APPENDIX

APPENDIX

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APPENDIX A

Case: 20-20248 Document: 00515730082 Date Filed: 02/02/2021

United States Court of Appeals

for the Fifth Circuit

No. 20-20248

Christopher Sullivan,

Plaintiff—Appellant,

Versus

Texas A&M University System,

Defendant—Appellee.

Appeal from the United
States District Court for
the Southern District of Texas
USDC No. 4:19-CV-4586

Before Haynes, Higginson, and Oldham, *Circuit Judges*. Andrew S. Oldham, *Circuit Judge*:

Christopher Sullivan sued Texas A&M University for money damages. The district court held that sovereign immunity barred the suit. We affirm.

I.

Sullivan was diagnosed with atrial fibrillation in April 2012. Shortly thereafter, he began training at the Texas A&M University Police Department.

Sullivan sought and received treatment for his condition, and the University eventually offered him employment in data entry and filing.

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Sullivan received a series of poor performance evaluations. The police department terminated him in November 2017. Sullivan then filed disability-discrimination and retaliation claims with the Equal Employment Opportunity Commission. The EEOC issued him a Right to Sue letter.

Sullivan timely filed suit in the United States District Court for the Southern District of Texas. He alleged employment-discrimination claims under Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq*. ("ADA"), and the Texas Commission on Human Rights Act, Tex. Lab. Code §§ 21.001 *et seq*. ("TCHRA"). He further alleged unlawful retaliation in violation of both Title I of the ADA and the Family Medical Leave Act, 29 U.S.C. §§ 2601 *et seq*. ("FMLA"). The suit sought compensatory damages, punitive damages, and attorney's fees.

The district court dismissed all of Sullivan's claims as barred by sovereign immunity. That dismissal was without prejudice. *See Warnock v. Pecos Cnty.*, 88 F.3d 341, 343 (5th Cir. 1996) (holding sovereign-immunity- based dismissals are without prejudice); 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2373, at 756–57

(3d ed. 2008) (explaining that because dismissal for lack of jurisdiction does not reach the merits, the claim "must be considered to have been dismissed without prejudice"). Sullivan timely appealed.

II.

Texas A&M is an agency of the State of Texas, so a suit against the former is a suit against the latter. *Moore v. La. Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014). That's a problem for Sullivan because the Constitution affords States sovereign immunity against suit. *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). And that sovereign immunity is a jurisdictional roadblock. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 64 (1996).

To establish jurisdiction, Sullivan must invoke one of two exceptions to sovereign immunity. First, he could argue Congress validly abrogated the State's sovereign immunity. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). Second, he could argue the State knowingly and plainly waived its sovereign immunity and consented to suit. *See ibid.* Neither exception applies here.

A.

Let's start with abrogation. The ADA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent

jurisdiction for a violation of this chapter." 42 U.S.C. § 12202. This provision at least purports to abrogate the States' sovereign immunity.[1] But the Supreme Court has held that Congress exceeded its constitutional abrogation authority in enacting § 12202. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 12202 as a synonym for the States' broader constitutional immunity. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363–64 (2001) (holding § 12202 constitutes an "unequivocal[]" congressional attempt to abrogate).

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[1] The ADA attempts to abrogate the States' immunity "under the eleventh amendment." 42 U.S.C. § 12202. The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State."

U.S. Const. amend. XI. By its terms, the Amendment does not apply to the situation in today's appeal—where a citizen sues his own State (or an agency of that State). Still, the Supreme Court has often used "Eleventh Amendment immunity" as a synonym for the States' broader constitutional sovereign immunity. *See, e.g.*, *Seminole Tribe*, 517 U.S. 44 (generally using "state sovereign immunity" and "Eleventh Amendment immunity" interchangeably); *cf. id.* at 54 (explaining that the Court understood the Eleventh Amendment to "confirm[]" "the presupposition" that "each State is a sovereign entity in our federal system" (quotation omitted)); *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct.1485, 1496 (2019) ("Although the terms of [the Eleventh] Amendment address only . . . specific provisions . . . , the natural inference from its speedy adoption is that the Constitution was understood . . . to preserve the States' traditional immunity from privatesuits." (quotation omitted)). The Supreme Court has likewise read "eleventh amendment immunity" in

531 U.S. 356, 374 (2001). Accordingly, Sullivan cannot rely on abrogation to overcome Texas's sovereign immunity from his claim under Title I of the ADA.

The same is true of Sullivan's claim under the FMLA. That statute, like the ADA, purports to make States amenable to suit. *See* 29 U.S.C.

§ 2617(a)(2) (creating a cause of action for damages "against any employer (including a public agency)"); *id.* §§ 203(x), 2611(4)(A)(iii) (defining "public agency" to include both "the government of a State or political subdivision thereof" and "any agency of . . . a State, or a political subdivision of a State"). With respect to the FMLA's *family*-care provision, 29 U.S.C.

§ 2612(a)(1)(C), Congress acted constitutionally in making the States amenable to suit. *See Nev. Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721, 724–25 (2003). But Sullivan did not sue under the family-care provision; he sued under the FMLA's *self*-care provision, 29 U.S.C. § 2612(a)(1)(D). And with respect to the latter, Congress exceeded its constitutional powers in trying to make States amenable to suit. *See Coleman v. Ct. of Appeals of Md.*, 566 U.S. 30, 43–44 (2012). Accordingly, Sullivan cannot rely on abrogation to overcome Texas's sovereign immunity from his FMLA claim.

B.

That means Sullivan can overcome sovereign immunity only by showing that Texas knowingly

waived its immunity—that is, consented—to his suit. Sullivan invokes both federal and state law. Neither helps him.

1.

First, the State of Texas did not waive its immunity to suit by accepting financial assistance under federal law. It's true that States can, under certain circumstances, waive their sovereign immunity by accepting federal funds and then violating "section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination.

Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." 42 U.S.C. § 2000d-7(a)(1). Thus, for example, we have held that a State is amenable to suit where it operates a program in violation of the Rehabilitation Act and accepts federal financial assistance for that state program. *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 288–89 (5th Cir. 2005) (en banc).

But Sullivan did not sue under the Rehabilitation Act. He sued under Title I of the ADA and the FMLA. Unlike the Rehabilitation Act, the ADA and the FMLA are not among the statutes mentioned in § 2000d-7(a)(1). So Sullivan's argument

turns on whether the ADA or the FMLA fall within § 2000d-7(a)(1)'s residual clause—that is, whether the ADA or the FMLA constitutes "any other Federal statute prohibiting discrimination by recipients of Federal financial assistance."

Our precedent forecloses Sullivan's argument. In *Cronen v. Texas Department of Human Services*, 977 F.2d 934 (5th Cir. 1992), we addressed the scope of § 2000d-7(a)(1)'s residual clause. Like Sullivan, the plaintiff in that case argued the residual clause covered "any federal statute prohibiting discrimination and involving the distribution of any federal financial assistance." *Id.* at 937. We thought another interpretation was more persuasive—the residual clause reaches "only . . . statutes that deal *solely* with discrimination by recipients of federal financial assistance." *Ibid.* (emphasis added); *accord Sullivan v. Univ. of Tex. Health Sci. Ctr. Houston Dental Branch*, 217 F. App'x 391, 395 (5th Cir. 2007) (per curiam) (finding the ADEA does not fall within § 2000d-7(a)(1)'s residual clause because the "ADEA prohibits age discrimination by 'employers,' not by those who receive federal financial assistance").

That narrower interpretation accords with § 2000d-7(a)(1)'s text. The listed statutes preceding the residual clause all limit their substantive

antidiscrimination provisions to recipients of federal funding. *See* 29 U.S.C. § 794(a) (prohibiting discrimination on the basis of disability in "any program or activity receiving Federal financial assistance"); 20 U.S.C. § 1681(a) (prohibiting discrimination on the basis of sex "under any education program or activity receiving Federal financial assistance"); 42 U.S.C. § 6102 (prohibiting discrimination on the basis of age in "any program or activity receiving Federal financial assistance"); 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color, or national origin in "any program or activity receiving Federal financial assistance").

The residual clause then sweeps in "any other Federal statute" that also prohibits "discrimination by recipients of Federal financial assistance." 42 U.S.C. § 2000d-7(a)(1). So the listed statutes define a set—"statutes that deal *solely* with discrimination by recipients of federal financial assistance." *Cronen*, 977 F.2d at 937 (emphasis added). And a plaintiff seeking to invoke the residual clause must show his cause of action arises under a statute within that defined set. *See Yates v. United States*, 574 U.S. 528, 545 (2015) ("Where general words follow specific words in a statutory enumeration, the general words are usually construed to embrace only

objects similar in nature to those objects enumerated by the preceding specific words." (quotation omitted)). If Congress wanted the residual clause to sweep as broadly as Sullivan's interpretation, it could have written the statute to cover "any other Federal statute prohibiting discrimination." It didn't, and we refuse to render meaningless the words Congress *did* choose. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute." (quotation omitted)).[2]

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[2] Limiting the sweep of the residual clause to "statutes that deal solely with discrimination by recipients of federal financial assistance," *Cronen*, 977 F.2d at 937, alsoreflects the constitutional *source* of waiver conditions in federal funding programs. Pursuant to the General Welfare Clause, Congress may impose obligations on the States as a condition of their receiving federal funding. *See South Dakota v. Dole*, 483 U.S. 203, 207 (1987); U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power . . . to pay Debtsand provide for the common Defence and general Welfare of the United States").

Thus, the "[S]tate may waive its immunity by voluntarily participating in federal spendingprograms when Congress expresses a clear intent to condition participation in the programs on a State's consent to waive its constitutional immunity." *Pederson v. La. State Univ.*, 213 F.3d 858, 876 (5th Cir. 2000) (quotation omitted). So, for example, we have held that TitleIX "operates much in the nature of a contract"—in return for federal funds the State "consent[s] to be sued in federal court for an alleged breach of the promise not to discriminate." *Litman v. George Mason Univ.*, 186 F.3d 544, 551–52 (5th Cir. 1999) (quotation omitted). By contrast, where Congress enacts a statute pursuant to another grant of power, it does not offer States a contractual exchange of funding for a waiver. *See, e.g.*, *Levy v. Kan. Dep't of Soc. & Rehab. Servs.*, 789 F.3d at 1170 (10th

circuits and a number of lower courts. *See Levy v. Kan. Dep't of Soc. & Rehab. Servs.*, 789 F.3d 1164, 1171 (10th Cir. 2015); *Fields v. Dep't of Pub. Safety*, 911 F. Supp. 2d 373, 379 & n.6 (M.D. La. 2012); *Panzardi-Santiago v. Univ. of P.R.*, 200 F. Supp. 2d 1, 9 (D.P.R. 2002).[3]

Like the ADA, the FMLA's substantive provisions cover a far broader range of entities than "recipients of Federal financial assistance." 42 U.S.C. § 2000d-7(a)(1). Under the FMLA, an "employer" may not deny leave to an "eligible employee" for covered medical needs. *See* 29 U.S.C. § 2612(a)(1) (leave requirements); *id.* § 2611(2)(A) (defining "eligible employee"); *id.*

§ 2611(4)(A) (defining "employer"). The FMLA

Cir. 2015) (finding no waiver of sovereign immunity for ADA claims in the Rehabilitation Act's residual clause, in part because "the statutes were enacted under wholly different provisions of the

Constitution"). Our interpretation of § 2000d-7 reflects this dichotomy—only statutes enacted pursuant to the General Welfare Clause fall within the contractual waiver offeredin § 2000d-7(a)(1).

[3] Sullivan also sues under Title V of the ADA, which prohibits certain acts of retaliation. But we recently held: "Title V itself does not abrogate a [S]tate's sovereign immunity. Instead, a plaintiff may bring a retaliation claim against a state entity only to the extent that the underlying claim of discrimination effectively abrogates sovereign immunity of the particular [S]tate." *Block v. Tex. Bd. of L. Exam'rs*, 952 F.3d 613, 619 (5th Cir. 2020) (quotation omitted). Because Sullivan's underlying Title I claim is barred by sovereign immunity, so too is his Title V claim.

defines "employer" as "any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year." *Id.* § 2611(4)(A)(i). And the statute's anti-retaliation provisions are equally broad—they make it unlawful for "any employer" to "interfere with, restrain, or deny the exercise of" substantive FMLA rights. *Id.* § 2615(a)(1). Because the FMLA is not a statute that "deal[s] solely with discrimination by recipients of federal financial assistance," *Cronen*, 977 F.2d at 937, it does not fall within the ambit of § 2000d-7(a)(1)'s residual clause.

Accordingly, Sullivan has failed to show that the State waived its sovereign immunity under § 2000d-7(a)(1).

2.

Finally, Sullivan points to state law to find Texas's waiver to his suit. Again, Sullivan fails. In the TCHRA, the State of Texas waives its immunity to suit in state courts, but it "does not expressly waive sovereign immunity in *federal* court." *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 332 (5th Cir. 2002); *see Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 306–07 (1990).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NORMA SOTO,

Plaintiff,

VS. CIVIL ACTION NO. 4:20-CV-2014

MD ANDERSON SERVICES

CORPORATION and

MD ANDERSON CANCER CENTER,

Defendants.

ORDER

Before the Court is the defendant's, M. D. Anderson Cancer Center, motion to dismiss [DE 16] and the plaintiff's, Norma Soto, response [DE 17]. The Court has reviewed the documents and pleadings and determines that the motion should be Denied.

The defendant states as the bases for dismissal that it enjoys sovereign immunity concerning the plaintiff's ADA and TCHRA claims, pursuant to the Eleventh Amendment to the federal Constitution. Notably, the defendant waited until the eve of the trial to file this motion. Nevertheless, the defendant disputes that the plaintiff has asserted a cause of action that survives a Rule 12(b)(6) motion. The Court

holds the contrary. The plaintiff's suit is sufficiently stated such that the defendant is not confused about her claims. The conduct alleged as having been committed by the defendant is beyond "threadbare rituals." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

The defendant's sovereign immunity defense to the plaintiff's claims must also be denied. The plaintiff asserts causes of action under both federal and state law. Moreover, the defendant receives federal funding and, therefore, has knowingly and voluntarily waived any claim(s) that it might assert under the Eleventh Amendment. See Pederson v. La. State Univ., 213 F.3d 8358, 876 (5th Cir. 2006). The defendant's motion to dismiss is, therefore, Denied in its entirety.

It is so Ordered.

SIGNED on this 29th day of April, 2021

Kenneth M. Hoyt

United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHRISTOPHER SULLIVAN,

Plaintiff,

v. CASE NO. 4:19-CV-4586

TEXAS A&M UNIVERSITY

Defendant.

O R D E R

Pending before the Court is Defendant Texas A&M University's ("TAMU's") Motion to Dismiss. (Instrument No. 6). Plaintiff Christopher Sullivan ("Plaintiff") brings claims against TAMU, alleging violations of (1) the Americans with Disabilities Act ("ADA"), (2) Family Medical Leave Act ("FMLA"), and (3) Texas Commission on Human Rights Act ("TCHRA"). (Instrument No. 1 at 2). Having read and considered said Motion, Plaintiff Christopher Sullivan's Response, and TAMU's Reply, the Court finds that the Motion to Dismiss should be GRANTED.

All claims brought forth by Plaintiff are barred by the Eleventh Amendment immunity. Unlike arguments made in Plaintiff's Response, 42 U.S.C. § 2000d-7(a)(1) does not waive sovereign immunity for the claims at issue. See Coleman v. Court of Appeals of Md., 566 U.S. 30, 43-44 (2012) (holding Congress

did not validly abrogate states' sovereign immunity from suits for money damages under FMLA's self-care provision); Bd. Of Trustees of Univ. of Alabama v. Garrett, 531 U.S. 356, 360 (2001) (holding that suits by employees of governmental entities for money damages under Title I of ADA are barred by Eleventh Amendment); Nelson v. Univ. of Texas at Dallas, 535 F.3d 318, 321 (5th Cir. 2008) (noting that self-care provision was not in response to gender discrimination and, thus, sovereign immunity defense applies).

Furthermore, sovereign immunity bars Plaintiff's TCHRA because Texas has not clearly consented to suit in federal court. *See Pequeno v. Univ. of Texas at Brownsville*, 718 F. App'x 237, 241 (5th Cir. 2018) (noting TCHRA waives Texas's immunity from suits in state court but not in federal court); *Perez v. Region 20 Edu. Serv. Ctr.*, 307 F.3d 318, 332 (5th Cir. 2002). For the foregoing reasons, IT IS HEREBY ORDERED that TAMU's Motion to Dismiss is GRANTED. (Instrument No. 6).

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this __8th__ day of April, 2020

_____

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHRISTOPHER SULLIVAN
CIVIL ACTION NO.:4:19-cv-04586

Plaintiff,

V

TEXAS A&M UNIVERSITY JURY DEMANDED
Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE U.S. DISTRICT COURT JUDGE:

Plaintiff Christopher Sullivan ("Mr. Sullivan" or "Plaintiff") files this Original Complaint for causes of action pleaded below, complaining of and about Defendant Texas A&M University ("TAMU" or "Defendant"), and will respectfully show onto the Court as follows:

[…]

V. FACTS

11. Mr. Sullivan began working for the TAMU PD on June 28, 2012. Mr. Sullivan trained for

approximately 5 months after his hire date. Mr. Sullivan's trainers included Sgt. Paxton and Sgt. Hartman, among others. Neither Hartman nor Paxton was a sergeant during this time of Mr. Sullivan's training.

12. Each trainer gave Mr. Sullivan excellent scores overall during his first 5 months and he was recommended to be put through an abbreviated training program.

13. On February 29, 2012, an Emergency Medical Services vehicle took Mr. Sullivan to an emergency room with an increased heart rate. A month and a half later, in April 2012, Mr. Sullivan was formally diagnosed with atrial fibrillation. In May 2012, Mr. Sullivan had an ablation for atrial fibrillation. Mr. Sullivan had 2 more ablations in 2014, while employed by Texas A&M University Police Department. During his job interview with TAMU PD, he made Sgt. Johnson aware of his heart condition. Mr. Sullivan's attending physicians gave him optimistic recovery prognoses, expecting a full recovery, after the treatment was completed in 2012.

14. On March 19, 2013, Mr. Sullivan was exposed to autoclave overheating and inhalation of smoke while on duty for TAMU PD.

15. On May 6, 2013, Mr. Sullivan was given a new bona fide offer of employment by TAMU PD for Data Entry and Filing, based on Mr. Sullivan's health issues.

16. On May 10, 2013, Dr. James Bond, Mr. Sullivan's attending physician, instructed Mr. Sullivan to stay home until May 13, 2013, and Mr. Sullivan received a "return to work form" from Dr.

Charles Moore. However, Dr. Moore further requested that Mr. Sullivan take leave from May 7 until May 22, 2013, and he released Mr. Sullivan with no restrictions on May 22, 2013.

17. On June 3, 2013, Mr. Sullivan had a follow up for his atrial fibrillation procedure, with a new return to work date of June 18, 2013, as prescribed by the physician.

18. On June 4, 2013, Mr. Sullivan received a sick pool leave withdrawal form for 68 hours from TAMU PD.

19. On June 20, 2013, Dr. Nancy Dickey ordered a radiology brain MRI (sinus tachycardia investigation). Mr. Sullivan received a work release for June 24, 2013 and 80 hours of sick pool leave withdrawal on June 29, 2013.

20. In 2013, prior to requiring unforeseen medical attention, Mr. Sullivan received three quarterly evaluations from Sgt. Paxton, his supervisor at TAMU PD. Sgt. Paxton was a firstyear, inexperienced supervisor during Mr. Sullivan's time with him. The feedback on all three evaluations provided that Mr. Sullivan's performance met or exceeded expectations. However, around the time of Mr. Sullivan's diagnosis and subsequent health leave, Sgt. Paxton's attitude towards Mr. Sullivan started changing. In late 2013, Sgt. Paxton commenced singling out Mr. Sullivan and treating him differently, compared to his other reports. Subsequently, Mr. Sullivan received lower marks during his annual evaluation, which stated that the "improvement was needed." This annual review used the information from "manager's notes," which notes Mr. Sullivan was

not allowed to see or read until after his termination. It is unknown whether Mr. Sullivan was ever able to see the entirety of Sgt. Paxton's manager's notes. However, the ones that were made available to Mr. Sullivan clearly show that some of the notes used, at least in part, were covering the time periods when Mr. Sullivan was receiving good quarterly evaluations.

21. In May 2014, while at a training event in Austin, Mr. Sullivan suffered from another bout of atrial fibrillation, in front of coworkers, and was hospitalized. Mr. Sullivan continued to be impacted by his condition throughout the year, which negatively affected his ability to perform his work on the full schedule. In June 2014, Mr. Sullivan had undergone another procedure to remedy his condition, but, unfortunately, he needed more sick leave hours from TAMU PD in order to recuperate and resume his full duties.

22. In 2015, Mr. Sullivan had a new supervisor, Sgt. Elkins. Sgt. Elkins treated Mr. Sullivan more fairly than Sgt. Paxton. However, seeing positive changes in Mr. Sullivan's mood, TAMU PD's management transferred Mr. Sullivan away from Sgt. Elkins because Mr. Sullivan was not being admonished by Sgt. Elkins, as TAMU PD personnel would prefer.

23. In 2016, Mr. Sullivan was transferred to work under the supervision of Sgt. Rodriguez, a first-year, inexperienced supervisor. Mr. Sullivan went to the police academy with Sgt. Rodriguez. Sgt. Rodriguez picked up right where Sgt. Paxton left off, by treating Mr. Sullivan worse than Mr. Sullivan's non-disabled peers and by creating a work

environment that was by no means conductive to Mr. Sullivan's healing and productivity.

24. Around that time, TAMU PD invested into a system called Guardian Tracking. Sgt. Rodriguez started using the system to document any miniscule problem with Mr. Sullivan's performance. The Guardian Tracking system was used by Mr. Sullivan's supervisors, often at the direction of Lt. Kary Shaffer, to document every issue possible, however minor, to use it against Mr. Sullivan. Mr. Sullivan also knows, from personal conversations with Lt. Shaffer, that Lt. Shaffer's mother had been treated with at least two ablation procedures for the same condition as Mr. Sullivan's. Mr. Sullivan is also aware that Lt. Shaffer knows that his mother saw the same group of doctors based in Austin, Texas, for her condition. Lt. Shaffer was the supervisor over the entire patrol division at the time Mr. Sullivan was terminated.

25. By the end of 2016, Mr. Sullivan was transferred again, this time to Sgt. Hartman's supervision. On a prior internal survey, Mr. Sullivan purposely omitted Sgt. Hartman as a possible choice for his supervisor. Sgt. Hartman utilized the Guardian Tracking system against Mr. Sullivan on many occasions, despite the fact that the system was only to be used to document discussions and not for disciplinary action, per TAMU PD's internal policy. Sgt. Hartman, on at least several of those occasions, used the Guardian Tracking system at the direction of Lt. Shaffer.

26. On January 23, 2017, Mr. Sullivan experienced a medical episode at work. His heart rate rose unexpectedly again, and he drove himself to a

nearby emergency medical service station (EMS). Sgt. Hartman arrived at the EMS station shortly after hearing Mr. Sullivan check out on the radio, and he listened to Mr. Sullivan answering questions about his medical history and medications to the EMS personnel. Sgt. Hartman observed all procedures performed on Mr. Sullivan and heard all conversations that took place in the room. The very next day, a copy of a "Letter of Expectations" was uploaded to Guardian Tracking by Sgt. Rodriguez, targeting Mr. Sullivan's performance which was signed and dated approximately 6 to 7 months prior to this health incident. It is at the very least suspect that TAMU PD would hold on to such letter for a prolonged period of time and upload it the day after Mr. Sullivan's condition recurred.

27. Mr. Sullivan continued to be harassed by other supervisors who utilized the Guardian Tracking to build up a file that would show Mr. Sullivan in a less positive light. Mr. Sullivan's career at TAMU PD came to an abrupt end on November 14, 2017. Mr. Sullivan was called in for a meeting with Chief Ragan and Assistant Chief Robert Meyer. When Mr. Sullivan arrived, he was presented with a letter stating that his employment was terminated, with the pay continuing until November 28, 2017. Mr. Sullivan was not allowed to work for those remaining 2 weeks.

28. Mr. Sullivan was escorted throughout the building to collect his personnel files and personal effects. When Mr. Sullivan received his documents, he noticed that one folder in the office contained all his doctor's notes, medical records, FMLA paperwork, and symptom information, to name a few items. The file

containing all or this information was described to Mr. Sullivan by Karen Terrell as his "Personnel File." It was apparent that Mr. Sullivan's personnel file stood out, compared to other employees' files, because of his extensive medical history, which made him a liability to supervisors at TAMU PD.

29. Mr. Sullivan immediately requested an appeal and a complete investigation of his termination. Mr. Sullivan was promised an investigation and a copy of the report on the findings of the investigation. However, pending the investigation, Mr. Sullivan's termination was marked as a "general discharge"[1], which would make it harder for him to find a reputable job, similar to the one he held at TAMU PD. In the meanwhile, Mr. Sullivan's medical history remained stored in his personnel file compiled during his employment at TAMU PD.

30. Mr. Sullivan was never given a final decision on his appeal, in violation of TAMU PD's own policy, until it was provided to him at a court date in 2018.

31. Mr. Sullivan had worked for TAMU PD for almost five and a half (5 ½) years. Mr. Sullivan's career started out strong, with great grades in training and positive evaluations. Prior to him acquiring a known disability, he earned regular pay increases and promotions, finishing with the rank of a Police Officer III. However, once Mr. Sullivan began to suffer from serious medical problems, his

[1] Plaintiff requested the appeal to change his termination from a "general discharge" to a "honorable discharge." This would have made it easier for Plaintiff to be rehired. Especially, since Plaintiff was never reprimanded

evaluation grades immediately went down, and he was blindsided at a yearly evaluation by "managers' notes" that he was never allowed to see in full.

32. The most insignificant of issues with his performance were scrupulously documented by TAMU PD using Guardian Tracking, just to be used against Mr. Sullivan later on. At the same time, the termination was the only formal disciplinary action that Mr. Sullivan had ever been given. There was no opportunity for remedial training and no form of progressive discipline. After Mr. Sullivan's on-duty medical episode on January 23, 2017, Guardian Tracking was almost immediately resorted to, in order to "build a case" against him to justify his termination.

33. In the University's own HR response, it was documented that Mr. Sullivan's health was discussed in at least one supervisors' meeting, if not more. The following is a direct quote from assistant chief Robert Meyer in response to Mr. Sullivan's original HR complaint after termination:

""Meyer stated that UPD tried very hard to take actions based on his disability early on because of the safety concern (i.e. job change, termination, etc.), but was told they could not according to the law. Since then, Meyer told his supervisors to address performance issues, and not worry about Sullivan's medical issues."

34. Assistant Chief, Robert Meyer, was the direct supervisor over the patrol division at that time. Lt. Kary Schaffer answered directly to Assistant Chief Meyer in the chain of command.

[…]

APPENDIX E

LABOR CODE

TITLE 2. PROTECTION OF LABORERS

SUBTITLE A. EMPLOYMENT DISCRIMINATION

CHAPTER 21. EMPLOYMENT DISCRIMINATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.211. ELECTION OF REMEDIES. A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance.

APPENDIX F

Authority & Funding

TWC's Civil Rights Division (the Division) enforces Texas Labor Code, Chapter 21. The Division enters into an Annual Worksharing Agreement and contract with the U.S. Equal Employment Opportunity Commission (EEOC). The Division also enforces the Texas Fair Housing Act. The U.S. Department of Housing and Urban Development (HUD) enters into a cooperative agreement with the Division.

EEOC and HUD allocate funds to state and local agencies that investigate complaints filed under state or local laws that are substantially equivalent to the federal laws. These funds in general on based on case closures.

Texas Labor Code, Chapter 21, the Texas Fair Housing Act (Texas Property Code, Chapter 301) and other state and federal laws and regulations govern the programs administered by the Division. Other federal and Texas laws and regulations include:

- Title VII of the Civil Rights Act of 1964, as amended
- The Age Discrimination in Employment Act, as amended
- The Americans with Disabilities Act, as amended
- Title VIII of the Civil Rights Act of 1968, as amended

- Texas Administrative Code, Chapter 40, Section 819
- 29 Code of Federal Regulations
- 24 Code of Federal Regulations
- Chapter 419, Texas Government Code (state military training / deployment)

APPENDIX G

THE TEXAS CONSTITUTION

ARTICLE 1. BILL OF RIGHTS

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

APPENDIX H

THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AS RATIFIED BY THE STATES

AMENDMENT XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Note: Article III, section 2, of the Constitution was modified by amendment 11.

APPENDIX I

THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AS RATIFIED BY THE STATES

AMENDMENT XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.