

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — Memorandum opinion affirming grant of summary judgment (9th Cir. Dec. 5, 2025).....	1a
APPENDIX B — Order adopting magistrate’s findings and recommendation and granting summary judgment (D. Or. Sept. 30, 2024)	4a
APPENDIX C — Magistrate’s findings and recommendation (D. Or. Apr. 25, 2024)	7a
APPENDIX D — Order denying rehearing (9th Cir. Jan. 28, 2026)	23a

1a

**APPENDIX A — MEMORANDUM OF THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED DECEMBER 5, 2025**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-6649

D.C. No. 6:19-cv-00420-MK

VAN POUNDS,

Plaintiff-Appellant,

v.

CAMERON SMITH, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY; BRIAN LIGHT,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY; OREGON DEPARTMENT OF
CONSUMER & BUSINESS SERVICES,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon

Mustafa T. Kasubhai, District Judge, Presiding

Argued and Submitted November 19, 2025
Seattle, Washington

*Appendix A***MEMORANDUM***

Before: McKEOWN, W. FLETCHER, and DESAI, Circuit Judges.

Van Pounds appeals from the district court's summary judgment in favor of Cameron Smith and Brian Light. Pounds also appeals the district court's denial of his motion to compel due to the attorney-client privilege and award of costs to Smith and Light. We have jurisdiction under 8 U.S.C. § 1291. We review de novo the district court's grant of summary judgment. *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 789 (9th Cir. 2025). We also review de novo whether the attorney-client privilege has been waived. *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020). We review the district court's cost award for abuse of discretion. *Draper v. Rosario*, 836 F.3d 1072, 1087 (9th Cir. 2016). We affirm.

The district court did not err in granting Smith and Light summary judgment because they are entitled to qualified immunity. Qualified immunity protects government officials sued in their personal capacity from damage awards unless they have violated a clearly established statutory or constitutional right. *Lane v. Franks*, 573 U.S. 228, 243 (2014). A right is clearly established when case law was "earlier developed in such a concrete and factually defined context to make

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix A

it obvious to all reasonable government actors, in the defendant[s'] place, that what [they are] doing violates federal law.” *Shafer v. Cnty. of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir. 2017). Pounds argues that Smith and Light retaliated against him for exercising his First Amendment rights when they (1) disclosed an investigative report in response to a reporter’s public records request, and (2) shared the report with the governor’s office. At the time of the events in this case, there was no case law or other law establishing that either act constituted an adverse employment action under the First Amendment. Whether or not Smith and Light’s treatment of Pounds was appropriate, they are entitled to qualified immunity because it was not established that their conduct violated the First Amendment.

Because Pounds’ suit fails based on qualified immunity, the information he sought in discovery would have made no difference to the suit’s outcome. We therefore need not reach the question of whether the district court erred in denying his motion to compel.

The district court did not abuse its discretion in awarding Smith, Light, and the Oregon Department of Consumer and Business Services costs under Rule 54(d) (1). Fed. R. Civ. P. 54(d)(1) (“Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.”); *see also* 28 U.S.C. § 1920.

AFFIRMED.

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF OREGON, EUGENE DIVISION,
FILED SEPTEMBER 30, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

No. 6:19-cv-00420-MK

VAN POUNDS,

Plaintiff,

v.

CAMERON SMITH; BRIAN LIGHT,

Defendants.

Filed September 30, 2024

ORDER

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation filed by Magistrate Judge Mustafa Kasubhai. ECF No. 134. Judge Kasubhai recommends that Defendants' Motion for Summary Judgment, ECF No. 122, be granted on the basis of qualified immunity.

Appendix B

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, Plaintiff has filed Objections, ECF No. 136, and Defendants have filed a Response, ECF No. 137. The Court has reviewed the F&R, the Objections, the Response, and the record and finds no error. The F&R, ECF No. 134, is ADOPTED and Defendants’ Motion for Summary Judgment, ECF No. 122, is GRANTED. Final judgment shall be entered accordingly.

6a

Appendix B

It is so ORDERED and DATED this 30th day of
September 2024.

/s/ Ann Aiken
ANN AIKEN
United States District Judge

**APPENDIX C — FINDINGS AND
RECOMMENDATION OF THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON, EUGENE DIVISION,
FILED APRIL 25, 2024**

UNITED STATES DISTRICT COURT,
DISTRICT OF OREGON, EUGENE DIVISION

Case No. 6:19-cv-00420-MK

VAN POUNDS,

Plaintiff,

vs.

CAMERON SMITH; AND BRIAN LIGHT,

Defendants.

Filed April 25, 2024

FINDINGS AND RECOMMENDATION

KASUBHAI, United States Magistrate Judge:

Plaintiff Van Pounds (“Plaintiff”) filed this § 1983 action alleging a violation of his First Amendment rights by Defendants Cameron Smith and Brian Light (collectively, “Defendants”). Pl.’s First Am. Compl. (“Pl.’s FAC”), ECF No. 49. Defendants filed a Motion for Summary Judgment on January 8, 2024. ECF No. 122. For the reasons below, Defendants’ Motion (ECF No. 122) should be granted.

*Appendix C***BACKGROUND**

Mr. Pounds was employed by the Oregon Department of Consumer and Business Services (“DCBS”) when he filed as a candidate for the Oregon Supreme Court on March 5, 2018. Decl. Pounds Resp. Mot. Summ. J. (“Pounds Decl.”) ¶¶ 3-5, ECF No. 130. Four days later, Mark Peterson—the Public Information and Communications Director at DCBS—received an email communicating that the Department of Administrative Services (“DAS”) received a public records request (“PRR”) seeking information about Mr. Pounds. Decl. Abrams Supp. Mot. Summ. J. Ex. E (“Abrams Decl. Ex. E”), at 1, ECF No. 123-5. Nigel Jaquiss—a reporter for the Willamette Week newspaper—filed the request. *Id.* at 3.

Mr. Jaquiss contacted Elizabeth Craig from DAS with his first PRR seeking Mr. Pounds’s titles, job classifications, and salaries from January 1, 2015, to March 8, 2018. *Id.* In his request he stated, “It’s my understanding that [Mr. Pounds] used to be director of enforcement [at DCBS] but was demoted to policy analyst in the past couple of years.” *Id.* Ms. Craig informed Mr. Peterson that this was the basis for the request. *Id.* at 1. DAS responded to the initial request by pulling Mr. Pounds’s HR records. *Id.* at 1–2. Ms. Craig emailed Mr. Jaquiss with the requested information, detailing that Mr. Pounds was Principal Executive Manager E (Chief of Enforcement and Securities) and was making \$8,496 per month as of December 1, 2016. *Id.* at 3. She then noted that he was reassigned to Senior Policy Analyst on April 28, 2017, and his salary decreased to \$8,091 per month. *Id.* She

Appendix C

then referred Mr. Jaquiss to DCBS if he had any further inquiries, and she copied Mr. Peterson on the email. *Id.*

In response, Mr. Jaquiss contacted Mr. Peterson and made a second PRR. He wrote the following in reference to his first request:

That information shows a demotion and decrease in pay. Mr. Pounds is running for a seat on the Oregon Supreme Court, which makes his employment history at the state a matter of public interest. Under Oregon's public records law, I am seeking written communication including but not limited to emails, correspondence, investigative reports or other documentation that explains the reasons for Mr. Pounds' demotion and pay cut.

Id. at 4. Mr. Peterson forwarded the request to several DCBS employees—including Brian Light, Cameron Smith, and Nancy Boysen—asking how he should proceed. *Id.* at 7. Mr. Smith was the director of the DCBS at the time, and Mr. Light was Deputy Administrator of the Division of Finance and Corporate Securities as well as one of Mr. Pounds's supervisors. Decl. Abrams Supp. Mot. Summ. J. ("Smith Dep."), 7:6-13, ECF No. 123-1; Decl. Abrams Supp. Mot. Summ. J. ("Light Dep."), 7:12-8:18, ECF No. 123-2. Mr. Light, Mr. Smith, and Ms. Boysen conferred to determine what records would be responsive to the PRR. Smith Dep. 76:11-15.

Appendix C

Mr. Peterson attached a draft letter he wrote in response to the PRR in an email to Brian Light asking for revisions to his letter. Abrams Decl. Ex. E, at 6. Mr. Light responded shortly thereafter by saying that the letter was acceptable and suggested only that he add a table of contents discussing what the response included: (1) rotation paperwork, (2) offer letter to Plaintiff, (3) investigation summary, and (4) investigation notes. *Id.* “Investigation summary” and “investigation notes” referred to an investigation into Mr. Pounds back in May 2015. Decl. Abrams Supp. Mot. Summ. J. (“Peterson Dep.”), at 49:6–19, ECF No. 123-4.

In May 2015, Mr. Light assigned Jay Wayland to investigate Mr. Pounds after receiving a complaint that he was treating female employees differently than male employees. Light Dep. 23:5-17. As part of that investigation, Mr. Wayland created a report of the investigation’s findings (“2015 Report”). Abrams Decl. Ex. E, at 15-33. Although the 2015 Report found that “[a]ction [did] not need to be taken regarding discrimination or retaliation,” it also found that DCBS should be concerned about Mr. Pounds’s management style. *Id.* at 16–17. Multiple witnesses reported problems working with Mr. Pounds. *Id.* at 19-33. One recurring comment from these witnesses called into question Mr. Pounds’s credibility and trustworthiness. *Id.* at 20–21, 24, 27, 29, 31. Based on these comments, Mr. Wayland concluded that Mr. Pounds was “generally found to be the least credible person in the unit.” *Id.* at 15. He recommended that DCBS “determine if [Mr. Pounds] has the skills, abilities, or desire to make immediate improvements and if not, remove [Mr. Pounds]

Appendix C

from his executive service role.” *Id.* at 17. He was then rotated into a temporary position with DCBS in October 2015. *Id.* at 12; Smith Dep. 79:10–15.

On March 26, 2018—a few hours after initially approving Mr. Peterson’s proposed response—Mr. Light emailed Mr. Smith, Ms. Boysen, and Sylvia Vandyke raising concerns about whether the 2015 Report was responsive to Mr. Jaquiss’s PRR. Abrams Decl. Ex. E, at 7. In that email, he stated the following:

I’ve been thinking a lot about this public records request. Might we be providing information that we don’t need to? The public records request is asking specifically for:

“seeking written communication including but not limited to emails, correspondence, investigative reports or other documentation that explains the reasons for Mr. Pounds['] demotion and pay cut.”

The Vamshi Reddy complaint was not found to have merit, therefore it does not explain the reasons for Mr. Pound’s [sic] demotion and pay cut. No adverse action was taken on Mr. Pounds as a result of this investigation. The notes of the investigation were not reason for Mr. Pound’s [sic] demotion and pay cut, evidenced by the fact that Mr. Pounds had never heard of these notes until today. They obviously were not used for coaching

Appendix C

purposes. They [sic] only thing we would have to provide are any emails, if they exist, discussing our desire to offer Mr. Pounds a terminal rotation and his decision to do so.

Am I off base?

Id. After raising this concern, Mr. Smith conferred again with Mr. Light and Ms. Boysen, and they agreed that the investigation report was responsive to the PRR. Smith Dep. 76:13–24. Mr. Smith testified that the comments made during Mr. Pounds’s investigation raised concerns about Mr. Pounds’s management style and seemed relevant to his transition to the analyst role a few months later. *Id.* at 79:10–15. Mr. Light testified that the 2015 Report “did influence decisions around [Mr. Pounds’s] . . . rotation out of management.” Light Dep. 45:1–8.

Prior to sending the documents, Mr. Light called Mr. Pounds into his office to notify him about the PRR and what documents they intended to release in response to it. Light Dep. 107:17–108:21. Mr. Pounds testified that—when he asked about the request—Mr. Light told him, “That’s what you get when you file for public office.” Pounds Decl. ¶ 7. Mr. Light disputes this. Light Dep. 108:22–24. When Mr. Light offered Mr. Pounds the opportunity for a name clearing hearing to publicly respond to the allegations in the 2015 Report prior to its release, *Id.* at 128:10–22, Mr. Pounds responded, “With all due respect, such an offer appears a bit disingenuous at this point in time.” *Id.* at 130:21–131:5; Decl. Pounds Resp. Mot. Summ. J. Ex. 27, ECF No. 130-1.

Appendix C

Mr. Peterson then emailed Mr. Jaquiss responding to his PRR—and he included the 2015 Report. Decl. Abrams Ex. E, at 8-9. Mr. Jaquiss subsequently published an article about Mr. Pounds, entitled *A State Investigation of a Candidate for the Oregon Supreme Court Found Him “the Least Credible Person in the Unit.”* *Id.* at 10. The quoted language came directly from the 2015 Report. *Id.* at 15. Mr. Smith also sent a copy of the PRR response to the governor’s office before the article became published. Smith Dep. 70:10–15. He said he did so because it was a “best practice” to keep his supervisor updated about information regarding a state agency before it hit the press. *Id.* at 67:14–20.

PROCEDURAL HISTORY

In March 2019, Plaintiff filed his Complaint asserting that DCBS, Mr. Light, and Mr. Smith violated both his federal and state due process rights and his federal and state free speech rights. Compl. ¶¶ 34–50. In August 2019, this Court recommended granting Defendants’ Motion to Dismiss in full and dismissing the case with prejudice, and that recommendation was adopted in full. Findings and Recommendation, ECF No. 13; Order, ECF No. 19. Plaintiff appealed, and the Ninth Circuit reversed in part, affirmed in part, and remanded. Notice of Appeal, ECF No. 34; *Pounds v. Smith*, No. 20-35154, 2021 WL 3667229, at *1 (9th Cir. Aug. 18, 2021). The Ninth Circuit affirmed this Court’s dismissal of Plaintiff’s due process claim but reversed and remanded on grounds that Plaintiff’s allegations, if true, could “constitute

Appendix C

adverse employment action” under the First Amendment. *Pounds*, 2021 WL 3667229, at *1. The Ninth Circuit declined to reach the issue of qualified immunity due to the underdeveloped record at the motion to dismiss stage of the case. *Id.* at *3.

On remand, this Court granted Plaintiff leave to amend his Complaint. ECF No. 47; *See* Pl.’s FAC. Defendants then moved to dismiss Plaintiff’s First Amended Complaint. ECF No. 50. This Court granted in part and denied in part Defendants’ Motion. Findings and Recommendation, ECF No. 60. This Court dismissed Plaintiff’s state law claims against all Defendants and Plaintiff’s claim for injunctive relief against Defendant DCBS. Findings and Recommendation, ECF No. 62. This Court denied Defendants’ Motion regarding Plaintiff’s First Amendment claim against Defendants Smith and Light. *Id.* Defendants now move for summary judgment on that claim. ECF No. 122.

STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file, if any, show “that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Substantive law on an issue determines the materiality of a fact. *T.W. Elec. Servs., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). Whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party determines the

Appendix C

authenticity of the dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The moving party has the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a genuine issue for trial. *Id.* at 324.

Special rules of construction apply when evaluating a summary judgment motion: (1) all reasonable doubts as to the existence of genuine issues of material fact should be resolved against the moving party; and (2) all inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *T.W. Elec.*, 809 F.2d at 630.

DISCUSSION

Plaintiff brings a claim under 42 U.S.C. § 1983 alleging that Defendants Smith and Light violated his First Amendment rights by retaliating against him for running for judicial candidacy. Pl.'s FAC ¶¶ 59–75. Plaintiff alleges that Defendants' overly broad response to Mr. Jaquiss's PRR was done with animus to harm Plaintiff's reputation. Pl.'s Resp. Mot. Summ. J. 6–8, ECF No. 129.

Defendants move for summary judgment asserting that they did not violate Plaintiff's First Amendment rights because there is no genuine issue of fact that no adverse employment action occurred here, and—even

Appendix C

if it did—that Defendants articulated a legitimate nondiscriminatory explanation for the action. Defs.’ Mot. 11–13. Additionally, Defendants argue that the suit is barred by qualified immunity. The Court exercises its discretion to take up qualified immunity first, as the issue is dispositive in this case. *Pearson v. Callahan*, 555 U.S. 223, 242 (2009).

This Court may deny qualified immunity at summary judgment in a § 1983 case “only if (1) the facts alleged, taken in the light most favorable to the party asserting injury, show that the officer’s conduct violated a constitutional right, and (2) the right at issue was clearly established at the time of the incident such that a reasonable officer would have understood [his] conduct to be unlawful in that situation.” *Isayeva v. Sacramento Sheriff’s Department*, 872 F.3d 938, 945 (9th Cir. 2017) (internal quotations omitted). Courts have discretion to decide which prong of the analysis to assess first. *Pearson*, 555 U.S. at 236. For the reasons discussed below, this Court finds that Defendants’ conduct did not constitute a clearly established violation of Plaintiff’s First Amendment rights.

When assessing the “clearly established” prong, courts look to the “objective legal reasonableness of the action.” *Id.* at 244 (internal quotation omitted). A right is clearly established where “*every* reasonable official” would know that the conduct violates that right. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (emphasis added) (internal quotation omitted); accord *Rosenbaum v. Washoe Cnty.*,

Appendix C

663 F.3d 1071, 1078 (9th Cir. 2011) (stating that qualified immunity depends on whether “all reasonable officers would agree” that the conduct was unlawful). “Conduct violates a ‘clearly established’ right if ‘the unlawfulness of the action in question [is] apparent in light of some pre-existing law.’” *Ballou v. McElvain*, 29 F.4th 413, 421 (9th Cir. 2022) (quoting *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1151 (9th Cir. 2021)). The plaintiff need not produce directly on-point case law precedent; however, “existing precedent must place the lawfulness of the conduct beyond debate.” *Id.* (internal quotation omitted).

First Amendment retaliation law is governed by *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). *Accord Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009). *Pickering*—and the subsequent cases that followed it—instructs this Court to consider five questions:

(1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff’s protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Appendix C

Id. It is the plaintiff's burden to prove that the first three prongs are satisfied, then the burden shifts to the defendants to satisfy either of the last two prongs. *Id.* at 1070–72. If the plaintiff fails to satisfy a single step in this analysis, the inquiry ends. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 961–62 (9th Cir. 2011).

For summary judgment purposes, Defendants concede that Plaintiff met prongs one and two of the *Pickering* inquiry. The parties disagree whether Defendants' conduct constituted an adverse employment action. Conduct amounts to an adverse employment action if it is "reasonably likely to deter" the plaintiff from engaging in protected speech. *Coszalter v. City of Salem*, 320 F.3d 968, 976–77 (9th Cir. 2003) (stating that examples of adverse employment actions include "an unwarranted disciplinary investigation," "an unwarranted assignment of blame," "a reprimand containing a false accusation," and "the circulation of a petition at the encouragement of management" amongst others). "If the plaintiff does not sufficiently allege that the state retaliated for the employee's exercise of First Amendment rights, there can be no recovery, and qualified immunity should be granted." *Eng*, 552 F.3d at 1071. Plaintiff alleges two adverse employment actions: (1) Mr. Light and Mr. Smith's overinclusive response to Mr. Jaquiss's PRR, and (2) Mr. Smith's decision to send the response to the governor's office.

I. Response to the Public Records Request

Defendants argue that they are entitled to qualified immunity because reasonable officials would not have

Appendix C

known that sending the 2015 Report in response to the PRR would violate Plaintiff's First Amendment rights. This Court agrees. Reasonable officials could disagree as to whether responding to the PRR in the way that Defendants had would violate the First Amendment. Defendants both testified that the 2015 Report played a role in Mr. Pounds's job rotation. Even if the word "demotion" itself was not used, Defendants reasonably understood that these indications of poor management led to Mr. Pounds being reassigned from a supervisory position to a nonsupervisory position. Defendants also conferred with another manager, Ms. Boysen, who also agreed that the 2015 Report was responsive. While there may be a dispute of fact as to whether Defendants' inclusion of the 2015 Report was required, there is no genuine dispute that Defendants took reasonable efforts to appropriately respond to the PRR. Not *every* reasonable official would understand this conduct to be unlawful.

"The plaintiff bears the burden of proof that the right allegedly violated was clearly established at the time of the alleged misconduct." *Romero v. Kitsap Cnty.*, 931 F.2d 624, 627 (9th Cir. 1991). Plaintiff argues that there is a case—*Ulrich v. City and Cnty. of S.F.*, 308 F.3d 968 (9th Cir. 2002)—that clearly establishes Defendants' constitutional violation. This Court disagrees. *Ulrich* is a case where the employer responded to the plaintiff's protests of the organization by subjecting him to an investigation for professional incompetence that could have led to revocation of his job privileges. *Id.* at 972, 977. The plaintiff resigned but retracted that resignation, and the employer refused to rescind his resignation and chose to

Appendix C

file an adverse action report that marred his employment record. *Id.* at 973, 977.

The issue before the court in *Ulrich* was whether the plaintiff set forth sufficient facts alleging an adverse employment action for the claim to survive summary judgment. *Id.* at 981. Importantly, qualified immunity was not at issue in that case. In contrast, here the allegedly adverse employment action arose from the employer's statutory obligation to provide a response to a PRR. The Supreme Court has "repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality." *al-Kidd*, 563 U.S. at 742. *Ulrich* does not clearly establish that Defendants' response to the PRR violated Plaintiff's First Amendment right to run for public office without retaliation. Because Plaintiff has not provided a compelling argument that Defendants' conduct violated a clearly established First Amendment right—and this Court cannot find case law supporting Plaintiff's position—Defendants are entitled to qualified immunity on this claim.

Plaintiff correctly asserts that officials can violate clearly established law even when a case presents novel factual circumstances; however, the Supreme Court has articulated that this applies "where it is *obvious* that there was a violation of clearly established law." *White v. Pauly*, 580 U.S. 73, 80 (2017) (emphasis added). Although a plaintiff need not present a case with "fundamentally similar" factual circumstances, the law at the time of the alleged violation must give the Defendants "fair warning" that their conduct was unconstitutional.

Appendix C

Hope v. Pelzer, 536 U.S. 730, 741 (2002) (holding that “[t]he obvious cruelty inherent in [restraining someone to a hitching post] should have provided respondents with some notice that their alleged conduct violated Hope’s constitutional protection against cruel and unusual punishment”). Here, it is not obvious that releasing potentially overinclusive information in response to a PRR would violate Plaintiff’s First Amendment right to engage in political speech. Absent such an apparent violation of Plaintiff’s constitutional rights here, Defendants are entitled to qualified immunity.

II. Sending the Request to the Governor

Plaintiff argues that Mr. Smith violated his clearly established First Amendment rights by sending the 2015 Report to the governor’s office. Defendants respond that there is no case law precedent clearly establishing that the conduct engaged in by Mr. Smith would violate Plaintiff’s rights. This Court agrees. Mr. Smith reasonably believed that it was part of his job duties to notify his supervisor when potentially negative information may hit the press. Notifying an employer about potentially damaging information is not comparable to, for example, filing an adverse action report. As discussed above, an on-point case is not always necessary to deny qualified immunity; however, this conduct is not so obvious a violation of Plaintiff’s First Amendment rights that all reasonable officials would agree that the conduct was unconstitutional. Because Plaintiff has not established that Mr. Smith’s conduct violated his clearly established First Amendment rights, Defendants are entitled to qualified immunity.

*Appendix C***RECOMMENDATION**

For the foregoing reasons, Defendants' Motion for Summary Judgment (ECF No. 122) should be granted. This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed. R. of App. P. 4(a)(1) should not be filed until entry of the district court's judgment or appealable order. The Findings and Recommendation will be referred to a district judge. Objections to this Findings and Recommendation, if any, are due fourteen (14) days from today's date. *See* Fed. R. Civ. P. 72. Failure to file objections within the specified time may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED this 25th day of April 2024.

/s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge

**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT,
FILED JANUARY 28, 2026**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-6649

D.C. No. 6:19-cv-00420-MK
District of Oregon, Eugene

VAN POUNDS,

Plaintiff-Appellant,

v.

CAMERON SMITH, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY; *et al.*,

Defendants-Appellees.

Filed January 28, 2026

ORDER

Before: McKEOWN, W. FLETCHER, and DESAI,
Circuit Judges.

The panel sua sponte accepts Appellant's late filing
of the petition for panel rehearing or rehearing en banc.

Appendix D

The panel has unanimously voted to deny Appellant's petition for panel rehearing. Judge Desai has voted to deny the petition for rehearing en banc, and Judge McKeown and Judge W. Fletcher have so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing or rehearing en banc (Dkt. 37) is DENIED.

