No.

IN THE

Supreme Court of the United States

ROBERT A. HAWKLAND, PETITIONER

v.

BURKE HALL, INDIVIDUALLY AND AS PRESIDENT OF THE BOARD OF TRUSTEES OF THE GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT; VICKI BRIDGES, INDIVIDUALLY AND AS ASSISTANT SUPERINTENDENT OF THE GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT; AND PHIL JIMERSON, INDIVIDUALLY AND AS SUPERINTENDENT OF OPERATIONS OF THE GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Without hearing any evidence and contrary to the fact-based allegations of petitioner's complaint that his speech was not made within the ordinary scope of his duties as a public employee, the Fifth Circuit Court of Appeals reversed the district court and dismissed petitioner's First Amendment retaliation claims under 42 U.S.C. § 1983 for failure to state a claim on the ground that, as a matter of law, his speech was made pursuant to his official duties as a public employee and was therefore not constitutionally protected.

Are statements made by a public employee during an internal investigation by a governmental agency regarding matters of public concern within the employee's official duties and therefore outside of the protection of the First Amendment *as a matter of law*, without regard to his fact-based allegations that the speech itself was not ordinarily within the scope of his duties?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

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The unpublished opinion of the United States Court of Appeals for the Fifth Circuit in *Robert A. Hawkland v. Burke Hall et al.*, Docket No. 20-10901, decided and filed on June 17, 2021, and reported at 860 Fed. Appx. 326 (5th Cir. 2021), reversing the District Court's order denying respondents' Rule 12(b)(6) motion to dismiss and remanding for the entry of a judgment in respondents' favor, is set forth in the Appendix hereto (App.1-12).

The unpublished and unreported Order of the United States District Court for the Northern District of Texas, Dallas Division, in *Robert A. Hawkland v. Grand Prairie Independent School District et al.*, Civil Action No. 3:19-CV-1822-E, decided and filed August 13, 2020, denying respondents' Rule 12(b)(6) motion to dismiss for failure to state a claim, is set forth in the Appendix hereto (App. 13-14).

The unpublished order of the United States Court of Appeals for the Fifth Circuit in *Robert A. Hawkland v. Burke Hall et al.*, Docket No. 20-10901, decided and filed on July 14, 2021, denying petitioner's timely filed petition for rehearing, is set forth in the Appendix hereto (App. 15).

Petitioner's First Amended Original Complaint in *Robert A. Hawkland v. Grand Prairie Independent School District et al.*, Civil Action No. 3:19-CV-1822-E, filed October 10, 2019, in the United States District Court for the Northern District of Texas, Dallas Division, is set forth in the Appendix hereto (App. 16-28).

JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit reversing the District Court's order denying respondents' Rule 12(b)(6) motion to dismiss and remanding for the entry of a judgment in respondents' favor, was entered on June 17, 2021; and its order denying petitioner's timely filed petition for rehearing was decided and filed on July 14, 2021 (App.1-12;15).

On March 19, 2020, in light of the public health emergency caused by COVID-19, this Court issued an Order extending the deadline for the filing any petition for writ of certiorari due on or after March 19, 2020, for 150 days from the date of the court of appeals' order denying a timely filed petition for rehearing. In a further Order of July 19, 2021, the Court rescinded this prior Order but provided that the time for filing any petition seeking review of an order denying a timely filed petition for rehearing which was issued prior to July 19, 2021, remains extended to 150 days from the date of that order.

This petition for writ of certiorari is filed within the time allowed by this Court's rules, 28 U.S.C. § 2101(c), and by this Court's Orders of March 19, 2020, and July 19, 2021.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Amendment I:

> 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.

28 U.S.C. Section 1331:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1343(a)(3) & (4):

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> ...
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Civil Rights Act–42 U.S.C. § 1983:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

STATEMENT

The principal question presented here is what test should be applied by courts in determining whether statements made by petitioner Robert A. Hawkland ("petitioner"), a public employee, during the course of an internal investigation concerning matters of public interest are protected by the First Amendment of the Constitution?

The decisions of this Court establish a straightforward, fact-based test for distinguishing between "citizen speech" which retains its First Amendment protections and "employee speech" made in the performance of a public employee's job, which of necessity loses its First Amendment protections. Here the court of appeals, by contrast, has adopted a multifactorial decisionmaking approach under which this determination is made *as a matter of law* after reading petitioner's amended complaint, by making a number of legal presumptions and inferences

unsupported by the pleadings and without any supporting evidence.

The legal test established by this Court for distinguishing unprotected "employee speech" from protected "citizen speech," is *whether it is "itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties*." *Lane v. Franks*, 573 U.S. 228, 240 (2014) (emphasis supplied). See *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). Petitioner submits that since *no* evidence has been presented at this pleading stage of the case, this test is a determination that must be based only on the well-pled facts as set forth in petitioner's amended complaint together with the reasonable inferences drawn therefrom in petitioner's favor.

On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), courts "accept all of the Plaintiff's well-pled factual allegations as true and draw all reasonable inferences in [the plaintiff's] favor . . . ." Petitioner submits that, as the district judge rightly determined, his amended complaint contains sufficient factual allegations which, accepted as true, "state a claim for First Amendment retaliation that is plausible on its face" (App. 13-14, citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Yet the Fifth Circuit court of appeals ruled as a matter of law that petitioner's claims for unlawful First Amendment retaliation under § 1983 against respondents of the Grand Prairie Independent School District should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim because his statements were made pursuant to his "official duties" as an employee

and therefore were not protected by the First Amendment (App. 10). However, petitioner was given *no* opportunity to present any evidence in support of his claim that his employment with respondent School District was terminated by the concerted actions of respondents in retaliation for the truthful testimony he gave during an internal investigation into mismanagement of the School District, testimony which was unfavorable to respondent Hall. Nor has he been given any opportunity to adduce evidence as to the scope of his duties as an employee of the School District.

In his First Amended Complaint, petitioner unequivocally alleges that his participation in an internal investigation into fiscal mismanagement by school administrators was not ordinarily within the scope of his duties as Manager of the School District's HVAC system (App.18;21). Nor, as he further alleged, "was it an ordinary part of his duties to provide information to a member of the School Board regarding [the] matters under investigation, or to make statements in the course of a School District investigation" (App. 21-22). As petitioner further alleged, the

> ordinary duties of [his] employment all pertained to the maintenance and operation of the heating and air conditioning equipment in the buildings owned and operated by the...School District....In the ordinary course of his duties as an employee of the...[School] District, [he] did not report to or provide information to members of the School Board, and he had virtually no direct contact or communications with [respondent] Hall or other

> members of the School Board in the ordinary course of his employment.

(App. 22). In fact, as he alleged, petitioner was *forced* to participate in the investigation and "was told by the outside attorneys hired by the School Board that he was *not* the subject of the investigation, and the statements he made in the course of the investigation did *not* pertain to his performance of his duties as an employee of the School District" (App. 22;23) (emphasis supplied). Yet after giving candid and truthful statements to the investigators, he alleged that respondents then retaliated against him on account of those statements by terminating his employment (App. 18-19;21; 23-24).

In its decision, the Fifth Circuit Panel gave no consideration at all to whether petitioner had properly alleged that he had been terminated from his employment by respondents in retaliation for his truthful statements to outside attorneys during their investigation into mismanagement by school administrators, a retaliatory termination violative of § 1983. In fact, none of those allegations by petitioner was even disputed in respondents' Rule 12(b)(6) motion to dismiss.

Despite the Panel's conclusion that petitioner's statements during the internal investigation were made "pursuant to his official duties," there is *no* allegation anywhere in petitioner's amended complaint that the investigation was even tangentially related to his work as the Manager of the School District's HVAC system. Respondents never disputed that petitioner's speech pertained to a matter of public concern; and their only

challenge was whether he spoke as a citizen or employee. Petitioner respectfully submits that there is *no* pleading and *no* evidence anywhere in this case to support the conclusion reached by the Panel that, as a matter of law, petitioner's speech was made pursuant to his official duties as Manager of the School District's HVAC system.

Petitioner further submits that in making its determination of whether his speech in this case was ordinarily within his official duties, the Panel based its decision on factors which neither individually nor collectively establish, as a matter of law, that his speech was ordinarily within the scope of his official duties as Manager of the School District's HVAC system; and its conclusions are largely inconsistent with the allegations in his amended complaint.

On July 14, 2021, the Panel denied petitioner's timely filed petition for rehearing (App. 15).

REASONS FOR GRANTING THE PETITION

A. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS OF THE SUPREME COURT IN *LANE v. FRANKS*, 573 U.S. 228 (2014) AND *CARCETTI v. CEBALLOS*, 547 U.S. 410 (2006), AND CREATES CONFUSION IN THE LAW AS TO THE CIRCUMSTANCES UNDER WHICH A PUBLIC EMPLOYEE FORFEITS HIS CONSTITUTIONAL RIGHTS TO FREEDOM OF SPEECH.

It is, in fact, irrelevant under the Fifth Circuit's holding whether respondents were engaged in corruption or mismanagement, or whether the statements for which petitioner was terminated were ordinarily within the scope of his official duties as Manager of the School District's HVAC system. The Panel's flawed analysis fails to accommodate either fact, as properly pled by petitioner in his amended complaint.

In making the determination as to whether petitioner had alleged a plausible claim for relief, the Panel first "considered the sufficiency of both [petitioner's] First Amendment retaliation claim and defendant's assertion of qualified immunity," citing its own decision in *Anderson v. Valdez*, 845 F.3d 580, 588-90 (5th Cir. 2016) (App. 4). It then held that "[t]he first requirement is a threshold inquiry into whether an employee was speaking as a citizen or 'pursuant to [the employee's] official duties'" (App. 7 citing *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). In fact, however, the only element the Panel considered in determining whether petitioner had properly alleged a claim for

First Amendment retaliation against respondents was whether he spoke as a citizen or pursuant to his official duties Manager of the School District's HVAC system.

Under the Panel's analysis, it must "first address whether [petitioner] sufficiently *alleged* a § 1983 claim against [respondents] Hall, Bridges, and Jimerson for First Amendment employment retaliation" (App. 6) (emphasis supplied). If he failed to do so, the Panel concluded that it "need not further address the [respondents'] invocation of qualified immunity" (*Id.*). The Panel made no attempt to analyze whether respondents had any legitimate qualified immunity defense. Under its analysis, even a corrupt public official who retaliates against a public employee who speaks the truth on issues of public corruption is entitled to dismissal of a § 1983 retaliation claim on grounds of qualified privilege, unless the plaintiff first establishes that he spoke as a citizen and not as an employee.

The Panel acknowledged that in determining whether an employee like petitioner spoke pursuant to his official duties,"the Supreme Court has emphasized [that] the critical question is 'whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.'" (App. 7, citing *Lane v. Franks*, 573 U.S. at 240). This inquiry is obviously a question of fact the resolution of which at the pleading stage can only be accomplished by a conscientious reading of petitioner's amended complaint to see if it alleges a sufficient factual nexus which supports a plausible claim for relief under the law.

In determining whether petitioner had sufficiently alleged a First Amendment retaliation claim, the Panel denied that it was making any determinations of fact, insisting that it accepted all of petitioner's well pleaded allegations as true and drew all reasonable inferences in his favor because "[w]hen a denial of qualified immunity is appealed, 'we are restricted to determinations of questions of law and legal issues, and we do not consider the correctness of the plaintiff's version of the facts.'" (App. 5, citing *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009)).

Nothing alleged in petitioner's amended complaint would support a factual finding by the Panel that the speech at issue in this case was itself ordinarily within the scope of his duties as Manager of the School District's HVAC system. Nor would any reasonable inference that could be drawn from that pleading support such a finding. In fact, petitioner explicitly and unmistakably pleaded that neither the speech at issue nor his participation in the investigation were ordinarily within the scope of his duties as Manager of the School District's HVAC system (App. 21-22;23). Nevertheless, the Panel concludes *as a matter of law* that " [petitioner's] statements during the District's internal investigation were made pursuant to his official duties" (App. 10).

In reaching this conclusion, the Panel rejects the clear, fact-based test laid down by the Court in *Lane v. Franks*, *supra*, and *Garcetti v. Ceballos*, *supra*, incorporating into its own peculiar analysis a number of non-specific, non-dispositive factors, which make it extremely difficult, if not impossible, to predict in any particular circumstances whether a court will hold that

a public employee is engaging in constitutionally protected free speech as a citizen or whether he is engaged in unprotected employee speech. Among the factors considered by the Panel in determining this issue were:

(a) An employee's job description is relevant; it is not dispositive; but the Court looks to it as "instructive" (App. 8, citing *Gibson v. Kilpatrick*, 773 F.3d 661, 671 (5th Cir. 2014));

(b) More importantly, if the employer directed the employee's speech, and was entitled to exercise such control, then it was "likely" made pursuant to the employee's official duties (*Id.*, citing *Anderson v. Valdez*, 845 F.3d 580, 596 (5th Cir. 2016));

(c) The Court looks to whether the speech, even if outside the employer's control, was still "intended to serve any purpose of the employer" (possibly even an illegal purpose) (*Id.*, citing *Corn v. Miss. Dep't. of Pub. Safety*, 954 F.3d 268, 277 (5th Cir. 2020));

(d) The Court focuses on the role of the speaker and not on the content of the speech, but will consider the content if it relates to the employee's official duties (App. 9, citing *Davis v. McKinney*, 518 F.3d 304, 314 (5th Cir. 2008));

(e) The Court will consider (i) whether the speech was made up the internal chain of command, or (ii) to an outside actor such

as the media (*Id.*, citing *Gibson*, 773 F.3d at 670);

(f) The Court will consider if the employee spoke to others at his workplace, or kept the information confidential (*Id.*, citing *Howell v. Town of Ball*, 827 F.3d 515, 524 (5th Cir. 2016)); and

(g) The Court will consider "whether there is an analogue to speech by citizens – that is, whether the speech is of the kind 'engaged in by citizens who do not work for the government'" (*Id.*, citing *Paske v. Fitzgerald*, 785 F.3d 977, 984 (5th Cir. 2015)).

(App. 8-9).

In determining whether petitioner spoke as a citizen or as an employee, the Panel also took into consideration the fact that the speech for which he was terminated occurred during an internal investigation (*Id.*). It cited two unpublished opinions of the Fifth Circuit (*Rodriguez v. City of Corpus Christi*, 678 F. App'x. 386, 390 (5th Cir. 2017) and *Caleb v. Grier*, 598 F. App'x.227, 236 (2015)) for the proposition that "assisting in an employer's investigation into workplace theft is "*ordinarily* within the scope of an employee's job duties." (App. 9-10) (emphasis supplied). However, the Panel emphasized that in both cases the courts there "recognized *multiple factors* showing the plaintiffs acted as employees and not as citizens," and stated that, "to hold that an employee spoke pursuant to his official duties *solely* by virtue of his involvement in an employer's internal investigation would unduly treat a single factor as dispositive" (App. 10, citing

Wilson v. Tregre, 787 F.3d 322, 325 (5th Cir. 2015) (emphasis in original).

In fact, the Panel's analysis, based on these multiple extraneous factors, of whether the speech for which petitioner was terminated was made as a citizen or as an employee has little or nothing to do with whether that speech was ordinarily within the scope of petitioner's duties as Manager of the School District's HVAC system, the clear, fact-based test laid down by this Court in *Lane* and *Garcetti*. Thus the Panel's holding that petitioner's statements during the School District's internal investigation were made pursuant to his official duties (App. 10) is *not* supported by any evidence; it is *not* supported by any of the allegations made by petitioner in his amended complaint; and it is *not* supported by any reasonable inferences which could be drawn from his amended complaint.

Petitioner submits that the Panel's abnegation of this Court's clear, fact-based test laid down in *Lane* and *Garcetti* for determining whether the speech which precipitated his termination was made as a citizen or as an employee comes within Rule 10(c)'s guidance by this Court about the considerations which point toward the granting of a petition for certiorari, i.e., that "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by th[e] Court, or has decided an important federal question in a way that conflicts with relevant decisions of th[e] Court." The Court should accordingly grant certiorari, reverse the judgment below, clarify the Panel's error and remand this matter to the district court for further proceedings.

B. THE DECISION OF THE COURT OF APPEALS SHIELDS PUBLIC OFFICIALS FROM INDIVIDUAL LIABILITY FOR MISMANAGEMENT OR CORRUPTION BECAUSE OF THE AMBIGUITY IT CREATES AS TO THE CIRCUMSTANCES UNDER WHICH A PUBLIC EMPLOYEE FORFEITS HIS CONSTITUTIONAL RIGHTS TO FREEDOM OF SPEECH.

The most crucial problem with the Panel's rejection of this Court's clear, single, fact-based test in *Lane* and *Garcetti* for distinguishing citizen speech from employee speech is that it destroys any possible certainty in the law on this issue. It is well established by this Court that "[q]ualified immunity 'gives governmental officials breathing room to make reasonable, but mistaken judgments about open legal questions," *Lane*, 573 U.S. at 243 quoting *Ashcroft v. al-kidd*, 563 U.S. 731, 743 (2011); and that "under this doctrine, courts may not award damages against a governmental official in his personal capacity unless "the official violated a statutory or constitutional right, *and the right was 'clearly established' at the time of the challenged conduct*." *Id.* quoting *al-kidd*, 563 U.S. at 735 (emphasis supplied).

As the Court explained in *Lane*, the relevant question for qualified immunity purposes in that case was: "Could Franks reasonably have believed, at the time he fired Lane, that a government employer could fire an employee on account of testimony the employee gave, under oath and outside the scope of his ordinary job responsibilities?" *Id.* The Court found that "Eleventh Court precedent did not preclude Franks from reasonably holding that belief....and no decision of

this Court was sufficiently clear to cast doubt on the controlling Eleventh Circuit precedent" *Id.*. The *Lane* Court accordingly concluded that because it was not "'beyond debate' [that Lane's speech was constitutionally protected] at the time Franks acted, Franks is entitled to qualified immunity." 573 U.S. at 246, quoting *al-kidd*, 563 U.S. at 741.

Under the ambiguous, multifactoral approach employed by the Fifth Circuit here as well as and in other cases in the Circuit, petitioner submits that in the vast majority of cases it will never be "clearly established" that the public employee's speech was constitutionally protected citizen speech if there is *any* arguable connection between the speech and the public employee's employment, and certainly not when there is an internal investigation by a governmental agency. As a practical matter, public officials will never be held individually liable for First Amendment retaliation, no matter how culpable their conduct, because under the law as construed by the Fifth Circuit, the issue of whether the speech of a public employee is constitutionally protected will never be clearly established or "beyond debate."

Unless a clear, fact-based test is established by the Court to provide clear notice to public officials as to what speech by public employees on matters of public interest constitutes constitutionally protected "citizen speech," disclosures of corruption and mismanagement in public agencies by public employees will be materially inhibited; public employees will be coerced into lying in order to keep their jobs; and the coverup of public corruption will be encouraged. The very purposes of qualified immunity are thereby subverted.

C. THE PANEL'S DECISION PLACES ALL PUBLIC EMPLOYEES IN THE INTOLERABLE POSITION OF BEING FORCED TO CHOOSE BETWEEN TELLING THE TRUTH REGARDING MISMANAGEMENT OR CORRUPTION WITHIN A GOVERNMENTAL AGENCY IN THE COURSE OF AN INTERNAL INVESTIGATION OR ASSUMING THE RISK OF JOB LOSS OR OTHER RETALIATION WITHOUT ANY REMEDY UNDER § 1983.

This case is analogous to the situation in *Lane v. Franks*, *supra*, in which Lane terminated the employment of state representative Schmitz from a public program of which Lane was the director. But there is no indication that Lane went to the public media with complaints about Schmitz's conduct or otherwise went public with any speech about the circumstances. Instead, similar to petitioner, Lane testified under compulsion (pursuant to a subpoena, in a grand jury and later at trial) about his reasons for firing Schmitz. Lane was later terminated by Franks, the president of his public agency, in retaliation for his testimony against Schmitz (on issues clearly related to his job). Lane brought suit under 42 U.S.C. § 1983 against Franks for retaliation in violation of his First Amendment rights, an action similar to the one asserted by petitioner here. 573 U.S. at 234.

Even though Lane's speech related only to his reasons for discharging a public employee and was made solely in the context of testimony before a grand jury and at trial, the Court had no difficulty in holding that his " testimony is also speech on a matter of public concern." *Id.* at 241. As the Court noted,

> Speech involves matter of public concern "when it can be fairly considered as relating to any matter of political, social, or other concern to the community," or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (citation omitted). The inquiry turns on the "content, form, and context" of the speech. *Connick v. Myers*, 461 U.S. 138, 147-148 (1983).
>
> The content of Lane's testimony – corruption in a public program and misuse of state funds – obviously involves a matter of significant public concern. See, e.g., *Garcetti*, 547 U.S. at 425 ("Exposing governmental inefficiency and misconduct is a matter of considerable significance").

Id.

As petitioner alleged in his amended complaint, his speech in the course of the investigation of the school administration was in the very same context that was being discussed by citizens in the community and by the public media; *i.e.*, mismanagement and misuse of public funds by school administrators; and it was clearly a matter of public concern (App. 19-21). There was never any contention that petitioner's speech failed to address matters of public concern.

Petitioner further alleged that his statements were truthful; that he was compelled to testify as a result of instruction from the Superintendent's office; and that he was in fear of the loss of his job if he did not

(App. 20-21). Most important, he alleged that his participation and statements were *not* within the ordinary scope of his employment as the Manager of the School District's HVAC system (App. 21-22). The only substantive distinction between petitioner's situation and the one presented in *Lane* is that Lane's speech was compelled by subpoena and was given under oath. Petitioner submits that this distinction does not justify a different result.

The Court points out in *Lane* that when a public employee testifies in a legal proceeding, he owes an obligation to the court and society at large to tell the truth and that "[t]hat independent obligation renders sworn testimony speech as a citizen . . . ." 573 U.S. at 239. But the Court goes on to say that "*the critical question*. . . is whether the speech at issue is itself ordinarily within the scope of an employee's duties . . . ." *Id*. at 240 (emphasis added).

The same rationale that provides the basis for the First Amendment retaliation claim in *Lane* applies with equal force in the instant case:

> It would be antithetical to our jurisprudence to conclude that the very kind of speech necessary to prosecute corruption by public officials – speech by public employees regarding information learned through their employment – may never form the basis for a First Amendment retaliation claim. *Such a rule would place public employees who witness corruption in an impossible position, torn between the obligation to testify truthfully and*

> *the desire to avoid retaliation and keep their jobs.*

Id. at 240-241 (emphasis supplied).

It would be anomalous indeed to hold that petitioner is protected against retaliatory discharge under the First Amendment if he gave those candid and truthful statements under oath but that he has no protection under the First Amendment if his statements were not made under oath. Why would he not be under the same obligation as a citizen to tell the truth in either circumstance?; and why would his right to freedom of speech on matters of public concern be limited to sworn statements? No logic or public policy supports such a result.

CONCLUSION

For all the reasons identified herein, petitioner respectfully requests that this Court grant his petition for a writ of certiorari and review the judgment and decision of the United States Court of Appeals for the Fifth Circuit, reverse said judgment and remand the matter to the federal district court for the Northern District of Texas, Dallas Division, for further proceedings, or provide petitioner with such other relief as is fair and just in the circumstances.

Respectfully submitted,

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See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5.

United States Court of Appeals, Fifth Circuit.

A. HAWKLAND, Plaintiff—Appellee,
v.
Burke HALL, individually and in his capacity as President of Board of Trustees of the Grand Prairie Independent School District; Vicki Bridges, individually and as Assistant Superintendent of the Grand Prairie Independent School District; Phil Jimerson, individually and in his capacity as Interim Assistant Superintendent of Operations of the Grand Prairie Independent School District, Defendants—Appellants.

No. 20-10901
FILED June 17, 2021

Appeal from the United States District Court for the Northern District of Texas, USDC No. 3:19-CV-1822

Attorneys and Law Firms

Robert Merle Thornton, Kilgore & Kilgore, P.L.L.C., Dallas, TX, for Plaintiff-Appellee.
Thomas Jude Fisher, Holly James, Leasor Crass, P.C., Mansfield, TX, for Defendants-Appellants.

Before Higginbotham, Stewart, and Wilson, Circuit Judges.

Opinion

Curiam:*

Robert Hawkland brought 42 U.S.C. § 1983 claims against his former employer, the Grand Prairie Independent School District (the "District"), for employment retaliation in violation of the First Amendment. Suing the District, two administrators, and a member of the Board, Hawkland alleged he was improperly terminated because of statements he made during an internal investigation into the District's finances. Defendants filed motions to dismiss for failure to state a claim, asserting that Hawkland spoke as an employee, such that his statements were not protected speech. Alternatively, defendants asserted that qualified immunity barred his claims against them. The district court denied defendants' motions. Concluding that Hawkland's speech was made pursuant to his official duties, we REVERSE the court's denial of defendants' motions to dismiss and REMAND for entry of judgment in favor of defendants.

I.

In 2017, District Superintendent Susan Hull faced public criticism for residing in a home purchased and renovated with District funds. Responding to rumors of financial impropriety, the District's Board of Trustees hired an outside law firm to investigate the District's management and accounting policies—including the purchase and renovation of Hull's home. In May 2018, the firm concluded its investigation. Though it publicly released only a portion of its final report, the firm did not find any actionable misconduct.

Hawkland was an employee of the District for approximately two decades. In the last five years of his tenure, he was a manager of the District's HVAC system. As part of the internal investigation, Hawkland and other District employees were interviewed by the investigating law firm. According to the complaint, the Superintendent's office required Hawkland's participation, and the firm assured him there would be no retaliation for truthful statements. The firm and a member of the District's Board asked Hawkland questions, and his answers negatively reflected on Hull and her use of District resources.

After the investigation concluded, Hawkland's responses were conveyed to Hull and Burke Hall, the current President of the Board.[1] Hawkland was thus revealed as a source of information about the District's purported mismanagement of funds. Thereafter, he was excluded from ordinary meetings, his department's budget was reduced, and Vicki Bridges—then Assistant Superintendent of Operations—instructed him to refrain from speaking on school district practices. Phil Jimerson, former Interim Assistant Superintendent of Operations, also inquired into Hawkland's management of the HVAC system, which Hawkland alleges was a front to find justification for terminating his employment. About a year after the investigation concluded, Hull fired Hawkland in June 2019 after he refused to resign. No criticisms of his performance or behavior, nor disciplinary procedures, were mentioned.

Hawkland filed his complaint in July 2019 and an amended complaint in October 2019 (the operative complaint for this appeal). He asserts multiple § 1983 claims. First, he alleges the District is liable for First Amendment employment retaliation. He maintains the District followed an informal policy or custom of

preventing its employees from "disclosing or discussing any matter that might cast the District or Superintendent Hull in a negative light" and "retaliate[ed] against those who did by taking or threatening to take adverse employment action." Second, and on the same alleged facts, he brings First Amendment retaliation claims against Hall, Bridges, and Jimerson in their individual capacities.[2]

The individual defendants filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), asserting Hawkland failed to a state a claim for First Amendment retaliation and interposing the defense of qualified immunity. In August 2020, the district court denied their motions. Defendants then filed this interlocutory appeal.

II.

The denial of a motion to dismiss predicated on qualified immunity is an "immediately appealable [collateral] order." *Zapata v. Melson*, 750 F.3d 481, 484 (5th Cir. 2014); *see Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 193–94 (5th Cir. 2009). We have pendant appellate jurisdiction when an appealable order is "inextricably intertwined" with an unappealable order. *Thornton v. Gen. Motors Corp.*, 136 F.3d 450, 453–54 (5th Cir. 1998). Here, the district court's one-page order denying the defendants' motions to dismiss made no express mention of qualified immunity, but the court's ruling impliedly rejected the defendants' alternative defense. When a district court denies a motion to dismiss that includes the defense of qualified immunity, and thereby holds the plaintiff properly stated a claim for First Amendment retaliation, we exercise jurisdiction over both issues. *Anderson v. Valdez*, 845 F.3d 580, 588–89 (5th Cir. 2016).

Hawkland contests our jurisdiction to consider whether he adequately pled a retaliation claim. He maintains that the contextual aspects of his speech (i.e., whether the statements were "within the scope of his job") are disputes of fact. But this mistakes the nature of our review. When a denial of qualified immunity is appealed, "we are restricted to determinations of questions of law and legal issues, and we do not consider the correctness of the plaintiff's version of the facts." *Club Retro*, 568 F.3d at 194 (citation omitted). While we thus accept all of Hawkland's well-pled factual allegations as true and draw all reasonable inferences in his favor, determining whether he spoke as an employee or as a citizen is a reviewable question of law. *See, e.g.*, *Graziosi v. City of Greenville*, 775 F.3d 731, 736 (5th Cir. 2015).

We consider de novo the sufficiency of both Hawkland's First Amendment retaliation claim and defendants' assertion of qualified immunity. *Anderson*, 845 F.3d at 589. With respect to the former, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. PROC. 8(a)(2); *see Arnold v. Williams*, 979 F.3d 262, 267 (5th Cir. 2020) ("Section 1983 claims implicating qualified immunity are subject to the same Rule 8 pleading standard set forth in *Twombly* and *Iqbal* as all other claims ...."). In other words, Hawkland's complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (internal quotation marks and citation omitted). Facial plausibility requires he plead "factual content that allows the court to draw the reasonable inference that the defendant[s are] liable for the misconduct alleged." *Id.*

III.

We first address whether Hawkland sufficiently alleged a § 1983 claim against Hall, Bridges, and Jimerson for First Amendment employment retaliation. If he failed to do so, we need not further address the defendants' invocation of qualified immunity. After all, to overcome a qualified immunity defense, a plaintiff must plead facts showing "(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011) (internal quotation marks and citation omitted). Some opinions, as well as defendants' brief, discuss First Amendment retaliation claims under prong one of the qualified immunity analysis. *See, e.g.*, *Rayborn*, 881 F.3d at 417–18. For analytic clarity, we separate the two issues, even if the analysis leads substantively to the same end. *See Anderson*, 845 F.3d at 590 (assessing the elements of a § 1983 claim for employment retaliation before discussing qualified immunity); *Howell v. Town of Ball*, 827 F.3d 515, 522 (5th Cir. 2016) (same).

A.

"To 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." *Wilson v. Tregre*, 787 F.3d 322, 325 (5th Cir. 2015) (internal quotation marks and citation omitted). Defendants

contest only the second element, contending Hawkland spoke as an employee—not as a citizen—during the District's internal investigation.

The second element of the First Amendment retaliation analysis encompasses two requirements: an employee must have spoken as a citizen *and* that speech must have been on a matter of public concern. The first requirement is a threshold inquiry into whether an employee was speaking as a citizen or "pursuant to [the employee's] official duties." *Garcetti v. Ceballos*, 547 U.S. 410, 421, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006); *see Hurst v. Lee County*, 764 F.3d 480, 484 (5th Cir. 2014). If an employee's speech was made pursuant to his official duties, he is not entitled to First Amendment protection even if he spoke on a matter of public concern. *Anderson*, 845 F.3d at 592; *see Howell*, 827 at 522–23, ("[I]nstead of asking only if the speech at issue was on a matter of public concern, a court must first decide whether the plaintiff was speaking as a citizen disassociated with his public duties."). Again, defendants do not dispute Hawkland's speech pertained to a matter of public concern; they only challenge whether he spoke as a citizen or employee. So we turn to that analysis.

In determining whether an employee spoke pursuant to his official duties, the Supreme Court has emphasized the critical question is "whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." *Lane v. Franks*, 573 U.S. 228, 240, 134 S.Ct. 2369, 189 L.Ed.2d 312 (2014). In *Lane*, a college administrator testified to a grand jury, under subpoena, about a financial fraud investigation at his university. *Id.* at 232–33, 134 S.Ct. 2369. He was fired thereafter, and he brought a § 1983 employment retaliation claim. *Id.* at 234, 134 S.Ct. 2369. Holding Lane's grand jury testimony

was protected under the First Amendment, the Supreme Court reasoned "the mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech." *Id.* at 240, 134 S.Ct. 2369. Rather, Lane's speech was made as a citizen because it fell outside his "ordinary job duties" and originated in an obligation "to the court and society at large ... to tell the truth." *Id.* at 238, 134 S.Ct. 2369.

Regarding *Lane*, we have cautioned against a strict interpretation of the term "ordinary job duties," insisting the question of whether an employee's speech was pursuant to his official duties remains "a practical inquiry." *Culbertson v. Lykos*, 790 F.3d 608, 620 (5th Cir. 2015); *Anderson*, 845 F.3d at 596; *see Gibson v. Kilpatrick*, 773 F.3d 661, 667–68 (5th Cir. 2014) (noting *Lane* presented "no occasion for the Court to refine the standard for determining when an employee speaks pursuant to his official duties"). To that end, we consider a number of factors to determine whether an employee's speech was made pursuant to, and was ordinarily within, his official duties.

First, while an employee's job description is relevant, it is not dispositive; we look to it insofar as it is "instructive" in the analysis. *Gibson*, 773 F.3d at 671. More importantly, if the employer directed the employee's speech, and the employer was entitled to exercise such control, then it was likely made pursuant to the employee's official duties. *Anderson*, 845 F.3d at 596. We similarly look to whether the speech, even if outside the employer's control, was still "intended to serve any purpose of the employer." *Corn v. Miss. Dep't of Pub. Safety*, 954 F.3d 268, 277 (5th Cir. 2020) (citation omitted); *see Garcetti*, 547 U.S. at 421–22, 126 S.Ct. 1951 ("Restricting speech that owes its existence to a public

employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.").

While our focus is on the role of the speaker and not the content of the speech, we will also consider the content if it relates to the employee's official duties. *See Davis v. McKinney*, 518 F.3d 304, 314 (5th Cir. 2008) (comparing different sections of employee's internal complaint letter to her official position and noting "some of [the letter] clearly relates to [her] job as an internal auditor, other parts do not"). Broader contextual factors include whether the employee's speech was made up the internal chain of command or to an outside actor (such as the media), if the employee spoke to others at his workplace or kept the information confidential, and whether there is an analogue to speech by citizens—that is, whether the speech was of the kind "engaged in by citizens who do not work for the government." *Paske v. Fitzgerald*, 785 F.3d 977, 984 (5th Cir. 2015) (citation omitted); *see Gibson*, 773 F.3d at 670 (considering chain of command); *Howell*, 827 F.3d at 524 ("[T]he confidential nature of [plaintiff's] speech alone suggests that it was not part of his 'ordinary' professional duties.").

Defendants largely rest their appeal on two cases that they contend dictate any statements made by an employee during an internal investigation were made pursuant to the employee's official duties. *See Rodriguez v. City of Corpus Christi*, 687 F. App'x 386 (5th Cir. 2017); *Caleb v. Grier*, 598 F. App'x 227 (5th Cir. 2015). Notwithstanding that these are unpublished opinions, and thus not precedential, we also disagree they stand for such a categorical proposition. That said, both opinions do concern internal investigations. In *Caleb*, we observed that "assisting in an employer's investigation

into workplace theft is ordinarily within the scope of an employee's job duties." 598 F. App'x at 236. We applied the same reasoning in *Rodriguez*, which involved an investigation into a workplace confrontation. 687 F. App'x at 390.

In both cases, however, we recognized *multiple factors* showing the plaintiffs acted as employees and not as citizens. Each considered, *inter alia*, that the employer directed the plaintiff to participate in the investigation and the plaintiff limited his or her speech to the chain of command. *Caleb*, 598 F. App'x at 236; *Rodriguez*, 687 F. App'x at 390. Indeed, to hold that an employee spoke pursuant to official duties *solely* by virtue of his involvement in an employer's internal investigation would unduly treat a single factor as dispositive. *See Tregre*, 787 F.3d at 325 (considering multiple factors in holding plaintiff acted in his official duties as police Chief Deputy when he was interviewed as part of an internal investigation).

B.

Applying this discussion to Hawkland's complaint, we conclude Hawkland's statements during the District's internal investigation were made pursuant to his official duties. Granted the subject-matter of the investigation was perhaps only tangentially related to Hawkland's work as a manager of the HVAC system, he still participated upon the directive of his employer and his speech unequivocally served his employer's purpose. *See Anderson*, 845 F.3d at 596; *Corn*, 954 F.3d at 277. Hawkland states he was "forced to cooperate," but he does not challenge the Superintendent's authority to require his participation. *Cf. Lane*, 573 U.S. at 239, 134 S.Ct. 2369 ("[O]bligations as an employee are distinct

and independent from the obligation, as a citizen, to speak the truth. That independent obligation renders sworn testimony speech as a citizen and sets it apart from speech made purely in the capacity of an employee.").

Moreover, Hawkland never expressed his criticisms of Hull to anyone outside his employment, let alone outside those with whom he spoke during the investigation. He did not, for instance, attempt to publicize his complaints, share his opinion publicly, or otherwise discuss the matter with news media or the greater public. *See Williams v. Dall. Indep. Sch. Dist.*, 480 F.3d 689, 694 n.2 (5th Cir. 2007) ("This is not a case where [plaintiff] wrote to the local newspaper or school board with his athletic funding concerns."); *cf. Graziosi*, 775 F.3d at 737 (holding police officer's posts on Facebook, while off duty and from her home computer, was speech made as a citizen). Indeed, in the context of Hawkland's participation in an employer-initiated internal investigation, it is difficult to imagine a citizen's comparable speech-related activity. *See Garcetti*, 547 U.S. at 422, 126 S.Ct. 1951 ("Contrast, for example, the expressions made by [an employee] whose letter to the newspaper had no official significance and bore similarities to letters submitted by numerous citizens every day.").

In sum, far and away from an independent obligation to our legal system or society at large, Hawkland's speech was made in the limited context of the District's internal investigation. It originated from his employer's request for his cooperation, and it lacked an analogue to speech normally made by citizens. For these reasons, the district court erred in holding Hawkland adequately pleaded a First Amendment

retaliation claim. It follows that we need not further address the defendants' assertion of qualified immunity.

* * *

Accordingly, we REVERSE the district court's denial of defendants' Rule 12(b)(6) motions to dismiss Hawkland's § 1983 claims against them. We REMAND for entry of judgment in favor of Hall, Bridges, and Jimerson in their individual capacities.

Footnotes

*Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

1The amended complaint does not specify if Hall was President or Vice President of the Board when he learned of Hawkland's statements.

2The amended complaint asserts Hall, Bridges, and Jimerson were "acting individually ... as well as in their official positions with the School District" in terminating Hawkland; the defendants' brief states these three were sued in their "individual and official capacities." Any claims against Hall, Bridges, and Jimerson in their official capacities are duplicative of the claim against the District itself. *See Rayborn v. Bossier Par. Sch. Bd.*, 881 F.3d 409, 417 (5th Cir. 2018) ("[S]uits against officials in their official capacities 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' ") (quoting *Kentucky v. Graham*, 473 U.S. 159, 165–66, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985)).

08/13/2020
United States District Court, N.D. Texas,
Dallas Division.

Robert A. HAWKLAND, Plaintiff,
v.
GRAND PRAIRIE INDEPENDENT SCHOOL

DISTRICT, et al., Defendants.
CIVIL ACTION NO. 3:19-CV-1822-E

Signed 08/13/2020

Attorneys and Law Firms
Robert M. Thornton, Kilgore & Kilgore PLLC, Dallas, TX, for Plaintiff.
Thomas J. Fisher, Holly Lynn James, Leasor Crass PC, Mansfield, TX, for Defendants.

ORDER

Ada Brown, UNITED STATES DISTRICT JUDGE

Before the Court are two Motions to Dismiss Plaintiff's Amended Complaint—one filed by Defendants Grand Prairie Independent School District, Burke Hall, and Phil Jimerson and one filed by Defendant Vicki Bridges (Doc. Nos. 17 and 23). Defendants assert Plaintiff's claims should be dismissed under Rule 12(b)(6) for failure to state a claim. To survive such a motion, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Upon review of the

complaint, motions to dismiss, Plaintiff's responses, and Defendants' replies, the Court concludes Plaintiff has pleaded specific facts which establish a plausibility of entitlement to relief on all his causes of action. Accordingly, Defendants' motions to dismiss are **DENIED**.

SO ORDERED.

Date Filed: 07/14/2021

United States Court of Appeals for the Fifth Circuit

No. 20-10901

Robert A. Hawkland,
Plaintiff—Appellee,
versus
Burke Hall, Individually and in his capacity as President of Board of Trustees of the Grand Prairie Independent School District; Vicki Bridges, Individually and as Assistant Superintendent of the Grand Prairie Independent School District; Phil Jimerson, Individually and in his capacity as Interim Assistant Superintendent of Operations of the Grand Prairie Independent School District,
Defendants—Appellants.

Appeal from the United States District Court for the Northern District of Texas

USDC No. 3:19-CV-1822

ON PETITION FOR REHEARING

Before Higginbotham, Stewart, and Wilson, *Circuit Judges*.

Per Curiam:

IT IS ORDERED that the petition for rehearing is DENIED.

Filed 10/10/19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3:19-cv-1822

ROBERT A. HAWKLAND, Plaintiff,
VS.
GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT, BURKE HALL, Individually and in his capacity as President of Board of Trustees of the Grand Prairie Independent School District, VICKI BRIDGES, Individually and as Assistant Superintendent of the Grand Prairie Independent School District, PHIL JIMERSON, Individually and in his capacity as Interim Assistant Superintendent of Operations Of the Grand Prairie Independent School District, Defendants.

PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Plaintiff Robert A. "Tony" Hawkland (sometimes referred to herein as "Plaintiff' or as "Hawkland"), complaining of Defendants Grand Prairie Independent School District (sometimes referred to herein as "Defendant" or the "School District" or "District"); Burke Hall, individually and in his capacity as President and Vice President of the Board of Trustees of the School District; Vicki Bridges, individually and as Assistant Superintendent of Operations and Phil Jimerson, individually and as

Interim Assistant Superintendent of Operations of the School District; and in support thereof shows the Court as follows:

I. Parties

1.01 Plaintiff, Robert A. "Tony" Hawkland, is an individual citizen of Texas who resides and is domiciled in the County and City of Dallas, Texas.

1.02 Defendant Grand Prairie Independent School District is a local government agency formed under the laws of the Stated of Texas which resides in Dallas County, Texas, in the Northern District of Texas, Dallas Division. Defendant may be served by delivery of process to its Interim Superintendent Linda Ellis, 2602 Sl Beltline Road, Grand Prairie, Texas 75052.

1.03 Defendant Burke Hall is an individual citizen of the United States who resides and is domiciled in the State of Texas. Defendant may be served at 2722 Logan Street, Dallas, Texas 75215.

1.04 Defendant Vicki Bridges is an individual citizen of the United States who resides and is domiciled in the States of Texas. Defendant may be served at 535 W. Division, Blossom, Texas 75416.

1.05 Defendant Phil Jimerson is an individual citizen of the United States who resides and is domiciled in the State of Texas. Defendant may be served at 2602 S. Beltline Road, Grand Prairie, Texas 75052.

II. Jurisdiction

2.01 The Court has jurisdiction over the lawsuit pursuant to 28 U.S.C. Sec. 1331 because the suit arises under the First Amendment to the U.S. Constitution.

III. Venue

3.01 Venue is proper in this district under 28 U.S.C. §1391(b)(1) because Defendant, Grand Prairie Independent School District resides in this district and all defendants reside in this state.

3.02 Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

IV. Statement of Facts

4.01 For approximately 20 years prior to June 30, 2019, Plaintiff was a public employee employed by the Grand Prairie Independent School District. During the last five years of his employment Plaintiff worked as Manager of the School District's HVAC systems.

4.02 On June 26, 2019 Defendant Grand Prairie Independent School District involuntarily terminated Plaintiff's employment with the District, without cause, effective June 30, 2019. The decision to terminate Plaintiff's employment with the District was made by the school Superintendent Susan Simpson Hull (now deceased), acting individually and in her official position as Superintendent of Schools. On information and belief, Plaintiff alleges that the termination of his employment was engineered and facilitated by Superintendent Hull, individually and in her capacity as Superintendent, by Defendant Vicki Bridges, acting individually and in her capacity as Assistant Superintendent of Operations, and by Defendant Phil Jimerson, acting individually and in his position as Interim Assistant Superintendent of Operations.

4.03 The involuntary termination of Plaintiff's longstanding employment with the District came suddenly, and with little advance notice. Plaintiff was simply called in and requested to resign, and when

Plaintiff refused to resign, Plaintiff's employment was promptly terminated. Plaintiff was given no reason for his termination; only a vague explanation that the District had decided to go in a different direction. No criticism of his performance or his behavior was mentioned. Plaintiff had consistently received excellent performance reviews from his supervisor throughout the time that he had been employed by the District as a Manager of the District's HVAC systems, and he had received a number of merit raises over the last five years of his employment with the District. He had not received any kind of counseling or adverse personnel action in the course of his 20 year employment with the District. No kind of progressive disciplinary procedure was followed in connection with the termination of Plaintiff's employment with the District.

4.04 In short, there is no satisfactory explanation for the abrupt involuntary termination of Plaintiff's long and successful career with the school district, at age 56, just a few years short of earning full retirement benefits at age 65. However the facts and circumstances leading to the termination of Plaintiff's employment with the District make it clearly evident that he was terminated in retaliation for having exercised his rights of freedom of speech in connection with an investigation into improper management practices by the school administration, and as part of an effort by the Defendants to conceal the disclosure of poor accounting practices and lack of accountability by school administrators.

4.05 During 2017, Superintendent Hull was suffering intense criticism from some citizens in the school district, and was the subject of repeated news stories concerning her use of a residence purchased with funds of the Grand Prairie Independent School District at

a cost of over seven hundred thousand dollars ($700,000), and concerning the subsequent improvements made to that residence with school district funds, totaling well over a hundred thousand dollars ($100,000 plus), including a long ten foot high privacy fence. As a result, the Board of Trustees caused an investigation to be launced into accounting and management practices and policies that were, or were not, being followed by the Defendant School District and its administrators. This investigation was conducted by outside attorneys and accountants hired by the Defendant District and by an internal auditor hired by the District. At the same time, the Defendant School District, under the control of Superintendent Hull and her supporters, including Defendant Hall, Defendant Bridges, and Defendant Jimerson, followed an informal policy and a course of action of covering up and preventing disclosures and public discussion of improper practices or mismanagement by Superintendent Hull and other school administrators, and of discrediting and getting rid of employees or Board members who disclosed or discussed, or who they feared might be willing to publicly disclose or discuss, evidence of mismanagement and wrongdoing by the Superintendent or members of her administration.

4.06 Pursuant to this policy, custom and practice, Superintendent Hull and Defendant Bridges gave false and inconsistent explanations of reasons for the improvements to the Superintendent's residence and the use of the School District's bond funds to pay for those improvements. Defendant Burke Hall and other members of the Board of Trustees of the Grand Prairie Independent School District publically released only a small portion of the report of investigation into the District's practice of splitting invoices and other failures to comply with District policies, and confined disclosures

of policy violations to matters which had already become public knowledge through investigative reporting by the news media. The Board refused to release the rest of the report to public view and discussion, claiming that it was protected by the attorney-client privilege. Pursuant to this policy and practice, the one member of the Board of Trustees who spoke in favor of releasing the full report of investigation to the public was branded as a "disruptive" member by Superintendent Hull. He was also excluded from portions of a closed session meeting, and asked to sign what amounted to a loyalty pledge and to surrender all of his notes relating to the investigation by Defendant Hall and other members of the Board. Pursuant to this cover up policy the Board took no action against Superintendent Hull, and she and the other Defendants were left free to threaten, coerce, and retaliate against Plaintiff and/or other employees who provided information relating to the investigation.

4.07 Plaintiff participated in the investigation and engaged in protected speech when he gave truthful statements and candid opinions in response to questions from a member of the Defendant District's Board of Trustees, and to questions from outside attorneys hired by that Board of Trustees to investigate. Plaintiff's statements and opinions reflected adversely on Superintendent Hull and on her management and use of the financial resources of the Grand Prairie Independent School District. Plaintiff was forced to cooperate with the investigation and give candid and truthful statements to the investigators, and he was subsequently retaliated against by the Defendants because he did.

4.08 Plaintiffs' participation in an investigation was not ordinarily within the scope of his duties as Manager of the HVAC system of the Defendant School District, nor was it an ordinary part of his duties to

provide information to a member of the School Board regarding matters under investigation, or to make statements in the course of a School District investigation. In fact, this was the only time Plaintiff had ever given statements in a School District investigation during his 20-year career with the Defendant District. Plaintiff was told by the outside attorneys hired by the School District to conduct the investigation that he was not the subject of the investigation, and the statements he made in the course of the investigation did not pertain to his performance of his duties as an employee of the School District.

4.09 The ordinary duties of Plaintiff's employment all pertained to the maintenance and operation of the heating and air conditioning equipment in the buildings owned and operated by the Grand Prairie Independent School District. In the ordinary course of his job Plaintiff prepared budgets; made inspections and evaluations of that type of equipment in school facilities; ordered and supervised repairs and replacement equipment; supervised employees and dealt with contractors who worked on that equipment; attended meetings pertaining to that equipment; and made recommendations concerning current and future needs for such equipment. In the ordinary course of his duties as an employee of the Defendant District, Plaintiff did not report to or provide information to members of the School Board, and he had virtually no direct contact or communications with Superintendent Hull or other members of the School Board in the ordinary course of his employment.

4.10 The only reason Plaintiff participated in the investigation conducted by the outside attorneys in this case was because he had been informed, through the Superintendent's office, that he had to participate, and

he feared that he would lose his job if he did not do so. Plaintiff was told by the outside attorneys that he should tell the truth, and was assured by them that he would not be retaliated against if he did so. None of those activities were performed within his regular chain of command.

4.11 The Grand Prairie Independent School District is a state governmental institution, and the individual Defendants held positions of public trust. The mismanagement and improper practices which Plaintiff discussed with the investigators were matters of serious public concern, such as the practice of splitting invoices for school district expenditures to avoid having to seek Board approval of the expenditures. Plaintiff was perceived to be disloyal to the Superintendent, and was known to have disclosed, or was perceived as a threat to disclose, improper purchasing practices or other mismanagement by the school administration.

4.12 Plaintiff's participation in the investigation was known to Superintendent Hull, and the results of the investigation were reported to Superintendent Hull and to Defendant Hall. Word leaked out that Plaintiff was the source of information relating to improper practices engaged in by the District, and it was related to Plaintiff that Defendant Hall was aware that Plaintiff had provided information unfavorable to Superintendent Hull.

4.13 Following the investigation, Plaintiff was excluded from meetings which he had customarily attended in the course of his employment, and the budget of his department was severely slashed leaving inadequate funding for the needs of his department. Money was even removed from his budget, in mid-year. Instructions were passed down from Defendant Bridges that Plaintiff was to keep his mouth shut regarding

school district practices and Defendant Jimerson began questioning contractors regarding Plaintiff's activities in an apparent attempt to find reasons to terminate his employment. Rumors began to circulate that Plaintiff was going to be fired, and Plaintiff was ultimately requested to resign, and then fired by Superintendent Hull when he refused to resign.

4.14 So far, Defendants have been successful in concealing the full report of the investigation into the purchasing practices and procedures of the school district from public disclosure. Superintendent Hull publically demeaned the former school Board President who initiated the investigation as "disruptive" for wanting to make the full report available to the public.

Plaintiff, and possibly other employees of the District who gave statements critical of practices followed by the Superintendent and her administration have been terminated in retaliation for having furnished information regarding the improper practices being investigated.

V. Count One 42 U.S.C. 0983: First Amendment Retaliation Claim *[Monell* Liability] Against Defendant Grand Prairie Independent School District

5.01 The foregoing paragraphs in this Complaint are incorporated in this count by reference as fully as if set forth at length herein.

50.2 All conditions precedent to Plaintiff's right to recovery herein have been performed or have occurred.

5.03 During the time involved in this action, Grand Prairie Independent School District followed an informal policy or custom that permitted Defendants to violate Plaintiff's right to free speech; i.e., the Defendant School District's policy, custom and practice was to

prevent employees from disclosing or discussing any matter that might cast the District or Superintendent Hull in a negative light and to retaliate against those who did by taking or threatening to take adverse employment action, including termination of employment.

5.04 Superintendent Hull, acting in her capacity as Superintendent of the GPISD, retaliated against and discharged Plaintiff because of his protected speech. She was supported, aided and abetted in her unlawful retaliation against Plaintiff by Defendants Burke Hall, Vicki Bridges, and Phil Jimerson, acting in their official positions with the School District.

5.05 Superintendent Hull and the Defendants were acting in the course and scope of their employment for the Grand Prairie Independent School District when they deprived Plaintiff of his right to free speech.

5.06 At the time of the Plaintiff's discharge, Defendants were acting under color of the laws and regulations of the State of Texas and the Grand Prairie Independent School District.

5.07 At the time of Plaintiff's protected speech, Plaintiff was acting as a private citizen speaking as to a matter of public concern.

5.08 Plaintiff's interest and the interests of the public in the subject matter of his disclosures outweighs any interest of Grand Prairie Independent School District in promoting the efficient operation and administration of government services.

5.09 The adverse employment action taken against Plaintiff would deter a person of ordinary firmness from continuing to engage in the protected speech.

5.10 Plaintiff's protected speech was a substantial and motivating factor in the decision by Defendants to retaliate against and discharge Plaintiff.

5.11 The adverse employment actions taken against Plaintiff culminating in his discharge from employment violated Plaintiff's clearly established constitutional rights and were not objectively reasonable in light of the circumstances.

5.12 Defendants acted willfully, deliberately, maliciously, or with reckless disregard for Plaintiff's right to free speech protected under the First Amendment.

VI. Count Two 42 U.S.C. Sec. 1983: First Amendment Retaliation Claim Against Defendants Burke Hall, Vicki Brides and Phil Jimerson In Their Individual Capacities

6.01 The foregoing paragraphs in this Complaint are incorporated in this count by reference as fully as if set forth at length herein.

6.02 All conditions precedent to Plaintiff's right to recovery herein have been performed or have occurred.

6.03 Defendants Hall, Bridges and Jimmerson directly, knowingly and materially participated in the informal policy or custom of the Defendant School District that permitted them to violate Plaintiff's right to free speech; i.e., which was to prevent employees from disclosing or discussing any matter that might cast the district or Superintendent Hull in a negative light and to retaliate against those who did by taking or threatening to take adverse employment action, including termination of employment.

6.04 Superintendent Hull, acting individually, as well as in her capacity as Superintendent of the

GPISD, retaliated against and discharged Plaintiff because of his protected speech. She was supported, aided and abetted in her unlawful retaliation against Plaintiff by Defendants Burke Hall, Vicki Bridges, and Phil Jimerson, acting individually, as well as in their official positions with the School District.

6.05 At the time of Plaintiff's protected speech, Plaintiff was acting as a private citizen speaking as to a matter of public concern.

6.06 Plaintiff's interest and the interests of the public in the subject matter of his disclosures outweighs any interest of Grand Prairie Independent School District in promoting the efficient operation and administration of government services.

6.07 The adverse employment action taken against Plaintiff would deter a person of ordinary firmness from continuing to engage in the protected speech.

6.08 Plaintiff's protected speech was a substantial and motivating factor in the decision by Defendants to retaliate against and discharge Plaintiff.

6.09 The adverse employment actions taken against Plaintiff culminating in his discharge from employment violated Plaintiff's clearly established constitutional rights and were not objectively reasonable in light of the circumstances.

6.10 Defendants acted willfully, deliberately, maliciously, or with reckless disregard for Plaintiff's right to free speech protected under the First Amendment.

VII. Count Three Damage

7.01 The foregoing paragraphs in this Complaint are incorporated in this count by reference as fully as if set forth at length herein.

7.02 As a direct and proximate result of Defendants' actions, Plaintiff suffered the following injuries and damages.

a. Lost earnings;
b. Loss of earning capacity;
c. Compensatory damages;
d. Loss of insurance coverages and other benefits;
e. Loss of retirement benefits;
f. Costs and Attorney's fees.

VIII. ATTORNEY FEES & COSTS

8.01 Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. § 1988 (b) and 42 U.S.C. §1983.

IX. Jury Trial Demanded

9.01 Plaintiff hereby demands trial by jury of all claims for which he is entitled to demand a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for judgment against Defendants jointly and severally for the following:

(1) Actual damages;
(2) Punitive damages;
(3) Reasonable attorney fees;
(4) Prejudgment and postjudgment interest;
(5) Costs of suit;
(6) Such other and further relief to which Plaintiff may be justly entitled.

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