

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH WIGHTMAN and DONALD)	
ROWE,)	
)	
Plaintiffs,)	
)	No. 19-CV-2344
v.)	
)	
WAUCONDA TOWNSHIP HIGHWAY)	JURY TRIAL DEMANDED
DEPARTMENT, SCOTT WEISBRUCH,)	
individually and in his official capacity)	
as WAUCONDA TOWNSHIP HIGHWAY)	
COMMISSIONER, and GLENN)	
SWANSON, individually,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs, Joseph Wightman and Donald Rowe, by their attorneys, Keith L. Hunt and Bradley E. Faber of Hunt & Associates, P.C., complain against Defendants Wauconda Township Highway Department, Scott Weisbruch, individually and in his official capacity as Wauconda Township Highway Commissioner and Glenn Swanson, individually and in his official capacity as Wauconda Township Supervisor as follows:

I.
NATURE OF THE ACTION

1. Plaintiffs Joseph Wightman (“Wightman”) and Donald Rowe (“Rowe”) bring this case seeking monetary damages, declaratory judgment, and permanent injunctive relief to prevent Defendants’ from continuing to deprive Plaintiffs of their rights under the United States Constitution. Plaintiffs bring First and Fourteenth Amendment claims based on Defendants’ retaliatory discharge because Plaintiffs

exercised free speech and political association under 42 U.S.C. §§ 1983 and 1988, the First and Fourteenth Amendments and for state law causes of action.

II. JURISDICTION AND VENUE

2. This Court has federal question jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343.

3. This Court has supplemental jurisdiction over Plaintiff's state law causes of action under 28 U.S.C. §1367. Plaintiff's state law claims arise out of the same nucleus of operative fact as Plaintiff's federal law claims.

4. Declaratory and injunctive relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

5. Venue is proper in the Northern District of Illinois as all parties reside within the district and all of the relevant actions occurred within this district.

III. THE PARTIES

6. The Plaintiff Joseph Wightman ("Wightman") is a resident of McHenry, McHenry County, Illinois.

7. The Plaintiff Donald Rowe ("Rowe") is a resident of Lake Zurich, Lake County, Illinois.

8. Defendant Scott Weisbruch ("Weisbruch") is a resident of Wauconda, Lake County, Illinois.

9. The Wauconda Township Highway Commissioner is an elected position empowered with statutory powers, duties and responsibilities under the Illinois Highway Code.

10. The Highway Commissioner operates the Wauconda Township Highway Department (the “Department”) and functions separately as a distinct entity from the Township itself.

11. The Illinois Highway Code gives the Township Highway Commissioner sole authority to “employ labor” for the Department.

12. Beginning in or around November, 2008, and continuing until May 26, 2017, Wightman was employed as a “Highway Maintenance Worker” with the Department and for the Highway Commissioner.

13. At all times between November, 2008 and May 26, 2017, the Department was Plaintiff Wightman’s employer.

14. Beginning in or around January, 2014, and at all times until May 26, 2017, Rowe was employed as a “Highway Maintenance Worker” with the Department.

15. At all times between January, 2008 and May 26, 2017, the Department was Plaintiff Rowe’s employer.

16. Weisbruch was elected Wauconda Township Highway Commissioner (“Highway Commissioner”) in April, 2017 and took office on or about May 15, 2017.

17. At all times beginning May 15, 2017-May 26, 2017, Wiesbruch was Plaintiffs’ employer.

18. As Highway Commissioner, Weisbruch was the final policymaker for employment decisions and employment policy within the Highway Department.

19. At all times, Plaintiff Wightman performed his job duties with skill, confidence and professionalism.

20. At all times, Plaintiff Rowe performed his job duties with skill, confidence and professionalism.

21. Wauconda Township (the "Township") is an Illinois township corporation organized under the Illinois Township Code.

22. Although the Highway Department is a separate governmental entity from the Township, the Highway Department relies on the Township to approve its budget and appropriate financial resources to the Highway Department for operational needs.

23. Defendant Glenn Swanson ("Swanson") is a resident of Wauconda, Lake County, Illinois.

24. At all times from 2005 until the present, Swanson served as the elected Wauconda Township Supervisor.

25. As Supervisor, Swanson is the Chief Law Enforcement Officer of the Township and a policymaker for Wauconda Township.

26. As Supervisor, Swanson formulates Township policy regarding how it allocates financial resources to the Highway Department.

FACTS

27. The Wauconda Township Highway Commissioner and the Department maintains and improves designated Wauconda Township District roadways and adjacent drainage areas.

28. The Commissioner and the Department consistently employed numerous full-time, part-time and seasonal Highway Maintenance employees.

29. The Highway Department did not have formal job descriptions for its Highway Maintenance employees.

30. Highway Maintenance employees' duties generally include such things as plowing, grading and resurfacing designated roadways within the district, excavating and mowing adjacent ditches, maintaining and repairing roadway signage and barriers and maintaining and repairing the Department's equipment and vehicles.

31. Plaintiffs both worked as Highway Maintenance employees and performed the above described manual labor and mechanical job duties as part of their employment.

32. Plaintiffs were not policymakers.

33. Plaintiffs did not advise the Highway Commissioner on policy issues.

34. Plaintiffs' essential job duties were not differentiated from those of other Wauconda Township Highway Maintenance employees.

35. From 2005 and continuing until May, 2017, Joe Munson served as the Wauconda Township Highway Commissioner.

36. Prior to 2016, Highway Commissioner Munson and Supervisor Swanson had a political falling-out, with significant issues including Munson's decision to prioritize certain roadway improvements and Munson's decision on what equipment and methods were best to deal with snow removal.

37. Swanson did not have supervisory authority over Highway Department personnel or authority to dictate which projects were addressed in which order.

38. Swanson acted without authority when he told Highway Department personnel what projects to work on and how certain projects should be completed.

39. Highway Commissioner Joe Munson explicitly informed Highway Department personnel, including the Plaintiffs not to listen to Swanson's instructions, but instead to follow his (Munson's) instructions.

40. When Joe Munson opposed Swanson's road improvement requests, Swanson politically turned against Munson and vowed to find a Highway Commissioner that would do things his way.

41. In 2016, Swanson recruited Weisbruch to run for Wauconda Township Highway Commissioner in the April, 2017 Wauconda Township election.

42. Swanson provided campaign resources to Weisbruch in the lead up to the 2017 township election.

43. Swanson set up and served as Chairman of the Wauconda Township for the People Political Action Committee which promoted Weisbruch, and a slate of other Swanson-allies in the 2017 campaign.

44. Joe Munson chose not to run again, but instead supported his brother, James Munson for the Highway Commissioner position, in opposition to Wiesbruch.

45. Joe Munson and James Munson shared the same political vision for the Wauconda Township roadways, including which improvements should be prioritized, and both opposed Swanson and Weisbruch's alternative vision.

46. Wightman was an avid political supporter for James Munson's election in 2017.

47. Wightman appeared with candidate James Munson and supported him in at least three public events, including at the Township hall.

48. Wightman spoke with more than twenty Wauconda Township residents supporting James Munson during the 2017 campaign and in the lead-up to the election.

49. Wightman also helped set up campaign signs supporting James Munson in advance of the April 4, 2017 election.

50. Wightman's support for James Munson's policies, vision and election campaign constituted protected activity under the First Amendment of the United States Constitution.

51. Plaintiff Rowe was an avid political supporter for James Munson's election in 2017.

52. Rowe appeared with Munson in public events, including at the Township hall.

53. Rowe met and spoke with more than fifteen Wauconda Township residents supporting James Munson during the 2017 campaign and in the lead-up to the election.

54. Rowe promoted and supported James Munson to Wauconda Township residents that were also members of his Mason Lodge, made them aware of the upcoming election and encouraged them to get out and vote for James Munson on April 4, 2017.

55. Plaintiff Rowe's support for James Munson's policies, vision and election campaign constituted protected activity under the First Amendment of the United States Constitution.

56. On April 4, 2017, Weisbruch defeated James Munson in the Wauconda Township election.

57. Weisbruch could not and did not take office until May 15, 2017.

58. Joe Munson continued to hold the office of Wauconda Township Highway Commissioner until May 15, 2017.

59. On April 7, 2017, Swanson visited the Highway Commissioner's building while Munson was not at the office.

60. Swanson brought with him one of the Munson election signs identical to those which Plaintiff Wightman had helped set out in the community and told Rowe and Wightman that he knew or believed they had set out the signs and wanted to return the sign to them.

61. Swanson attempted to terminate Plaintiffs because they backed the Munsons, telling Rowe, while looking at Wightman: "You're fired. Get your shit and get out of here."

62. The Highway Commissioner has authority to hire, employ and terminate Highway Maintenance employees.

63. The Township Supervisor does not have authority to terminate Highway Maintenance employees.

64. Swanson attempted to terminate Plaintiffs without authorization from the Highway Commissioner, and without the legal authority to do so.

65. Rowe told Swanson that Joe Munson was still his boss and that Swanson did not have authority over employees at the Highway Department.

66. Swanson became very angry and told Rowe and Wightman that he knew they supported Munson and to “[s]tart looking for a new job.”

67. Swanson yelled at Plaintiffs that “If you two had any brains, you’d get out of here now. Once my guy [Weisbruch] gets in, you’ll be fired so fast your head will spin.”

68. On May 26, 2017, shortly after Weisbruch was sworn into office, and immediately after Rowe returned from a two-week vacation, Weisbruch terminated both Wightman and Rowe.

69. Weisbruch hired several employees in Plaintiffs’ stead, including Dennis Piehl, who had previously worked with and supported Weisbruch.

COUNT I
FIRST AMENDMENT RETALIATION CLAIM
(Wightman and Rowe against Weisbruch, the Wauconda
Township Highway Department, and Swanson)

70. Plaintiffs allege, adopt and incorporate by reference the allegations contained in paragraphs 1 through 69 as and for this paragraph.

71. At all times, Plaintiffs had a Constitutional Right under the First Amendment of the United States Constitution to freedom of speech and freedom of association. These rights are enforceable through 42 U.S.C. § 1983.

72. As Highway Maintenance employees, Plaintiffs’ positions did not involve policymaking duties or discretion.

73. The Highway Maintenance position did not advise elected officials on policy.

74. Political affiliation or support is not an appropriate prerequisite for the effective performance of the Highway Maintenance position which Plaintiffs held and from which they were terminated.

75. Plaintiffs, as Highway Maintenance employees did not supervise any other employees, but instead worked shoulder-to-shoulder with each other and with other full-time, part-time and seasonal co-workers to perform the manual and mechanical duties of the position.

76. Plaintiffs were duty-bound to follow standard operating procedures, municipal ordinances and state and federal statutes and regulations, and the instruction of the Highway Commissioner in the performance of their job function.

77. In 2016 and 2017, Plaintiffs exercised their right to free speech by publicly speaking to others in the community in support of James Munson's election campaign and in opposition to Weisbruch's election campaign.

78. Weisbruch terminated Plaintiffs because Plaintiffs publicly supported Joe Munson and James Munson's policies and vision for the Wauconda Highway District.

79. Weisbruch terminated Plaintiffs because Plaintiffs publicly supported James Munson's election campaign.

80. Weisbruch terminated Plaintiffs because Plaintiffs publicly opposed Weisbruch in the 2017 election.

81. Weisbruch retained Highway Department employees that supported his candidacy and who supported his political ally, Swanson.

82. Weisbruch replaced Plaintiffs, including with one of his own political supporters.

83. Alternatively, Swanson acted as a cat's paw and insisted Weisbruch terminate Plaintiffs in retaliation for their support for the Munsons, opposition to Weisbruch and Swanson and in return for Swanson's own political support of Weisbruch in the 2017 campaign.

84. Weisbruch, as Highway Commissioner and a final policymaker in the Township Highway Department implemented a custom, policy and practice by which he terminated employees that supported his political opponent's candidacy and opposed his own.

85. Weisbruch acted under color of law and used and/or misused his authority and official position as Wauconda Township Highway Commissioner.

86. Weisbruch is personally involved in the wrongful conduct about which Plaintiffs complain.

87. Even before Weisbruch took office, his political ally, Swanson acted without authority when he attempted to terminate Plaintiffs and told Plaintiffs they were terminated.

88. Swanson acted under color of law and used and/or misused his authority and official position as Wauconda Township Supervisor.

89. Swanson acted intentionally and with a deliberate or reckless disregard for the Plaintiff's constitutionally protected rights of free speech, free expression and free association.

90. Defendants have violated Plaintiff' rights guaranteed by the First Amendment to the United States Constitution, enforceable through 42 U.S.C. §1983, causing Plaintiffs' injuries and damages.

91. Wiesbruch and the Wauconda Highway Department retaliated against Plaintiffs for exercising their First Amendment rights.

92. Plaintiffs have suffered substantial losses by being terminated, including losing salary and benefits and emotional distress.

COUNT II
VIOLATION OF 1983-EQUAL PROTECTION (AGE)
(by all Plaintiffs against all Defendants)

93. Plaintiffs adopt, reallege and incorporate by reference all of paragraphs 1-92 as and for this paragraph.

94. Plaintiffs at all relevant times were members of the protected class based upon their political affiliation – supporting the Munsons and opposing the Wauconda Township for the People political slate of candidates.

95. Weisbruch was the actual final policymaker with respect to employment policies and decisions within the Wauconda Township Highway Department following May 15, 2017, including the decision to terminate Plaintiffs.

96. Swanson was the cat's paw or the *de facto* final policymaker with respect to employment policies and decisions following the 2017 municipal and township election, including the decision to terminate Plaintiffs.

97. At all relevant times the Defendants had a custom, policy and/or practice based upon their actual practices and based upon the decisions of one or

more of its final policy makers to discriminate against persons, such as Plaintiffs, on the basis of their political affiliation.

98. Defendant Weisbruch, as a final policymaker, intentionally discriminated against Plaintiffs based on their political affiliation by giving more favorable treatment (hiring, promotion and retention) to employees that supported Swanson, and the Wauconda Township for the People political slate of candidates.

99. Weisbruch acted under color of law and misused his authority and position as Wauconda Township Highway Commissioner to rid the office of the employees that opposed the Wauconda Township for the People political slate of candidates and retain and hire employees that supported the Wauconda Township for the People political slate of candidates.in the Plaintiffs' stead.

100. Based upon the decision of an actual and/or *de facto* final policymaker who was empowered and authorized by custom to decide to terminate the Plaintiffs based on their political support and affiliation, the Defendants violated the Plaintiffs' right to equal protection and/or turned a blind eye toward its discriminatory practices.

101. In 2017, Defendants intentionally acted to hire employees that supported the Wauconda Township for the People political slate of candidates into Highway Maintenance positions.

102. Defendants did not terminate the shortest serving Highway Maintenance employees.

103. Defendants did not terminate the least experienced Highway Maintenance employees.

104. Defendants' conduct was to terminate Plaintiffs because they supported the Munsons and opposed Swanson, Weisbruch and the Wauconda Township for the People political slate of candidates.

105. Plaintiffs were treated less favorably than similarly situated employees that supported Swanson, Weisbruch and the Wauconda Township for the People political slate of candidates.

106. There is no rational basis for Defendants' treatment of Plaintiffs.

107. The Plaintiffs have been damaged as a result of the constitutional violations and deprivation of their right to Equal Protection.

COUNT III
TORTIOUS INTERFERENCE WITH EMPLOYMENT CLAIM
(By All Plaintiffs Against Swanson)

108. Plaintiff re-alleges, adopts and incorporates by reference the allegations contained in paragraphs 1-107 as and for this paragraph.

109. During Plaintiffs employment, Swanson repeatedly demanded Plaintiffs to work on certain projects and instructed them how to perform their jobs.

110. Because Swanson's demands were contrary to the work Plaintiffs' supervisor, Joe Munson wanted them to do, Plaintiffs rejected Swanson's demands.

111. Defendant Swanson was politically influential and well-known in Wauconda Township and the surrounding community.

112. Swanson was not authorized to take materially adverse employment actions against Plaintiffs because only the Wauconda Township Highway Commissioner has authority to take such actions with regard to Township Highway Department employees.

113. Because Plaintiffs refused to do their job the way that he wanted, Swanson agreed to support Weisbruch in the election, and used his political influence and campaign finances to help Weisbruch become elected in exchange for Weisbruch's promise that he would terminate Plaintiffs.

114. Swanson took steps to interfere with and terminate Plaintiff's employment, including that he attempted to terminate Plaintiffs himself, and upon information and belief demanded Weisbruch terminate Plaintiffs.

115. In exchange for Swanson's financial and public support and publicity for his campaign for Township Highway Commissioner, Weisbruch agreed to terminate and did terminate Plaintiffs.

116. Weisbruch's agreement to terminate Plaintiff was the *quid pro quo* for Swanson's financial and political support of Weisbruch.

117. Swanson's actions caused Weisbruch to terminate Plaintiffs and caused the Wauconda Township Highway Department to violate the terms and conditions of Plaintiffs' employment.

118. As a result of Swanson's intentional and tortious conduct, Plaintiffs were damaged and continue to suffer damages.

COUNT IV
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(All Plaintiffs Against Swanson)

119. Plaintiff re-alleges, adopts and incorporates by reference the allegations contained in paragraphs 1-118 as and for this paragraph.

120. Swanson was aware that Plaintiffs had a prospective economic expectancy through their expected continued employment with the Wauconda Township Highway Department.

121. Swanson was aware that Plaintiffs could only be terminated by the Wauconda Township Highway Commissioner.

122. Upon information and belief, Swanson agreed to support and rally others to support Weisbruch so long as Weisbruch terminated Plaintiffs upon taking office.

123. Swanson's actions caused Weisbruch to terminate Plaintiffs and caused the Wauconda Township Highway Department to deny Plaintiffs the prospective economic advantage expected through continued employment.

124. As a result of Swanson's intentional and tortious conduct, Plaintiffs were damaged and continue to suffer damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court:

A. Enter a declaratory judgment that defendants' acts and conduct are in violation of Plaintiffs' rights under the First Amendment to the United States Constitution, as well as in violation of Illinois state law;

B. Permanently enjoin defendant from continuing to violate Plaintiffs' rights under the First Amendment, by ordering that the Defendant Wauconda Township Highway Commissioner:

1) reinstate Plaintiffs to their positions as Highway Maintenance workers;

2) restore Plaintiffs' seniority, salary, benefits and pension contributions;

3) operate the Highway Commissioner's office and make personnel decisions without regard to whether employees or job applicants politically supported the Highway Commissioner.

- C. Award Plaintiffs their lost past and future wages and benefits;
- D. Award Plaintiffs front pay, if appropriate;
- E. Award Plaintiffs appropriate compensatory damages;
- E. Award Plaintiffs punitive damages (against Weisbruch and Swanson, only);
- G. Award Plaintiffs prejudgment interest;
- H. Award Plaintiffs reasonable attorneys' fees and costs of litigation; and
- I. Grant such other relief as is just and necessary.

PLAINTIFF DEMANDS A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all issues so triable in the matter.

Respectfully submitted,
Hunt & Associates, P.C.

/s/ Keith L. Hunt (Electronically Filed)
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