforcement agency in Augusta, Georgia that provides security at various public buildings in the city and investigates and cites violations of certain laws and ordinances. The marshal holds an elected position and carries out his duties through deputy marshals. Directly below the marshal are the chief deputy, followed by the captain over administrative services and the captain over the airport.

Jones was employed as a deputy marshal on and off from 1993 to 2016. When Jones first was hired, the marshal for the county was Steve Smith. Smith remained the marshal and hired Jones each time he returned. When Jones was re-hired in 2003, Smith promoted him to the rank of lieutenant, and he eventually achieved the rank of captain. Jones's duties after 2003 were mostly administrative, working with the community, and doing public speaking. He also helped develop new policies and plans to grow the marshal's office and managed deputy certification.

Moses worked as a deputy marshal from 2008 to 2016. At the time of his termination, Moses was a

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[1] The City of Augusta consolidated with Richmond County in 1995, and "Augusta, Georgia" ("Augusta") is the name of the consolidated government. *See* 1997 Ga. Laws 4024. Because we conclude that no constitutional violation occurred, it is unnecessary for us to resolve whether Jones and Moses, as deputies in the county marshal's office, were employees of the consolidated government.

sergeant in the marshal's office. His duties as a sergeant were community relations and public speaking, going to schools and nursing homes to teach safety classes, and attending meetings of neighborhood associations.

In 2016, Lamkin decided to run for marshal of Richmond County against the incumbent, Smith. Jones participated in Smith's campaign and posted on social media about things Smith had done for him over the years. As to Moses, Lamkin asked for his support, but Moses refused because he planned to run for the position in 2020 and decided to support Smith in 2016. Moses wore campaign shirts supporting Smith, took pictures with him to post on social media, and encouraged his family and friends to support Smith.

Lamkin won the election in May 2016 and assumed office in January 2017. Before Lamkin assumed office, Jones was informed by Scott Peebles, the incoming chief deputy for marshal-elect Lamkin, that he was being let go from the marshal's office. Jones later met with Lamkin, who confirmed that Jones was being terminated. Lamkin explained in his deposition that he terminated Jones because captain of the marshal's office was a policy-making position and he had questions about Jones's suitability for it. He said that he knew Jones had helped Smith in his re-election campaign but that it was not a factor in the decision to terminate Jones.

Peebles also informed Moses that his services would no longer be needed when Lamkin took office.

Lamkin testified in his deposition that he chose to terminate Moses because Moses planned to run for marshal in the next election, which Lamkin felt would affect the cohesiveness of the office. He denied that Moses's support of Smith influenced his decision.

B. Procedural History

Jones and Moses alleged in their complaint against Lamkin and Augusta that they were terminated in retaliation for supporting Smith in the election. They raised (1) First Amendment claims under § 1983 against both defendants and (2) a retaliation claim under Title VII against Lamkin.

After the close of discovery, Lamkin and Augusta separately moved for summary judgment. They both argued that even if motivated by their support of Smith, the plaintiffs' termination was permissible under the *Elrod-Branti* standard[2] because loyalty to the marshal and his policies was an appropriate requirement for effectively performing their duties. They also argued that the plaintiffs could not make out a *prima facie* retaliation claim because they could not prove a

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[2] The *Elrod-Branti* standard derives from two United States Supreme Court decisions, *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and *Branti v. Finkel*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980). *See Ezell v. Wynn*, 802 F.3d 1217, 1223 (11th Cir. 2015). As will be discussed more fully below, it is the standard by which a court determines whether adverse employment actions based on political allegiance contravene the First Amendment. *See id.* at 1223-24.

causal connection between any protected activity and their termination.

The district court granted the motions for summary judgment. First, the court addressed the plaintiffs' 42 U.S.C. § 1983 claims. It determined there was no dispute that Lamkin terminated the plaintiffs for supporting Smith. But it found that the plaintiffs, as deputy marshals, were the alter egos of the marshal when they were terminated, and thus it concluded Lamkin did not violate their First Amendment rights by terminating them. Because it determined that no constitutional violation occurred, the court declined to address whether Augusta could be liable under § 1983. As to the plaintiffs' retaliation claim, the court found that they could not make out a *prima facie* case because political speech was not protected activity under Title VII.

Following the grant of summary judgment, the plaintiffs appealed.

II. STANDARD OF REVIEW

We review an order granting summary judgment *de novo*, viewing "the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party." *Battle v. Bd. of Regents*, 468 F.3d 755, 759 (11th Cir. 2006). Summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Shaw v. City of*

Selma, 884 F.3d 1093, 1098 (11th Cir. 2018) (internal quotation marks omitted).

III. DISCUSSION

The plaintiffs argue that the district court erred in granting summary judgment to Lamkin and Augusta because (1) they established that their First Amendment rights were violated when Lamkin and Augusta terminated their employment based on their political support for Lamkin's rival, and (2) for their retaliation claim, they met their burden of showing that they engaged in a protected activity. We address each argument in turn.

A. Lamkin's Termination of Jones and Moses Did Not Violate Their First Amendment Rights Because Deputy Marshals Were Alter Egos of the Marshal.

Section 1983 of Title 42 makes any person acting under color of state law liable to an injured party for depriving the injured party of his rights under the Constitution. 42 U.S.C. § 1983.

The First Amendment guarantees the right of free speech and assembly against state intrusion. U.S. Const. amend. I; *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 277, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). In general, the First Amendment protects public employees from adverse employment actions or retaliation based on their political affiliations. *Ezell v. Wynn*, 802 F.3d 1217, 1222 (11th Cir. 2015). For public employees, the

First Amendment's protections are not absolute, however. Public employees are protected from adverse employment actions based on political patronage only when "political loyalty is an inappropriate requirement for the effectiveness of a given employee's position." *Id.* Whether a political patronage dismissal is permitted under the First Amendment is determined using the *Elrod-Branti* standard. *Id.* at 1222-24.

In *Elrod*, a plurality decision, the controlling concurring opinion held that "a nonpolicymaking, nonconfidential government employee can[not] be discharged or threatened with discharge from a job that he is satisfactorily performing upon the sole ground of his political beliefs." 427 U.S. at 375, 96 S.Ct. 2673 (Stewart, J., concurring) (plurality opinion); *see Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) (stating that the opinion concurring on the narrowest ground may be regarded as the controlling opinion of a plurality decision). In *Branti*, the Court clarified that "the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position [but whether] the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S. at 518, 100 S.Ct. 1287. This latter statement is the *Elrod-Branti* standard. *Ezell*, 802 F.3d at 1223.

To determine whether the *Elrod-Branti* standard is met, we use a "categorical approach" to determine whether the employee has the same statutory powers and duties as the elected official. *Id.* at 1225. In

applying the categorical approach, we look only at what the employee was empowered to do under state or local law, not the actual daily activities of the employee. *Id.* If the employee had the same duties and powers as the elected official, she was the elected official's "alter ego," and her termination based on her political affiliation did not violate the First Amendment. *Id.*; *see Underwood v. Harkins*, 698 F.3d 1335, 1345 (11th Cir. 2012) (holding that a Georgia superior court clerk did not violate the First Amendment when she discharged a deputy superior court clerk for running against her; the deputy was her alter ego because the Georgia legislature gave persons holding the position of deputy superior court clerk the same powers and duties as the superior court clerk). If not, then we determine whether, as a factual matter, the effectiveness of the employee's position required political loyalty. *Ezell*, 802 F.3d at 1224-25.

In *Ezell*, we applied the categorical approach and concluded that a deputy sheriff was the alter ego of the sheriff under Georgia law. *Id.* at 1225-26. In reaching this conclusion, we relied on state court precedent holding that deputy sheriffs were the sheriff's agents and state law granting sheriffs the authority to appoint deputies at their discretion. *See id.*

We now examine the position of marshal and deputy marshal under Georgia law. We begin with the history of the positions' creation. The Municipal Court of Augusta was established by the Georgia General Assembly in 1931; along with it, the elected position of sheriff was created. 1931 Ga. Laws 270, 270-72. The

law was amended in 1971 to replace that court with the Civil Court of Richmond County. 1971 Ga. Laws 2745, 2746. The position of sheriff was changed to an appointed one, but, with the chief judge's approval, the sheriff could name deputies who would serve at his pleasure. *Id.* at 2751. The deputies would have the same duties and responsibilities as the sheriff. *Id.* at 2751-52.

The law was amended again in 1974, *see* 1974 Ga. Laws 2410, 2416-17, and the relevant amended language provides that: "The sheriff . . . shall have authority . . . to name [his] deputies who shall hold said office at the pleasure of the said sheriff." *Id.* at 2416. "[D]eputy sheriffs, if and when appointed under the terms of this Act, shall exercise *all the functions* and be subject to *all the responsibilities and requirements* of the . . . sheriff of said court." *Id.* at 2417 (emphasis added). In 1978, the Georgia General Assembly replaced the word "sheriff," as it relates to the Civil Court of Richmond County, with "marshal." 1978 Ga. Laws 3341. Thereafter, the sheriff of the Civil Court of Richmond County was known as the marshal of that court. *Id.* In 1999, the marshal was made an elected position, with the authority to appoint deputies "who shall hold said office at the pleasure of the marshal." 1999 Ga. Laws 3508, 3508-09.

Applying the categorical approach here, we conclude that under Georgia law a deputy marshal in Richmond County has the same powers and duties of the marshal and, therefore, is his alter ego. *See Ezell*, 802 F.3d at 1225. As with the clerk and deputy clerks

in *Underwood*, the relevant state law here gave deputy marshals the same powers and duties as the marshal. *See* 1974 Ga. Laws at 2417; 1978 Ga. Laws at 3341; *Underwood*, 698 F.3d at 1345. And, like the position of sheriff we considered in *Ezell*, the marshal had the discretion to appoint and remove deputies. *See* 1999 Ga. Laws at 3508-09; *Ezell*, 802 F.3d at 1225-26. Because as deputy marshals the plaintiffs had the same powers and duties as the marshal and because the marshal had the discretion to appoint and remove them, they were his alter egos. *See Ezell*, 802 F.3d at 1225. Thus, Lamkin was permitted to terminate their employment based on a political reason, their support of his opponent in the election. *See id.*

The plaintiffs argue at length on appeal that the district court erred in concluding that deputy marshals were the alter egos of the marshal because the marshal and the sheriff were not the same office. Their argument is misplaced, however, because the district court's conclusion that the deputy marshal was the alter ego of the marshal was not based on a determination that the marshal was equal to the sheriff. Rather, it was based on a correct determination that Georgia's state laws gave the deputy marshal the same powers and duties as the marshal.

The plaintiffs also contend that the district court erred in applying the categorical approach and, instead, should have considered the actual duties that Jones and Moses performed. They base this contention in part on the premise that the district court erroneously found that the marshal was the equivalent of the

sheriff. As noted, however, the district court never made such a finding.

Relatedly, the plaintiffs assert that O.C.G.A. § 15-10-100(c.1)(2) prohibits marshals from exercising powers vested in sheriffs. They contend that the 1978 and 1999 laws defining the powers of deputy marshals violated § 15-10-100(c.1)(2) because those laws were derived from the 1974 laws defining the powers of sheriffs. Because the 1978 and 1999 laws were invalid, the plaintiffs argue, the court could not rely on them to apply the categorical approach. But the plaintiffs' argument is unavailing because § 15-10-100 expressly permits marshals to exercise powers vested in the sheriff if the law provides for it:

> No person employed or appointed as a marshal . . . shall exercise any of the powers or authority which are by law vested in the office of sheriff or any other peace officer, including the power of arrest, *except as may be authorized by law*.

O.C.G.A. § 15-10-100(c.1)(2) (emphasis added).

Jones and Moses also rely on local ordinances and municipal employment policies to establish that they could not be terminated based on their political activities. These policies say nothing, however, about the factors relevant to our inquiry—the powers and duties of the marshal and his deputies. They therefore have no bearing on whether the plaintiffs' termination violated their First Amendment rights or whether the

categorical approach applied in this case. *See Ezell*, 802 F.3d at 1224-25.

Because Jones and Moses have failed to show that their termination violated their First Amendment rights, we affirm the district court's grant of summary judgment as to their § 1983 claims.

B. The District Court Did Not Err in Granting Summary Judgment on the Plaintiffs' Retaliation Claims.

On appeal, Jones and Moses contend that the district court erred in granting summary judgment on their retaliation claims because they were terminated for engaging in protected activity. As we concluded above, the plaintiffs' termination did not violate their First Amendment rights, so we affirm the grant of summary judgment on their retaliation claims to the extent they brought those claims under 42 U.S.C. § 1983. We turn next to the plaintiffs' Title VII retaliation claims.

Title VII makes it unlawful for an employer to discharge an employee on the basis of the employee's "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Title VII's retaliation provision makes it unlawful for an employer to retaliate against an employee because the employee "has opposed any practice made an unlawful employment practice by this subchapter" or "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C.

§ 2000e-3(a). A plaintiff may establish a *prima facie* retaliation claim by showing that (1) he was engaged in statutorily protected activity, (2) he suffered a materially adverse action, and (3) there was a causal connection between the two events. *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1277 (11th Cir. 2008).

The district court was correct to conclude that the plaintiffs failed to establish a *prima facie* Title VII retaliation claim; they failed to come forward with any evidence that they were terminated for opposing any employment practice made unlawful by Title VII or for participating in any investigation, hearing, or proceeding. *See* 42 U.S.C. § 2000e-3(a); *Goldsmith*, 513 F.3d at 1277. Moreover, the plaintiffs have not expressly challenged that conclusion on appeal.

IV. CONCLUSION

Because Jones and Moses have failed to show that the district court erred, the grant of summary judgment is affirmed.

AFFIRMED.

2018 WL 9538939
Only the Westlaw citation is currently available.
United States District Court,
S.D. Georgia, Augusta Division.

Mallory C. JONES; and Troy A. Moses, Plaintiffs,
v.
Ramone LAMKIN, Individually, and in His Official Capacity as Marshal of the Civil and Magistrate Courts of Richmond County, Georgia; and Augusta, Georgia, Defendants.

CV 117-003
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Signed 09/24/2018

ORDER

J. RANDAL HALL, CHIEF JUDGE

Before the Court is a motion for summary judgment filed by Defendant Ramone Lamkin ("Lamkin") and a motion for summary judgment filed by Defendant Augusta, Georgia ("Augusta"). (Docs. 50, 57-1.) The Clerk of Court gave Plaintiffs timely notice of both Defendants' summary judgment motions and the summary judgment rules, of the right to file affidavits or other materials in opposition, and the consequences of default. (Docs. 54, 59.) Therefore, the notice requirements of *Griffith v. Wainwright*, 772 F.2d 822, 825 (11th Cir. 1985) (per curiam), have been satisfied. Upon consideration of the record evidence, the Parties' briefs, and the relevant law, Defendant Lamkin's motion for summary judgment is **GRANTED**, and Defendant Augusta's motion for summary judgment is **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiffs Mallory C. Jones ("Jones") and Troy A. Moses ("Moses") (collectively, "Plaintiffs") filed a complaint against Defendants Lamkin and Augusta (collectively, "Defendants"). After Lamkin was elected Marshal of Richmond County, Georgia, he terminated Plaintiffs. Plaintiffs allege Lamkin terminated them because of their political support for his predecessor, Steve Smith. (Compl., Doc. 1, ¶ 15.)

At the time of the election, Steve Smith was the incumbent Marshal of the Richmond County Marshal's Office[1]; Jones and Moses were deputy marshals with ranks of Captain and Sergeant, respectively. (Jones Dep., Doc. 52, at 11-12; Lamkin's Statement of Material Facts ("Lamkin's Facts"), Doc. 49, ¶¶ 2, 5.)

During the election, Plaintiffs openly supported Steve Smith. Moses supported him "to the fullest," stating he wore campaign shirts, posted pictures on Facebook with Steve Smith, and "ask[ed] family and friends to support him." (Moses Dep., Doc. 53, at 28, 33.) Jones made one Facebook post describing the "things that Steve Smith had done for [him] over the

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[1] The Richmond County Marshal's Office is within Augusta, Georgia, a political subdivision of the State of Georgia. (Augusta's Statement of Material Facts, Doc. 58, ¶ 7) (admitted by Plaintiffs). Augusta, Georgia controls the budget of the offices of elected officials, including the Marshal's Office. (*Id.*) Although Defendant Augusta and Plaintiffs agree over Augusta's budgetary control, Plaintiffs also allege Augusta exercises more control over the Marshal's Office than it does the Sheriff's Office. (Pls.' Resp. to Augusta's Statement of Material Facts, Doc. 61, ¶ 10.)

years," but without "bashing" Lamkin. (Jones Dep., at 45.)

On May 24, 2016, Lamkin was elected Marshal-Elect, but did not officially assume office until January 1, 2017.(Lamkin Dep., Doc. 55, at 14, 18.) In the summer after theelection [sic], Lamkin spoke with Jody Smitherman, a City of Augusta attorney, about the legality of terminating Plaintiffs. (Lamkin Dep. II,[2] Doc. 76, at 169.) He told Ms. Smitherman that he wanted to terminate Moses because "he hadn't even given me an opportunity to take office yet and already declared that he was going to go ahead and seek my seat," which would be "disruptive for the agency." (*Id.* at 173.) Regarding Jones, Lamkin states he had "character issues with [Jones] being that high up, and [he] wanted to do more than just have a captain to serve Fi Fa's."[3] (*Id.* at 173-74.) Lamkin states that Ms. Smitherman also explained that if he wished to fire Plaintiffs forpolitical [sic] reasons, "there is an argument for that, too." (*Id.* at 172.)

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[2] In Lamkin's initial deposition, he did not discuss his conversation with Ms. Smitherman claiming attorney-client privilege. By order dated April 11, 2018, the Court compelled Lamkin to testify regarding this conversation. (Doc. 72.) The supplemental deposition is referred to in the docket as Continued Deposition of Ramone Lamkin. (Doc. 76.)

[3] A F.I.F.A. (Fieri Facias) is "an order issued from the Court to the Sheriff or Marshal requiring him to seize sufficient property of the defendant to satisfy the amount due on the judgment." EVICTIONS & F.I.F.A, www.augustaga.gov (last visited Sept. 14, 2018).

In late October or early November, Sheriff Roundtree and Lamkin had a conversation where Lamkin "made an indication that he had planned to fire some employees, more specifically Mr. Moses and Mr. [] Jones." (Roundtree Dep., Doc. 56, at 7-8.) According to Sheriff Roundtree, Lamkin's reason was that "he couldn't trust them because of their loyalty to Steven Smith." (*Id.* at 10.) Lamkin denies making such a statement (Lamkin Dep., at 42-43), but in his Statement of Material Facts, Lamkin admits he "told Sheriff Roundtree that he couldn't keep Plaintiffs because he couldn't trust them because of their loyalty to or support for Steve [] Smith." (Lamkin's Facts, ¶ 22.) Sheriff Roundtree states he advised Lamkin that the terminations may not be legal. (Roundtree Dep., at 10.)

Even though Plaintiffs were not part of the above conversations, soon after the election, Jones began hearing rumors that Lamkin was going to terminate him. (Jones Dep., at 29-32.) Around November, the rumors were confirmed by Scott Peebles who told Jones and Moses that their services would no longer be needed as of January 1st. (Jones Dep., at 33; Moses Dep., at 9.) After hearing from Scott Peebles, Plaintiffs spoke with the Richmond County Sheriff's Office about obtaining positions there. (Jones Dep., at 33; Moses Dep., at 16.)

By letters dated December 6, 2016, Lamkin personally informed Plaintiffs that "[d]ue to the change in administration and leadership," both would be terminated effective January 1, 2017. (Compl., Ex. A.)

Plaintiffs began working at the Sheriff's Office on January 1, 2017. (Jones Dep., at 70; Moses Dep., at 11.)

On January 6, 2017, Plaintiffs filed a complaint against Defendants Lamkin and Augusta. (Compl.) Plaintiffs brought two claims. First, Plaintiffs brought a 42 U.S.C. § 1983 claim alleging the Defendants violated their First Amendment rights of freedom of political association and affiliation when Lamkin terminated them for supporting Steve Smith. Second, Plaintiffs brought a claim of retaliation for protected activities in violation of 42 U.S.C. § 2000e-3(a).

On February 28, 2018, Lamkin filed a motion for summary judgment. (Doc. 50.) On March 1, 2018, Augusta filed a motion for summary judgment. (Doc. 57-1.)

II. SUMMARY JUDGMENT STANDARD

The Court should grant summary judgment only if "there is no genuine dispute as to any material fact and . . . the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The purpose of the summary judgment rule is to dispose of unsupported claims or defenses, which, as a matter of law, raise no genuine issues of material fact suitable for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). Facts are "material" if they could affect the outcome of the suit under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of those material facts "is 'genuine' . . . [only] if the

evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.*

As required, this Court will view the record evidence in the light most favorable to Plaintiffs, *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), and will draw "all justifiable inferences in [Plaintiffs'] favor," *see United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437 (11th Cir. 1991) (en banc) (internal punctuation and citations omitted). Importantly,

> [t]he mere existence of some factual dispute will not defeat summary judgment unless the factual dispute is *material* to an issue affecting the outcome of the case. The relevant rules of substantive law dictate the materiality of a disputed fact. A genuine issue of material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor.

Chapman v. AI Transp., 229 F.3d 1012, 1023 (11th Cir. 2000) (*en banc*) (quoted source omitted) (emphasis supplied). Additionally, the party opposing the summary judgment motion "may not rest upon the mere allegations or denials in its pleadings. Rather, its responses . . . must set forth specific facts showing that there is a genuine issue for trial." *Walker v. Darby*, 911 F.2d 1573, 1576-77 (11th Cir. 1990).

III. LEGAL ANALYSIS

A. Plaintiffs' Claims Against Lamkin

Lamkin argues this Court should grant summary judgment in his favor for three reasons. First, his decision to terminate Plaintiffs based on their political activities was lawful. Second, Plaintiffs cannot prove a prima facie case of retaliation. Third, Plaintiffs were not actually terminated.

1. Plaintiffs' Political Activity

According to the Supreme Court, "[I]t has been settled that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." *Connick v. Myers*, 461 U.S. 138, 142 (1983). As an employer, however, "the State has interests . . . in regulating the speech of its employees" in a way that differs significantly from its interests in regulating citizen speech in general. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). To determine if regulating employee speech is appropriate, courts must balance the public employee's interest, as a citizen, in the political expression with the State's interest, as an employer, in the efficiency of the public services it performs. *Id.*

Recognizing the different reasons why employers may terminate employees for political expression, the Supreme Court created two frameworks for analyzing a case depending on whether it involves political patronage or employee expression. *Terry v. Cook*, 866 F.2d 373, 375 (11th Cir. 1989). A political patronage case is

one in which "an employee's retention of public employment is conditioned on the employee's support of the political party in office." *Stough v. Gallagher*, 967 F. 2d 1523, 1527 (11th Cir. 1992). An employee expression case is one in which an employee suffers an adverse employment action because of the "overt expression of ideas." *Id.*

Regarding Plaintiffs' First Amendment claims, the Court finds (1) Lamkin terminated Plaintiffs based on political patronage not employee expression, and (2) such terminations were lawful.

a. Political Patronage or Employee Expression

In *Terry*, the Eleventh Circuit Court of Appeals first discussed when it is appropriate to analyze a case under the political patronage as opposed to the employee expression framework. 866 F.2d at 375. Prior to assuming office, the newly-elected sheriff "publicly declared his intention to replace all of [his predecessor's] employees." *Id.* at 373. The sheriff carried out those plans, and the employees brought a suit claiming they were not retained for political reasons in violation of 42 U.S.C. § 1983. *Id.* The court found this case properly analyzed as a political patronage case because the "wholesale refusal to retain employees who supported an opponent's election elevates political support to a job requirement." *Id.* at 377. The court went on to state that the employees' public employment "was absolutely conditioned upon political allegiance

and not upon the content of expressions of political beliefs." *Id.*

In *Stough*, the newly-elected sheriff argued the case was a political patronage case like *Terry* because the plaintiff, a sheriff's office captain, supported his opponent in the election and was a member of a different political party. 967 F. 2d at 1528. The court disagreed finding the case properly analyzed as an employee expression case because it primarily concerned the newly-elected sheriff firing the plaintiff for the substance of his political speech and campaigning activities. *Stough*, 967 F. 2d at 1528 (in campaign speech, plaintiff stated defendant did not possess qualifications to be sheriff); *see also Connick v. Myers*, 461 U.S. at 154 (1983) (finding employee expression case when employee circulated questionnaire to co-workers asking views on office policies, procedures, and whether employees felt pressured to work for political campaigns because questionnaire primarily related to internal office policy not political patronage).

The fact that Lamkin terminated Plaintiffs because of their support for his predecessor is not in dispute. First, Lamkin admits in his Statement of Material Facts that he terminated Plaintiffs "because he couldn't trust them because of their loyalty to or support for Steve[] Smith." Second, Lamkin asks the Court to assume that his motivating factor was Plaintiffs' support of his predecessor. (Lamkin's Mot. for Summ. J., Doc. 50, at 8.) Finally, Plaintiffs agree by stating Lamkin's "only motivation for terminating the employment of Plaintiffs is the fact that [they] were

faithful to . . . Steve Smith." (Compl., ¶ 15.) Thus, the Court finds no genuine dispute of material fact as to Lamkin's reason for terminating Plaintiffs.

The question remains whether Lamkin's reason for terminating Plaintiffs triggers a political patronage or an employee expression analysis. The Court finds this case appropriately analyzed as a political patronage case.

Although Plaintiffs publicly campaigned for Lamkin's opponent as in *Stough*, the situation is more similar to *Terry*. First, Lamkin admits that he terminated Plaintiffs "because he couldn't trust them because of their loyalty to or support for Steve[] Smith." Here, as in *Terry*, Lamkin terminated Plaintiffs not for the "content of expressions of political beliefs" but for their "political allegiance" to his predecessor. *Terry*, 866 F.2d at 377.

Second, in *Stough*, the plaintiff publicly stated defendant was not qualified to be sheriff, thus defendant's decision to terminate plaintiff was, in part, based on the substance of his speech. Here, however, neither Plaintiff made any disparaging remarks about Defendant; Plaintiffs only publicly voiced their support for Steve Smith.

Lastly, as in *Terry*, Lamkin made the decision not to keep Plaintiffs well before actually taking office. In fact, Lamkin sent the Plaintiffs a termination letter on December 6, 2016 but did not take office until January 1, 2017. For the above reasons, the Court will analyze this case as one about political patronage.

b. Political Patronage Analysis

Courts analyze political patronage cases under what is uniformly referred to as the *Elrod-Branti* standard. In *Elrod v. Burns*, 427 U.S. 347 (1976), the Supreme Court, in a plurality opinion, held that the newly-elected county sheriff could not terminate employees because they were not affiliated with his political party. In so finding, the court stated, "[T]he practice of patronage dismissals clearly infringes First Amendment interests"; however, the "protection[] is not an absolute." *Id.* at 360. Specifically, the court stated:

> [I]f conditioning the retention of public employment on the employee's support of the in-party is to survive constitutional challenge, it must further some vital government end by a means that is least restrictive of freedom of belief and association in achieving that end, and the benefit gained must outweigh the loss of constitutionally protected rights.

Id. at 363. Justice Stewart's concurring opinion provides the controlling rationale defining the limits of the protection: that "a nonpolicymaking, nonconfidential employee" cannot "be discharged or threatened with discharge from a job that he is satisfactorily performing upon the sole ground of his political beliefs." *Id.* at 375.

Four years later, in *Branti v. Finkel*, the Supreme Court stated, "[T]he ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, the question is whether the hiring

authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." 44 U.S. 507, 519 (1980); *see also O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 714 (1996) ("Government officials may not discharge public employees for refusing to support a political party or its candidates, unless political affiliation is a reasonably appropriate requirement for the job in question."). Applying this rule, the court went on to find that an assistant public defender's continued employment could not be conditioned on his "allegiance to the political party in control of the county government" because his primary responsibility "is to represent individual citizens in controversy with the State." 445 U.S. 507, 519 (1980). "Thus, whatever policymaking occurs in the public defender's office must relate to the needs of individual clients and not to any partisan political interests." *Id.*

Following *Branti*, the Eleventh Circuit analyzes political patronage cases by asking whether political affiliation is a reasonably appropriate requirement, which is a fact-intensive inquiry. *Cutcliffe v. Cochran*, 117 F.3d 1353, 1555 (11th Cir. 1997). The Eleventh Circuit, however, has carved out a subgroup of political patronage dismissal cases where it applies a "categorical" approach not requiring a factual inquiry. *Underwood v. Harkins*, 698 F.3d 1335, 1344 (11th Cir. 2012).

Under the categorical approach, a political patronage dismissal is appropriate as a matter of law when the subordinate has the authority to act as the "alter ego" of the elected official. *Ezell v. Wynn*, 802 F.3d 1217,

1225 (11th Cir. 2015). When a subordinate has "powers and duties which are identical to those of the [elected official]," the subordinate is the official's alter ego, and the official "must be able to select a [subordinate] in whom she has total trust and confidence and from whom she can expect, without question, undivided loyalty." *Underwood*, 698 F.3d at 1343. Note, however, "a factual determination remains necessary for any subordinate whose statutory duties do not make her the 'alter ego' of the hiring authority." *Ezell*, 802 F.3d at 1225.

The Eleventh Circuit first introduced the alter ego approach in *Terry*. 866 F.2d at 377-78. In *Terry*, the newly-elected sheriff terminated employees at the sheriff's office working in the following positions: deputy sheriff, clerk, investigator, dispatcher, jailer, and process server. *Id.* at 373. The court stated the position of deputy sheriff was the alter ego of the sheriff, thus allowing the sheriff to terminate deputy sheriffs for political patronage reasons. *Id.* at 377. The court reasoned, "The closeness and cooperation required between sheriffs and their deputies necessitates the sheriff's absolute authority over their appointment and/or retention." *Id.*

Regarding the remaining positions of clerk, investigator, dispatcher, jailer, and process server, the court found loyalty to an individual sheriff was not "an appropriate requirement for effective job performance." *Id.* at 377-78. The court reasoned that such positions "revolve around limited objectives and defined duties and do not require those holding them to function as

the alter ego of the sheriff" even though each job "implements the policies of the office." *Id.* at 378.

In *Underwood*, the Eleventh Circuit eliminated the need to engage in a factual inquiry when determining whether a subordinate is the alter ego of an elected official. The court stated, "[A]n elected official may dismiss an immediate subordinate for opposing her in an election without violating the First Amendment if the subordinate, under state or local law, has the same duties and powers as the elected official." *Underwood*, 698 F.3d at 1343. Courts should now consider only whether the "Georgia Legislature chose to give [the subordinate] the same powers and duties as the [elected official]," and not consider "a snapshot of the position as it is being carried out by a given person at a given point in time under a given elected official." *Id.* at 1344-45.

In finding the clerk could terminate the deputy clerk for political patronage reasons, the court stated, "Given the substantial powers and duties that a deputy superior court clerk has under Georgia law-powers and duties which are identical to those of the clerk herself-a person holding that position is essentially the legal alter ego of the clerk." *Id.* at 1343.

Finally, in *Ezell*, the court found the holding in *Terry* (that Florida deputy sheriffs are the alter egos of the sheriff) applied to Georgia deputy sheriffs. 802 F. 3d at 1225. The court found Georgia Code section 15-16-23 informative, which states, "Sheriffs are authorized in their discretion to appoint one or more deputies. . . ." O.C.G.A. § 15-16-23 (2015); *Ezell*, 802 F. 3d at

1225. The court also cited *Veit v. State*, 357 S.E.2d 113, 115 (Ga. Ct. App. 1987) as instructive, which found, "A deputy sheriff is an agent of the sheriff . . . and is empowered with the same duties and powers." *Ezell*, 802 F.3d at 1225.

After *Ezell*, it is clear that deputy sheriffs are the alter egos of sheriffs in Georgia; therefore, political patronage is a reasonably appropriate job requirement. The question in the current case remains whether the same can be said for Georgia marshals and their deputies. To determine as a matter of law whether a deputy marshal is the alter ego of the marshal, the Court must examine the legal powers and duties of deputy marshals as given by the Georgia Legislature.

In 1974, the Georgia Legislature created the Civil Court of Richmond County, Georgia through local law. 1974 Ga. Laws 2410. What was originally referred to as "Sheriff of the Civil Court of Richmond County," was amended, in 1978, to be called the "Marshal of the Civil Court of Richmond County." 1978 Ga. Laws 3341. The Marshal became an elected official in 1999. 1999 Ga. Laws 3508.

1974 Georgia Laws 2416 states, "all of the requirements and duties, powers and authority imposed by law upon and conferred upon the . . . sheriff of Richmond county . . . shall be vested in the . . . [marshal] of said Civil Court, and the several deputies." Here, the Georgia Legislature aligns the marshal and his deputies with the sheriff and his deputies, at least with

respect to the marshal's authority over the Civil Court of Richmond County.

More importantly for the Court's inquiry, the Legislature states that deputy marshals "shall exercise all the functions and be subject to all the responsibilities and requirements of the . . . [marshal]. . . ." 1974 Ga. Laws 2417. In *Underwood*, the court found the deputy clerk was the alter ego of the clerk because the Georgia Legislature gave her duties "which are identical to those of the clerk herself." *Underwood*, 698 F. 3d at 1343. In 1974, the Legislature expressly gave deputy marshals' duties "which are identical to" those of the marshal by granting deputy marshals the authority to "exercise all the functions" of the marshal.

Lastly, in *Ezell*, the court held deputy sheriffs in Georgia are the alter egos of sheriffs, in part, because the Georgia Legislature gave sheriffs the authorization "in their discretion to appoint one or more deputies." O.C.G.A. § 15-16-23 (2015). Similarly, the Legislature gave marshals the authority to "name their deputies who shall hold said office at the pleasure of the marshal."[4] 1999 Ga. laws 3509.

Although Lamkin and Plaintiffs discuss the daily tasks each Plaintiff had at the marshal's office, such

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[4] In Plaintiffs' Brief in Opposition to Augusta, Georgia's Motion for Summary Judgment, they argue the key difference between a sheriff and a marshal is that the sheriff is a constitutional officer, but the marshal is not. (Doc. 64, at 2-7.) As shown in *Underwood*, the court looks at whether the deputy has the same duties as the elected official "under state or local law," not whether the officer is constitutional. *Underwood*, 698 F.3d at 1343.

facts would only be relevant if the Court were to find Plaintiffs were not the alter egos of Marshal Lamkin. *See Underwood*, 698 F.3d at 1344-45 (although daily tasks of deputy clerk did not extend to outer limits authorized by law, she was nevertheless the alter ego because Legislature gave her same powers and duties as the clerk). As stated in *Ezell*, after concluding that the subordinate is the elected official's "alter ego," "[t]his conclusion ends the inquiry." *Ezell*, 802 F.3d at 1225.[5]

Based on the foregoing, the Court finds Plaintiffs, as deputy marshals, were the alter egos of Marshal Lamkin when terminated; thus, Lamkin did not violate Plaintiffs' First Amendment rights by terminating them for political patronage reasons. Accordingly, Lamkin's motion for summary judgment on the section 1983 claim is **GRANTED**.

2. Plaintiffs' Retaliation Claim

Although courts sometimes refer to an elected official's act of terminating an employee for political

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[5] Plaintiffs argue that, under *Rodriguez v. City of Doral*, 863 F.3d 1343 (11th Cir. 2017), Plaintiffs' "only have to show they engaged in a constitutionally protected affiliation or held constitutionally protected beliefs." (Pls.' Br. in Opp'n to Lamkin's Mot. for Summ. J., Doc. 63, at 6-7.) *Rodriguez* is inapplicable to the current case because the parties in *Rodriguez* all agreed political affiliation was an inappropriate requirement for the job at issue. *Rodriquez* [sic], 863 F.3d at 1350. Thus, there was no need for the court to analyze whether the *Elrod-Branti* standard protected the defendants. The current case, however, hinges on whether political affiliation is an appropriate requirement for deputy marshals, thus *Rodriguez* is inapplicable.

patronage reasons as "retaliation," this is not, as claimed by Plaintiffs (Compl., ¶ 22), retaliation for protected activities in violation of Title VII. *See e.g.*, *Leslie v. Hancock Cty. Bd. of Educ.*, 720 F. 3d 1338, 1346 (11th Cir. 2013). Title VII prohibits employment discrimination based on the following enumerated list of protected classes: "race, color, religion, sex, and national origin." 42 U.S.C. § 2000e-2(a). Asserting your employer discriminated against you based on a protected class is "protected activity." Retaliation under 42 U.S.C. § 20.00e-3(a) [sic] occurs when an employer retaliates against an employee for engaging in such protected activity. Section 2000e-3(a) of Title VII does not protect against the type of "retaliation" claimed here.

Plaintiffs have the burden to show a prima facie case of retaliation, which requires them to show: "(1) [they] engaged in an activity protected under Title VII, (2) [they] suffered an adverse employment action, and (3) there was a causal connection between the protected activity and the adverse employment action." *Crawford v. Carroll*, 529 F.3d 961, 970 (11th Cir. 2008). Defendant Lamkin met his burden of demonstrating that there is no evidence Plaintiffs engaged in protected activity, thus he could not have retaliated against them. (Lamkin's Mot. for Summ. J., at 10-11.) Plaintiffs responded that the protected activity they engaged in was "political speech." (Pls.' Br. in Opp'n to Lamkin's Mot. for Summ. J., at 7). Political speech, however, is not protected activity under Title VII. Because the facts clearly show Plaintiffs failed to engage in protected activity, there exists no genuine issue of

material fact and Lamkin's motion for summary judgment on the retaliation claim is **GRANTED**.

3. Plaintiffs' Employment Termination Claim

In his motion for summary judgment, Defendant Lamkin argues that he did not terminate Plaintiffs; rather, Plaintiffs voluntarily transferred to the Richmond County Sheriff's Department before he took office. (Lamkin's Mot. for Summ. J., at 11-12.) In addition to terminations, *Elrod-Branti* applies to transfers, demotions, and voluntary resignments [sic]. *See Rutan v. Republic Party*, 497 U.S. 62, 62 (1990); *Rodriguez*, 863 F.3d 1343 at 1350; *Silva v. Bieluch*, 351 F.3d 1045, 1047 (11th Cir. 2003). Nevertheless, it is unnecessary for the Court to reach a decision on this issue having already found such purported terminations valid.

B. Plaintiffs' Claims Against Augusta

To establish a 42 U.S.C. § 1983 claim against a local government, a plaintiff must prove that an official policy fairly attributable to the county existed which was the "moving force" behind the constitutional violation actually suffered. *Monell v. Dep't of Soc. Servs.*, 436 LJ.S. 658, 694 (1978). Having found no constitutional violation suffered by Plaintiffs, Augusta cannot be liable, and the Court need not determine whether Augusta could be liable if there had been a constitutional violation. Accordingly, Augusta's motion for summary judgment on the section 1983 claim is **GRANTED**.

Although the complaint is unclear as to whether Plaintiffs allege Augusta is also liable under their Title VII retaliation claim, the Court addresses this claim. Under Title VII, an employer may be vicariously liable for "actionable discrimination caused by a supervisor." *Faragher v. City of Boca Raton*, 524 U.S. 775, 780 (1998). Having found Lamkin did not engage in retaliatory discrimination under Title VII, Augusta cannot be liable. The Court need not determine whether Augusta is the Marshal's "employer" under Title VII, nor whether Augusta could otherwise be liable. Augusta's motion for summary judgment on the retaliation claim is **GRANTED**.

IV. CONCLUSION

Upon the foregoing, Defendant Lamkin's motion for summary judgment is **GRANTED**, and Defendant Augusta's motion for summary judgment is **GRANTED**. Accordingly, the Clerk is directed to **ENTER JUDGMENT** in favor of Defendants on all of Plaintiffs' claims, **TERMINATE** all other pending motions, if any, and **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 24th day of September, 2018.

IN THE UNITED STATES COURT OP APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14111-JJ

MALLORY C. JONES,
TROY A. MOSES,

Plaintiffs - Appellants,

versus

RAMONE LAMKIN,
Individually, and In his official capacity as Marshal of the Civil and Magistrate Courts of Richmond County, Georgia,
AUGUSTA, GEORGIA,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(Filed Sep. 5, 2019)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILLIAM PRYOR, JILL PRYOR and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for. Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ENTERED FOR THE COURT:

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

ORD-42

LOCAL AND SPECIAL ACTS AND RESOLUTIONS, VOL. II

CITY OF AUGUSTA—MUNICIPAL COURT—PROVISIONS CLARIFIED, ETC.

No 882 (House Bill No. 1812).

An Act to amend an Act abolishing the justice courts and the office of justice of the peace and notary public ex officio justice of the peace and the office of constable in the City of Augusta, Georgia, and creating in lieu thereof a Municipal Court in and for the City of Augusta, approved August 28, 1931 (Ga. L. 1931, p. 270), as amended, so as to revise, consolidate and clarify all the laws establishing; concerning and relating to the Municipal Court, City of Augusta, Georgia, in and for the County of Richmond; to provide for the election of judges thereof; to provide for the creation of the office of Associate Judge; to provide for their compensation, define their qualifications, powers and duties; to provide for the appointment of all other officers; to increase the jurisdiction of said court; to establish and revise the rules of procedure; to provide for trial by jury of six members; to provide for destruction of old records; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act abolishing the justice courts and the office of justice of the peace and notary public ex officio justice of the peace and the office of constable in the City of Augusta, Georgia, and creating in lieu thereof a Municipal Court in and for the City of Augusta, approved August 28, 1931 (Ga. L. 1931, p. 270),

as amended, is hereby amended by striking in their entirety sections 1 through 41 and substituting in lieu thereof the following:

"Section 1. That a Civil Court of Richmond County is hereby established and created and that from and after January 1, 1933, and the election and qualification of the officers of said Civil Court of Richmond County, Georgia, no justice court, or justice of the peace or notary public ex officio justice of the peace or Constable shall have or exercise any jurisdiction civil or criminal, within the city limits of Augusta, Georgia, as they now or may be hereafter defined.

* * *

"Section 10. The sheriff and the clerk of the Civil Court of Richmond County, Georgia, shall be appointed by the chief judge of said court for a term of office to run concurrently with his own. The sheriff and the clerk of said court shall have authority, with the approval of the chief judge of said court, to name their deputies who shall hold said office at the pleasure of the said sheriff or clerk as the case may be, subject to approval of the chief judge of said court. It is hereby further provided that the chief judge, and associate judge and all of the other officers of the Civil Court of Richmond County, Georgia, now serving their present term of office are hereby confirmed as the chief judge, and associate judge and other officers of said court, to name their deputies who shall hold said office at the pleasure of said sheriff or clerk as the case may be subject to approval of the chief judge of said court. It is

hereby further provided that the judge and all of the other officers of the Civil Court of Richmond County, Georgia, now serving their present term of office are hereby confirmed as the judge and other officers of said court.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MALLORY C. JONES and TROY A. MOSES,	)	
PLAINTIFFS,	)	CASE NO. 17CV00003-JRH-BKE
VS.	)	
RAMONE LAMKIN, Individually, and In his official capacity as Marshal of the Civil and Magistrate Court of Richmond County, Georgia, and AUGUSTA, GEORGIA,	)	
DEFENDANTS	)	

AFFIDAVIT OF STEVE SMITH

(Filed Mar. 21, 2018)

STATE OF GEORGIA
COUNTY OF RICHMOND

Personally appeared before the undersigned attesting authority, Steve Smith, who, after being duly sworn states:

1. That he served as Marshal of the Civil and Magistrate Court of Richmond County, Georgia for 29 years.

2. That he was defeated in an election on May 24, 2016 by Ramone Lamkin. He continued to serve as

Marshal of the Civil and Magistrate Court through his term of office which ended December 31, 2016.

3. That while employed as the Marshal of the Civil and Magistrate Court both Plaintiffs served as Deputy Marshals.

4. That even though Mallory C. Jones' (hereinafter "Jones") position was Captain, he was never in a policymaking position with the Marshal's Office. All policies related to the Marshal's Office were made by the Affiant or by the Chief Deputy Marshal, Teresa Russell. Jones did not have a policy making responsibility at all while he was serving under the Affiant as a Deputy Marshal.

5. That Jones was utilized by the Affiant to handle certain problem areas of the Marshal's Office. Affiant assigned Jones to the Fifa section of the Department in order to approve its efficiency.

6. That Troy A. Moses (hereinafter "Moses") served as a Sergeant with the Marshal's Office. He was never in a policy making position with the Marshal's Office. His last position was in the Community Relations Division, but he had previously served in other capacities in the Marshal's Office.

7. That at no time was Moses responsible for the implementation of any new programs instituted by Affiant.

8. That while Jones and Moses served as Deputy Marshals, Affiant knows of no reason why they were

not performing their duties and at all times they performed their duties properly.

9. That Jones and Moses actively supported Affiant in his re-election efforts, with Jones' going into various neighborhoods, but also speaking publicly throughout the community in support of Affiant.

10. That Jones' campaigned for Affiant on his own time, not while he was on the clock as a Deputy Marshal.

11. That Moses also took a very active role in the Affiant's re-election campaign and was out and about in the community campaigning for Affiant.

12. That there were a number of other employees of the Marshal's Office who actively supported Affiant, those being: Chantel Daniels, Steve Johnson and Bryan Patterson.

13. That after the election and before Lamkin assumed his duties, rumors were rampant that persons who actively supported Affiant would not have jobs at the end of the 2016 election year. Chantel Daniels resigned prior to Lamkin taking office, as did Chief Deputy Teresa Russell. After Lamkin took office, Steve Johnson and Bryan Patterson resigned.

14. That when Moses and Jones were notified of the fact that they would be terminated effective December 31, 2016, it was no surprise to Affiant based upon what he had heard the new Marshal would do. However, Affiant does not believe that it is proper for these individuals to be terminated before the new

Marshal even had an opportunity to observe these employees' performance of their duties.

15. That Affiant is aware of the fact that the current Sheriff of Richmond County, Georgia had opposition when he ran for office. Even though Sheriff Rountree won re-election, persons who opposed the Sheriff remained as employees and were not demoted.

16. That Affiant does not believe that individuals who take a position in a political race should have their employment with Augusta, Georgia affected by their support or non-support of a particular candidate.

17. That while serving as Marshal of the Civil and Magistrate Court, Affiant recognized that he did not have the same status as the Sheriff of Richmond County, Georgia. The Sheriff is a constitutional officer and is the Chief Law Enforcement Office [sic] of Richmond County. The duties of the Marshal's Office consist of serving process, issuing citations for ordinance violations, and providing those other duties required by state law. In connection with the courthouse, it is the Sheriff's duty to be responsible for security for the courthouse under the provisions of O.C.G.A. §15-16-10. There is a written agreement that existed between the Marshal and the Sheriff in which the Sheriff delegated to the Marshal authority to execute security measures for persons entering the courthouse, even though at all times security for the courthouse was the responsibility of the Sheriff.

18. That during his term as Marshal, Affiant knew of no legitimate reason that Jones or Moses should be terminated.

This 14th day of March, 2018.

/s/ Steve Smith
Affiant

Sworn to and subscribed before me,

this 14 day of March, 2018.

[Notary Stamp]

[Certificate Of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MALLORY C. JONES and TROY A. MOSES, PLAINTIFFS, VS. RAMONE LAMKIN, Individually, and In his official capacity as Marshal of the Civil and Magistrate Court of Richmond County, Georgia, and AUGUSTA, GEORGIA, DEFENDANTS	)	CASE NO. 17CV00003-JRH-BKE

AFFIDAVIT OF STEVE SMITH

(Filed May 25, 2018)

STATE OF GEORGIA
COUNTY OF RICHMOND

Personally appeared before the undersigned attesting authority, Steve Smith, who, after being duly sworn states:

1. That he served as Marshal of the Civil and Magistrate Court of Richmond County, Georgia for 29 years.

2. That he was defeated in an election on May 24, 2016 by Ramone Lamkin. He continued to serve as

Marshal of the Civil and Magistrate Court through his term of office which ended December 31, 2016.

3. That while employed as the Marshal of the Civil and Magistrate Court both Plaintiffs served as Deputy Marshals.

4. That even though Mallory C. Jones' (hereinafter "Jones") position was Captain, he was never in a policymaking position with the Marshal's Office. All policies related to the Marshal's Office were made by the Affiant or by the Chief Deputy Marshal, Teresa Russell. Jones did not have a policy making responsibility at all while he was serving under the Affiant as a Deputy Marshal.

5. That Jones was utilized by the Affiant to handle certain problem areas of the Marshal's Office. Affiant assigned Jones to the Fifa section of the Department in order to approve its efficiency.

6. That Troy A. Moses (hereinafter "Moses") served as a Sergeant with the Marshal's Office. He was never in a policy making position with the Marshal's Office. His last position was in the Community Relations Division, but he had previously served in other capacities in the Marshal's Office.

7. That at no time was Moses responsible for the implementation of any new programs instituted by Affiant.

8. That while Jones and Moses served as Deputy Marshals, Affiant knows of no reason why they were

not performing their duties and at all times they performed their duties properly.

9. That Jones and Moses actively supported Affiant in his re-election efforts, with Jones' going into various neighborhoods, but also speaking publicly throughout the community in support of Affiant.

10. That Jones' campaigned for Affiant on his own time, not while he was on the clock as a Deputy Marshal.

11. That Moses also took a very active role in the Affiant's re-election campaign and was out and about in the community campaigning for Affiant.

12. That there were a number of other employees of the Marshal's Office who actively supported Affiant, those being: Chantel Daniels, Steve Johnson and Bryan Patterson.

13. That after the election and before Lamkin assumed his duties, rumors were rampant that persons who actively supported Affiant would not have jobs at the end of the 2016 election year. Chantel Daniels resigned prior to Lamkin taking office, as did Chief Deputy Teresa Russell. After Lamkin took office, Steve Johnson and Bryan Patterson resigned.

14. That when Moses and Jones were notified of the fact that they would be terminated effective December 31, 2016, it was no surprise to Affiant based upon what he had heard the new Marshal would do. However, Affiant does not believe that it is proper for these individuals to be terminated before the new

Marshal even had an opportunity to observe these employees' performance of their duties.

15. That Affiant is aware of the fact that the current Sheriff of Richmond County, Georgia had opposition when he ran for office. Even though Sheriff Rountree won re-election, persons who opposed the Sheriff remained as employees and were not demoted.

16. That Affiant does not believe that individuals who take a position in a political race should have their employment with Augusta, Georgia affected by their support or non-support of a particular candidate.

17. That while serving as Marshal of the Civil and Magistrate Court, Affiant recognized that he did not have the same status or authority as the Sheriff of Richmond County, Georgia, except in service of process and judicial sales. When the Civil Court of Richmond County was created in 1931, it was apparent that the intention of the Legislature was to create a court system inferior to but much like the Superior Court with its own clerk and sheriff. Therefore the verbiage used to establish these positions was taken from the statutory language for the clerks and sheriffs of Superior Court, strictly for the purpose of processing and serving the cases filed in and issued by the new court which did not include law enforcement duties. The Sheriff is a constitutional officer and is the Chief Law Enforcement Officer of Richmond County. The duties of the Marshal's Office consist of serving process, issuing citations for ordinance violations, and providing those other duties required by state law, specifically abandoned motor

vehicles and the regulation of litter on private and public property and the issuance of citations thereof which was given by special legislation in 2009. Regarding security at the Augusta Regional Airport, this was an agreement between the ARA Commission and Affiant to provide 24 hour security at the airport with the consent and understanding of the Sheriff and that any serious offense that occurred at the airport would be reported to the sheriff's office for the appropriate response. This written agreement was made on a limited basis and that with proper notice it could be terminated and that the Sheriff could assume these duties". . In connection with the courthouse, it is the Sheriff's duty to be responsible for security for the courthouse under the provisions of O.C.G.A. §15-16-10. There is a written agreement that existed between the Marshal and the Sheriff in which the Sheriff delegated to the Marshal authority to execute security measures for persons entering the courthouse, even though at all times security for the courthouse was the responsibility of the Sheriff.

18. That during his term as Marshal, Affiant knew of no legitimate reason that Jones or Moses should be terminated.

This 15th day of May, 20, 2018.

/s/ Steve Smith
Affiant

Sworn to and subscribed before me,
this 15th day of May, 2018.

/s/ Deborah E. Coggins
NOTARY PUBLIC, RICHMOND COUNTY
STATE OF GEORGIA

[Certificate Of Service Omitted]

Augusta
GEORGIA

PERSONNEL POLICY

&

PROCEDURES MANUAL

* * *

Section 800.025 Political Activities

A. **Prohibited Activities during Working Hours.** An Employee shall be subject to discipline up to and including immediate dismissal for violation of these provisions –

1) No Employee of Augusta, Georgia shall, while on duty –

a) Request or solicit contributions or anything of value for any political candidate or cause;

b) participate in any political campaign by speaking in favor of any candidate or cause;

c) distribute literature;

d) picket or demonstrate on behalf of or in opposition to any political candidate or cause;

e) make telephone calls in support of any candidate or cause; or

f) organize, plan, or in any other way participate in the administration or carrying on of any political campaign.

2) No employee or volunteer of Augusta, Georgia shall, while on duty, while in the uniform of Augusta, Georgia, or while in or operating any Augusta, Georgia vehicle display any badge, button, sign or sticker promoting or opposing any political cause or candidate.

* * *