

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

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| THEODORE ROBERT                           | ) | FOR THE NORTHERN DISTRICT<br>OF INDIANA |
| Plaintiff                                 | ) |   |
| V.  | ) | CASE NO.                                |
| )   | ) |   |
| CITY OF SOUTH BEND INDIANA                | ) | JURY DEMAND                             |
| Pete Buttigieg, Mayor, City of South Bend | ) |   |
| Indiana, Charles Hurley, Jeffrey Walters, | ) |   |
| Lee Ross, Andrea Beachkovsky, Robert      | ) |   |
| Yearly, Catherine Toppel and Janice Hall, | ) |   |
| Individually                              | ) |   |
| Defendants                                | ) |   |

**I. JURISDICTIONAL STATEMENT**

Jurisdiction of this court invoked pursuant to Sections 1331 and 1333.

Venue in this action is proper in the Northern District of Indiana under 28 U.S.C. Sec. 1331 (b).

This action brought by Plaintiff Theodore Robert, under the provisions of 42 U.S.C. §§ 1983, 1988. And Title VII of the Civil Rights Act of 1964, 1991 and 42 USC Section 2000e, et seq. to redress the deprivation of rights, privileges and immunities secured by the constitution and laws of the United States, including but not limited to the First (speech) and Fourteenth (due process) Amendments to the United States Constitution under the color of state law.

Plaintiff filed complaints with the Equal Employment Opportunity Commission (EEOC) on August 30 2012 and October 30 2012, alleging discrimination based on race and retaliation, including workplace harassment. The U.S. Department of Justice issued Notices of Right to Sue on May 7 2013 informing complainant that he had the right to institute a civil action under Title

VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the South Bend Police Department, et al., No. 24M201300022 and No. 24M201300292. Copies of the Notices sent to Indianapolis District Office, EEOC and South Bend Police Department. (Ex. 1 and 2)

The notices not taken to mean that the Department of Justice has made a judgment as to whether or not the claims were meritorious. The Department of Justice mailed notice of suit rights on May 8 2013. Plaintiff filed Complaint on August 7 2013 within 90 days of receipt of the notice of suit rights.

## II. PLAINTIFF

Theodore Robert (Robert), African-American male and at all times relevant to this Complaint a resident of St. Joseph County, IN. and employed as a police officer by the City of South Bend (“COSB”).

## III. DEFENDANTS

1. The City of South Bend Indiana, a municipal corporation, is a political subdivision of the State of Indiana but neither a state agency nor an instrumentality or arm of the State of Indiana.

2. COSB at all times relevant to this Complaint had more than 15 employees.

3. Pete Buttigieg (“Mayor Buttigieg”), Caucasian male, at all times relevant Mayor of the City of South Bend and held final policymaking authority for the City of South Bend and the South Bend Police Department.

4. Jeffrey Walters (Walters), Caucasian male at all times relevant to this Complaint Chief of the Patrol Division of the South Bend Police Department (“SBPD”). As Chief of the

Patrol Division, Walters empowered by COSB to take tangible employment actions against Robert.

5. Charles Hurley ("Hurley"), Caucasian male at all times relevant to this Complaint Acting Interim Police Chief of the COSB Police Department. As Chief of Police of the South Bend Police Department, Hurley empowered by COSB to take tangible employment action against Robert.

6. Lee Ross ("Ross"), African-American male at all times relevant to this Complaint Lieutenant and Head of Internal Affairs for the SBPD. As SBPD Lieutenant, Ross empowered by COSB to take tangible action against Robert.

7. Catherine Toppel, Director City of South Bend Code Enforcement Department.

8. Andrea Beachkofsky (Beachkofsky), Caucasian female at all times relevant to this Complaint, Assistant City Attorney for the COSB and liaison to the SBPD. As Assistant City Beachkofsky empowered by the COSB to take tangible action against Robert by recommending that Robert be terminated.

9. Robert Yearly, Caucasian male, Manager of the COSB Risk Management Department, empowered by COSB to take tangible action effecting Robert's employment with the COSB.

10. Janice Hall, Director of COSB Department of Human Resources, authorized to take tangible action to prevent the harassment, discrimination and infringement on Robert's rights under the First and Fourteenth Amendments to the United States Constitution.

#### IV. OPERATIVE FACTS

11. Plaintiff repeats, reiterates and realleges paragraphs 1-10 of this Complaint as if the same had been set forth in its entirety.

12. Roberts employed by COSB as South Bend Police in November 2006.
13. In May 2010 during an arrest, suspect fought with Robert. The fight continued until backup arrived. Robert eventually placed handcuffs on the suspect at the scene of the arrest. Robert ordered by supervisor to transport suspect to the County jail. At the jail, another altercation occurred between Robert and the suspect while the suspect was handcuffed. During the altercation, Robert in fending off the suspect struck the suspect. Robert suspended for 30 days without pay. Robert did not contest the suspension.
14. Robert in March 2010 received Officer of the Month Award.
15. In November 2010, Robert received Officer of the Month Award.
16. In November 2010, Robert received Captain's Accommodation Award.
17. Prior to joining the South Bend Police Department, Robert received Certification as School Resource Officer (SRO) and served as SRO Officer while a member of the Benton Harbor Michigan Police Department.
18. In January 2010, Robert applied for an open SRO position with the SBPD.
19. To apply for the position a South Bend Police officer required to file Officer's Report stating qualifications, prior experience and reasons for wanting to be appointed to the position. No test required.
20. In addition to Robert, a White male officer and a Hispanic female officer applied for the open position.
21. Neither the White male officer nor Hispanic female officer held Certification as a SRO officer and no experience as such.
22. The White male officer appointed to the position did not hold SRO Certification at time of appointment.

23. In March 2011, Robert applied again for an open/or new SRO position with the SBPD.

24. In addition to Robert, several White males; a Hispanic male and female, and African-American male officers applied for the position. Except for Robert, none of the applicants held a Certification as SRO officer.

25. The Hispanic male appointed to the SRO position. Approximately one and one half years earlier, the Hispanic male appointed to the position had received a promotion to the Family Unit of the SBPD. The appointee did not hold a SRO Certification at time of appointment to the SRO position.

26. On August 8 2011, Robert filed Complaint with Hurley against Lt. Ross for harassing Robert by opening and subjecting him to a groundless Internal Affairs investigation. (Ex. 3)

27. The Internal Affairs investigation opened by Ross based on fact that Robert several months prior called COSB Code Enforcement Department ("CED") on one of his off days to file an ordinance violation complaint against his neighbor due to multiple motor vehicles parked on the neighbor's lawn.

28. Robert had reported the violation to CED several times and received no response.

29. Robert called the COSB Mayor's office to file a complaint against CED due to its reluctance to investigate his complaint.

30. Robert spoke to an assistant from the Mayor's office and informed her about the nature of his complaint against CED.

31. The assistant in the Mayor's office told Robert that she would contact the CED on his behalf to find a resolution.

32. Approximately one-half hour after speaking with the assistant in the Mayor's office, Robert received a telephone call from the assistant in which she stated that she was told by a representative from CED that the City no longer has an ordinance that governs vehicle parking on lawns or seeded areas.

33. The COSB had an ordinance that governed vehicles parked on seeded areas.

34. Robert asked the assistant for the name of the person CED who told her that the COSB did not have such an ordinance.

35. The assistant refused.

36. Robert eventually spoke with the Assistant Mayor who told him that he would look into the matter.

37. Several days later Robert informed by Lt. Ross that a formal complaint #11-0025 was filed against him by the Director of CED, Cathy Toppel, accusing him of harassing her and the CED staff and that she had recorded voice mail messages of his (Robert's) voice to justify her complaint.

38. The complaints filed by Toppel were determined to be unfounded after formal investigation by Lt. Ross.

39. The investigation conducted by Lt. Ross titled "Calling City Code Enforcement and the Mayor's Office harassing the employees about moving a car."

40. Ross ordered Robert to forward to him an Officer's report about calls made to Cathy Toppel and the Mayor's Office. (Ex. 3)

41. Lt. Ross admitted that there was no complainant from "Mayor's Office" and that he (Ross) was the complainant. (Ex. 3)

42. Robert requested that Ross remove the fictitious Complaint that he (Ross) created.

43. Ross responded that by saying that "I will look into your suggestion."
44. Robert filed formal complaint against Ross for opening the harassing Internal Affairs.
45. In November 2011, Robert for a third time applied for an open/or new SRO position with the SBPD.
46. In addition to Robert, several White males; and one Hispanic male and African-American male applied for the position.
47. The Hispanic female appointed to the SRO position. The appointee did not hold a SRO Certification at time appointed.
48. As time passed, Robert's work environment within the SBPD (Department) continued to worsen and he began experiencing constant harassment, unfair treatment, racial discrimination and disrespect primarily by Patrol Division Chief Walters.
49. In February 2012 immediately after roll call Walters called Robert into his office and had Lt. Newton accompany him.
50. Robert had no idea why called into Walters' office.
51. In the office, Walters asked Robert if he remembered a conversation he had recently with the Assistant City Attorney defendant Beachkofsky.
52. Robert told him yes.
53. Beachkofsky was new to her position as liaison for the police department.
54. Robert told Walters that Beachkofsky had represented the COSB in a civil trial in which he was a witness and that afterwards they had a brief conversation/discussion in the City/County Building.

55. The conversation with Beachkofsky was about how frustrated South Bend police officers had become with the County prosecutor's office pleading down serious criminal charges and the fact that the City Attorney's office did not back the police officers.

56. Sometime after the conversation with Beachkofsky, Robert learned that Beachkofsky approached former Chief Boykin and advocated that Robert be fired.

57. Thereafter, Walters called Robert into his office; Robert had not mentioned the Beachkofsky conversation to Walters.

58. During the meeting, Walters did not ask Robert what the conversation with Beachkofsky was about and Robert did not tell him.

59. After acknowledging that a conversation had taken place between himself and Beachkofsky, Walters told Robert, a Private First Class Patrolman, that he was being relieved of duty and taken off street patrol (ROD #1) and placed on desk duties. (Ex.4)

60. Robert asked Walters why. Walters did not respond to the question or state a reason for taking Robert off the street and placing him on desk duty.

61. Robert then asked Walters why he was reassigned. Walters did not respond or tell Robert why had been reassigned.

62. Robert then asked Walters why he was being disciplined. Walters did not respond or tell Robert why he was relieved of duty (ROD) and disciplined.

63. It is the policy and practice of the SBPD that when an officer is disciplined by a supervisor by being removed from street duty to provide the officer with an immediate explanation.

64. Robert ordered to cease his part-time employment, which resulted in the loss of income. (Ex. 4)

65. Roberts subsequently made aware that he removed from street duty due in part to allegations made by one of the new City Attorneys. (Ex. 5)

66. Robert sat in a closed office at the SBPD for two weeks without knowing why Walters had disciplined him by removing him from street duty.

67. Several weeks later Robert received a visit from Robert Yearly, COSB Manager of the Risk Management Department.

68. During the conversation, Yearly told Robert that the COSB had set up an appointment with a doctor and that Robert ordered to undergo a psychological evaluation.

69. Robert asked Yearly why. Yearly did not tell him why he was to undergo psychological evaluation.

70. Yearly did not tell Robert who ordered him to undergo a psychological evaluation.

71. During the reassignment, Robert sent Walters several e-mails requesting an explanation as to what was going on and why he removed from street duty. (Ex. 4, 5, 6) Robert received no response from Walters.

72. During the following months Robert ordered by COSB to complete psychological evaluations.

73. The COSB attempted to place the financial obligation for the costs of the evaluation on Robert on grounds that the stress from which he suffered was personal, according to Yearly.

74. Robert asked the doctor conducting the evaluation about the source of the stress. The doctor told him that his stress was work related.

75. Yearly intentionally discriminated against Robert by misleading and misrepresenting the Psychologist's determination of the source of Robert's stress in order to justify the COSB order that Robert be evaluated for purpose of determining whether he was fit for duty as a South Bend police officer and maintain his employment with the COSB police department.

76. Approximately three months after Walters removed Robert from street duty, Yearly told him that he removed because the department questioned his fitness for duty.

77. Robert followed all orders of the department related to the psychological evaluation for fear of retaliation and loss of his job as a police officer with the COSB.

78. Robert at no time found to be medically or psychologically unfit for duty as a South Bend police officer.

79. After completing the evaluation sessions, the Psychologist wrote the COSB a letter stating that Robert cleared to return to work.

80. After receiving the information from the Psychologist designated by the COSB to evaluate Robert, recommending that Robert return to work, the COSB resisted returning Robert to duty.

81. Defendant Beachkofsky of the COSB City Attorney's office resisted and delayed Robert's return to duty.

82. After defendant Hurley became Acting Interim Chief of Police, Robert presented letter from Psychologist clearing Robert to return to work.

83. Robert returned to street duty in May 2012.

84. On August 3 2012, Robert received call from Captain Ruszkowski informing him that Chief Walters had again removed him from street duty (ROD#2). (Ex. 7)

85. When Robert asked Ruszkowski why he had been removed from duty, Ruszkowski told him he had not been given a reason a reason why.

86. Robert not allowed to work his part-time job after reassignment and sustained economic loss.

87. Robert wrote defendant Hurley requesting an explanation as to why he removed from regular duties.

88. Robert received no communication or response from defendant Hurley.

89. Robert received information that defendant Hurley wanted to relieve Robert of his police duties ("ROD").

90. Robert wrote Chief Walters a letter requesting explanation for placement on desk duty and requested a copy of the written rules and procedures that allow any Chief or supervisor to discipline a subordinate officer without a formal explanation. (Ex. 7)

91. Robert did not receive any response, verbal or written from Walters or his designee.

92. While on desk duty, Robert ordered by Hurley through defendant Ross of Internal affairs to submit to a polygraph test without explanation.

93. Robert later learned that the polygraph order resulted from an alleged citizen complaint stating that Robert had harassed him.

94. Robert is the only SBPD officer to be removed from street duty without explanation and ordered to submit to a polygraph examination on a citizen complaint.

95. The ROD orders removing Robert from street duty without explanation constituted harassment, discriminatory treatment, denial of due process, and retaliation for

Robert's exercise of his speech rights under the First Amendment to the United States Constitution by COSB, Walters, Beachkofsky, Hurley and Ross.

96. After ROD#2, Robert submitted formal complaints to the Director of Human Resources against defendants Walters, Beachkofsky, Hurley and Ross for racial discrimination, harassment, and unfair treatment.

97. Robert received no response to complaints of racial discrimination, harassment and unfair treatment from the COSB.

98. On August 30 2012, Robert filed Complaint with EEOC, Charge No. 24M-2012-00292 alleging discrimination based on race. (Ex. 1)

99. On October 12 2012 at approximately 1:20 PM defendant Ross and several other officers arrived at Robert's home. Ross stated that they were acting under the authority of Chief Hurley to relieve Robert of his police duties (ROD#3) effective immediately.

100. When Robert inquired of Ross as to why he being relieved of police duties, Ross stated it was because Robert had interfered with an internal affairs investigation.

101. When Robert asked what investigation he had interfered with Ross stated because Robert went to a Seven-11 convenience store that day.

102. Robert asked Ross how he could interfere with an investigation that he knew nothing about. Ross gave no reply.

103. Under SBPD, rules and regulations only the Internal Affairs investigator (Ross), the Chief of Police (Hurley) and other officers assigned by the Chief and the officer directly involved with an investigation are the only persons who have knowledge of confidential internal investigations.

104. Robert at no time had knowledge of any ongoing internal investigation into any subject including internal investigation relating to a 7-11 store.

105. Ross and the other officers collected Robert's badge, gun, police vehicle and other police credentials.

106. After Ross left his home, Robert called defendant Hurley's office and requested a meeting with Hurley and a union representative to discuss the situation.

107. Robert informed by Hurley's Secretary that the "Chief does not want to speak to me or my union representative at all."

108. Robert then called his shift Captain and informed him that he had been relieved of duty. The Shift Captain told Robert that he ordered by Hurley not to talk to Robert about the situation.

109. On November 15 2012, Robert filed Complaint against defendant Interim Chief Hurley with the Mayor of the City of South Bend for having wrongfully accused him of interfering with an Internal Investigation.

110. The Mayor's office on November 19 2012 forwarded the complaint to Janice Hall, Director of Human Services for the City of South Bend for review.

111. Janice Hall never responded to Robert's complaint.

112. On October 17 2012, Robert met with Ross because he was now under investigation.

113. Ross informed Robert that he (Robert) accused of interfering with a criminal investigation and an internal affairs investigation.

114. Robert denied the allegations.

115. During the meeting with Ross, Robert asked Ross to either tell him or provide him with any factual evidence that he or the police department had to justify the accusations (charges).

116. Ross stated that there was no factual evidence.

117. Roberts asked Ross if the punishment of relieving him of his police duties followed the policies and procedures of the collective bargaining agreement between the Police and the City.

118. Ross responded by telling Robert that he was not being punished.

119. On October 30 2012, Robert filed EEOC Charge No. 24M-2013-00022 alleging discrimination based on retaliation. (Ex. 2)

120. On January 2 2013, Robert sent letter to Janice Hall, Director, Human Resources as follow up to the Mayor Office forwarding Robert's complaint to her for review.

121. Hall did not respond to Robert's letter or the letter from the Mayor's office requesting that she follow up on Robert's complaint.

122. On January 16 2013, Hurley filed written charges with the Board of Public Safety of the City of South Bend, Indiana recommending that Robert be terminated from his position as a South Bend Police Officer. For conducting an unauthorized investigation into an Internal Affairs, case already under investigation by Ross.

123. Hurley being personally involved acted out of retaliatory motive based on Robert's exercise of his First Amendment speech rights in filing the charges recommended Robert's termination from the SBPD.

124. The hearing on the charges by the Board of Public Safety concluded on July 30 2013.

125. The case before the Board of Public Safety prosecuted by Beachkofsky over Robert's objection that she had conflict of interest.

126. Hurley over Robert's objection allowed to sit at table with Beachkofsky throughout hearing after separation of witness order entered.

127. Ross and Hurley listed and called as witnesses in the hearing by Robert.

128. Hurley permitted to listen to Ross testimony prior to being called as witness by Robert.

129. At time instant Complaint filed the Board of Public Safety had not issued its findings.

#### **FIRST CAUSE OF ACTION-FEDERAL LAW CLAIMS**

Plaintiff for his first cause of action against defendants says:

130. Plaintiff hereby incorporates by reference the same as if fully set forth in full the fact allegations contained in Parts I-IV, paragraphs 1-129 inclusive, of this complaint.

131. The above-described conduct of Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall unlawfully deprived Robert of his constitutional and civil rights to procedural due process and equal protection under the Fourteenth Amendment to the United States Constitution. (Ex. 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-9, 8-10)

132. Defendants Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted with reckless indifference to Robert's constitutional and civil rights and was the proximate cause of the deprivation of Robert's constitutional and civil rights.

133. At all times relevant to this complaint, defendant Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted under color of state law.

134. The constitutional injury to Robert caused by Mayor Buttigieg who held final policymaking authority for the COSB and the SBPD.

**WHEREFORE**, because of foregoing, Robert demands judgment against the defendants, jointly and severally as follows:

- a. An injunction enjoining the COSB to provide full explanation to any SBPO who is relieved of duty as to why said action taken and provide a due process mechanism that protects the officer due process rights under the Fourteenth Amendment to the United States Constitution.
- b. Award Robert compensatory damages against defendants;
- c. Award Robert an allowance for costs and disbursements incurred in the prosecution of this action, including reasonable attorney's fees;
- d. Award Robert punitive damages against the individual defendants.

#### **SECOND CAUSE OF ACTION-FEDERAL LAW CLAIMS**

Plaintiff for his Second cause of action against defendants says:

Plaintiff hereby incorporates by reference the same as if fully set forth in full the fact allegations contained in Parts I-IV, paragraphs 1-134, inclusive, of this complaint.

135. Defendants Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall's retaliatory conduct toward Robert described above deprived Robert of his constitutionally protected interest in freedom of expression under the First Amendment to the United States Constitution. (Ex. 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-9, 8-10)

136. Defendants Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted with reckless indifference to Robert's constitutional and civil rights and was the proximate cause of the deprivation of Robert's constitutional and civil rights.

137. At all times relevant to this complaint, defendants Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted under color of state law.

138. The constitutional injury to Robert caused by Mayor Buttigieg who held final policymaking authority for the COSB and the SBPD.

**WHEREFORE**, because of foregoing, Robert demands judgment against the defendants, jointly and severally as follows:

- a. An injunction enjoining the COSB to provide full explanation to any SBPO who is relieved of duty as to why said action taken and provide a due process mechanism that protects the officer's First Amendment speech rights under the due process clause of the Fourteenth Amendment to the United States Constitution.
- b. Award Robert compensatory damages against defendants;
- c. Award Robert an allowance for costs and disbursements incurred in the prosecution of this action, including reasonable attorney's fees;
- d. Award Robert punitive damages against the individual defendants.

### **THIRD CAUSE OF ACTION-FEDERAL CLAIM**

Plaintiff for his Third cause of action against defendants says:

Plaintiff hereby incorporates by reference the same as if fully set forth in full the fact allegations contained in Parts I-IV, paragraphs 1-138, inclusive, of this complaint.

139. Defendants, Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall created and perpetuated a hostile, harassing, racially discriminatory work environment for Robert in retaliation for him exercising his right of freedom of expression under the First Amendment to the United States Constitution by complaining about discriminatory and unfair treatment. (Ex. 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-9, 8-10)

140. Defendants Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted with reckless indifference to Robert's constitutional and civil rights and was the proximate cause of the deprivation of Robert's constitutional and civil rights.

141. At all times relevant defendant Mayor Buttigieg, COSB, Walters, Hurley, Beachkofsky, Ross, Yearly, Toppel and Hall acted under color of state law.

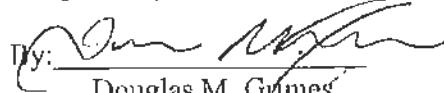
142. At all times relevant to the Complaint the City of South Bend was negligent in that it knew or reasonably should have known about the harassment and discriminatory treatment of Robert but failed to take remedial action.

143. The constitutional injury to Robert caused by Mayor Buttigieg who held final policymaking authority for the COSB and the SBPD.

**WHEREFORE**, because of foregoing, Robert demands judgment against the defendants, jointly and severally as follows:

- a. Award Robert compensatory damages against defendants;
- b. Award Robert an allowance for costs and disbursements incurred in the prosecution of this action, including reasonable attorney's fees;
- c. Award Robert punitive damages against the individual defendants.

Respectfully submitted,

By:   
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