

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY

RACHEL ANDERSON

PLAINTIFF

VS.

CASE NO. 16 JCV-23-2110

RICK ELLIOTT, INDIVIDUALLY AND  
IN HIS OFFICIAL CAPACITY AS POLICE  
CHIEF OF THE CITY OF JONESBORO,  
HAROLD COPENHAVER, INDIVIDUALLY,  
AND IN HIS OFFICIAL CAPACITY AS  
MAYOR OF THE CITY OF JONESBORO

DEFENDANTS

**RESPONSE TO MOTION TO RECONSIDER ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

Come the Plaintiff, **RACHEL ANDERSON**, by and through counsel, **SUTTER & GILLHAM, P.L.L.C.**; and, for her Response, she states:

1. Defendants appear to be trying to win the Motion to Reconsider based on a typo and a hyper-technical reading of the Order, not the facts, the law, or what is just. Defendants argue that "Plaintiff in her Complaint, cited Article 22 of the Arkansas Constitution, which does not exist." Mot. Recon. para. 3. As Defendants are well aware, Plaintiff's claims are based on Article 2 of the Constitution. An extra 2 does not give them a winning argument. It is clear that the Arkansas Constitution creates a constitutionally protected interest in one's reputation, that may not be taken without due process, that has a stronger textual basis in the Arkansas Constitution, than the interests in reputation created by the U.S. Constitution.

Applicable Constitutional Provisions:

2. *Article 2, Section 2*, of the Arkansas Constitution, states: “**All men** are created equally free and independent, and **have certain inherent and inalienable rights; amongst which are those of enjoying and defending** life and **liberty; of acquiring, possessing and protecting property, and reputation**; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.” (Emphasis added).

3. *Article 2, Section 3*, of the Arkansas Constitution, states: “**The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right**, privilege or immunity; nor exempted from any burden or duty, **on account of race, color or previous condition.**”

4. *Article 2, Section 4*, of the Arkansas Constitution, states: “The right of the people peaceably to assemble, to consult for the common good; and to petition, by address or remonstrance, the government, or any department thereof, shall never be abridged.”

5. *Article 2, Section 6*, of the Arkansas Constitution, states, in pertinent part: “The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions, is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right.”

6. *Article 2, Section 8* of the Arkansas Constitution, states, in pertinent part: “No person shall . . . be deprived of life, liberty or property, without due process of law.”

7. *Article 2, Section 13*, of the Arkansas Constitution, states: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.”

8. *Article 2, Section 21*, of the Arkansas Constitution, states, in pertinent part: “No person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land.”

9. *Article 2, Section 29*, of the Arkansas Constitution, states: “This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.”

### Argument

10. Defendant argues that there is no case under Arkansas law recognizing the right to a name clearing hearing. However, the Arkansas Civil Right Act states: “When construing this section, a court may look for guidance to state and federal decisions interpreting the federal Civil Rights Act of 1871, as amended and codified in 42 U.S.C. 1983, as in effect on January 1, 1993, which decisions and act shall have persuasive authority only.” Defendant is relying in its Brief

on the same federal cases to describe the outlines of a name clearing hearing claim that it argues should be ignored by this Court when deciding if such a right exists. It should not be noted that the due process clauses of the U.S. Constitution do not speak directly to any liberty or property interest in reputation, yet they determined such a right exists.

11. The Arkansas Constitution has expressly recognized that there is a liberty and property interest in one's reputation. See Ark. Const., Art. 2, Sec. 2 ("All men . . . have certain inherent and inalienable rights; amongst which are those of enjoying and defending . . . liberty; of acquiring, possessing and protecting property, and reputation . . .").

12. Furthermore, the Arkansas Constitution has expressly stated that such a right may not be taken without due process. "No person shall . . . be deprived of life, liberty or property, without due process of law." Ark. Const. Art. 2, Sec. 8. Furthermore, "no person shall be . . . disseized of his estate, freehold, liberties or privileges; . . . or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land." Ark. Const., Art. 2, Sec. 21. The constitution indicates that one who abuses the right of speech may be held responsible. Ark. Const., Art. 2, Sec. 6. Finally, anyone who is wronged is entitled to a remedy. Ark. Const., Art. 2, Sec. 13. In sum, the right to a name clearing hearing is far stronger, far clearer, and far more expansive than any such right under the U.S. Constitution, because of the express, clear nature of the language addressing issues of reputation.

13. This has been exacerbated by the fact that the stigmatizing statements were made for retaliatory reasons, that in themselves are a violation of the Arkansas Constitution. Ark. Const., Art. 2, Sec 3, 4, 6, 13, 29.

14. Defendants wrongly argue that: there was no finding of stigma; that the allegations Anderson made were conclusory; that the allegations against Anderson were not shown to be false; and that there was no finding of how the statements stigmatized Anderson (also contradictorily arguing that the stigma the Court found as not enough). That completely misreads the Order. The Court noted that a finding of “irreparable harm” was needed to issue an injunction. Order, p. 2, para. 2. The Court noted that the termination letter made a false claim that she was being fired in connection with misuse of a city vehicle, which undermined trust and confidence in her. Ord., p. 3, para. 5, 7, 9. Then, the letter was improperly released in violation of the FOIA, and publication was made of those allegations, in connection with statements indicating she had betrayed them, violated city policy, including the ethics policy. Ord., p. 5-6, para. 13-16. Furthermore, although it was not cited in the Order specifically, the mayor testified that the statements involved dishonesty and violations of the law, that impinged on her professional reputation and could make it hard for her to get hired. Anderson has testified that she has been confronted in public about these issues, and has had difficulty finding a reasonable job offer due to the publicity. All of this established irreparable harm. Ord., p. 6-7, para. 18-19.

15. Defendants argue that Plaintiff is responsible for the publication because she told a member of the City Council she had been fired. If she feels her termination was illegal she has a right to petition. She cannot be blamed for exercising that right. Furthermore, the initial stigmatizing statement was placed in the file, when the Defendants knew it would inevitably become public. placing false allegations in a personnel file is sufficient to satisfy the element of publication. *Donato v. Plainview-Old Bethpage Cent. Sch. Dist.*, 96 F.3d 623, 631 (2d Cir. 1996); *Brandt v. Board of Coop. Educ. Servs.*, 820 F.2d 41, 45 (2d Cir. 1987); *Velger v. Cawley*,

525 F.2d 334, 336 (2d Cir. 1975), rev'd on other grounds sub nom. *Codd v. Velger*, 429 U.S. 624, 51 L. Ed. 2d 92, 97 S. Ct. 882 (1977). We have recognized, in fact, that this is the very action that circulates the stigmatization. *Valmonte v. Bane*, 18 F.3d 992, 1000 (2d Cir. 1994). In *Rosenstein v. Dallas*, 876 F.2d 392, 396 n.6 (5th Cir. 1989), the Fifth Circuit stated: "An employee may prove that the government agency is likely to make the charges public or that information about the charges is available to the public, although not publicized by the government. See *Wells*, 736 F.2d at 256; *Yakima Police Patrolman's Ass'n v. City of Yakima*, 2014 U.S. Dist. LEXIS 58017 (E.D. Wash. 2014).

16. Defendants make the ludicrous, and conclusory, allegation, that because Anderson's email requesting her name clearing hearing did not go to the Chief, but rather the Mayor and Council, it does not count because the Jonesboro police department is her employer. Who is a legal entity? The municipality of Jonesboro is a fictional person that can sue and be sued, not the police department. Who issues Anderson a W-2? The City of Jonesboro. Who is the CEO of Jonesboro? The mayor. If one is suing Jonesboro, who is able to accept service of a lawsuit? The mayor. Who is the Chief's boss, and can hire and fire him? The Mayor. Jonesboro, not the PD, is her employer.

17. Defendants argue that a name clearing hearing is not appropriate for preliminary injunctive relief. This is wrong as well. See *Estiverne v. Esernio-Jenssen*, 908 F.Supp.2d 305 (E.D.N.Y. 2012); *Joyce v. Potter*, 2006 U.S. Dist. LEXIS 109548 (M.D. Fla. 2006).

18. Finally, as to the scope of the hearing, that is a matter of law, and there is a split of authority. The cases going the way the Court has chosen include two Courts of Appeal. *McGhee v. Draper*, 564 F.2d 902, 911 (10th Cir. 1977) ("[W]e agree that in the circumstances of this case

due process required that the accusers of plaintiff, who were attacking her morality and fitness as a teacher, be heard only where plaintiff could confront and cross-examine them.”); *Campbell*, 741 F.2d at 1346 (11th Cir.) (holding that due process requirements were satisfied where the plaintiff had "opportunity to hear and cross-examine all adverse witnesses and to attempt to rebut their claims of insubordination and mishandling of funds”). Given that the textual basis for a name-clearing hearing is even stronger under the Arkansas Constitution than the federal constitution, it makes sense that the extent of relief would be greater as well.

**WHEREFORE**, Plaintiff, **RACHEL ANDERSON**, prays for an Order granting her Motion for a Preliminary Injunction and requiring Defendants to provide her with a name-clearing hearing before the City Council, with the right to testify and to call and cross-examine witnesses, including the Mayor, the Chief, and Bill Campbell; and, for all other proper relief.

Respectfully submitted,

By: /s/ Lucien Gillham and Luther Sutter  
Luther Oneal Sutter, Esq., ARBN 95031  
Lucien R. Gillham, Esq., ARBN 99199  
Attorneys for Plaintiff  
**SUTTER & GILLHAM, P.L.L.C.**  
1501 N Pierce, Ste. 105  
Little Rock, AR 72207  
501/315-1910 – Office  
501/315-1916 - Facsimile  
[Luther.sutterlaw@gmail.com](mailto:Luther.sutterlaw@gmail.com)  
[Lucien.gillham@gmail.com](mailto:Lucien.gillham@gmail.com)

CERTIFICATE OF SERVICE

I certify the foregoing has been e filed with the Arkansas Courts on this the 12th day of February 2024, and that the e filing system shall serve via email:

All counsel of record

By: /s/ Lucien Gillham and Luther Sutter