UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KELVIN J. COCHRAN,

Plaintiff,

v.

CITY OF ATLANTA, GEORGIA; and MAYOR KASIM REED, IN HIS INDIVIDUAL CAPACITY,

Defendants.

Case No. 1:15-cv-00477-LMM

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

In the Fall of 2013, Plaintiff Kelvin Cochran, Fire Chief of the Atlanta Fire and Rescue Department ("AFRD"), published and began selling a book entitled *Who Told You That You Were Naked?*. Therein, Plaintiff outlines his views on religion, placing all people in one of two categories: those who are "clothed" or righteous (devout Christians like Plaintiff), and those who are "naked" or sinful (everyone else). Based on this dichotomy, Plaintiff's book condemns broad swathes of the diverse workforce Plaintiff led and the diverse community AFRD serves. Further, Plaintiff identifies himself as AFRD Chief throughout his book, and distributed copies of it in the workplace, including to all of his direct reports and several of his indirect reports.

In November 2014, the City learned of the book after one of Plaintiff's subordinates reported concerns about its content. After concluding that Plaintiff had not obtained any of the requisite approvals for outside employment prior to publishing and selling the book, and concerned about the risk of Title VII liability Plaintiff's workplace distribution posed, Mayor Reed suspended Plaintiff for thirty days without pay. He did so both as punishment for Plaintiff's failure to comply with the rules and to allow the City's Law Department time to conduct a Title VII investigation.

Rather than comply with the Mayor's directive to avoid public comment during his suspension, Plaintiff spent this time publicly spreading the false and inflammatory narrative that the City was punishing him for his religious beliefs, stirring up a massive PR campaign against his employer. Faced with Plaintiff's unprofessional conduct, as well as the Law Department's findings that Plaintiff's publication and distribution of the book had demonstrably eroded his subordinates' trust in his ability to lead AFRD, the Mayor concluded he no longer had confidence in Plaintiff. Accordingly, he terminated Plaintiff's employment.

Plaintiff now seeks summary judgment on several of his claims arising from this series of events, seeking to perpetuate the false narrative he began while suspended.

Because Plaintiff is not entitled to judgment as a matter of law on any of his claims, this Court should deny Plaintiff's motion in its entirety.

I. FACTUAL BACKGROUND

Plaintiff first served as Fire Chief of AFRD under former Mayor Shirley Franklin in 2008-2009. (KCT,[1] relevant portions attached as **Ex. A**, at 17:3-8, Exs. 1-2). Mayor Reed later appointed Plaintiff to reprise the role in his administration in 2010. (KRT, relevant portions attached as **Ex. B**, 19:23-24; 62:6-15; KCT, Ex. 6). In this capacity, Plaintiff served as an at-will employee at the Mayor's pleasure. (KCT, 17:9-17; 83:16-84, Ex. 15, at p. 2).

AFRD provides fire and rescue, homeland security, and emergency medical services for the City of Atlanta. (KCT, 51:10-20; 52:4-24). As Fire Chief, Plaintiff was responsible for overseeing and ensuring AFRD's successful operation. (KRT, 63:2-6; KCT, 42:1-4, Ex. 8). During the relevant time period, Plaintiff reported to the City's Chief Operating Officer, Michael Geisler, who in turn reported directly to the Mayor. (KCT, 21:13-16; KRT, 18:23-19:10). Plaintiff was a member of the Mayor's

[1] All source materials referred to as defined in Defendant's Statement of Material Facts (Dkt. No. 106).

Cabinet, which includes the heads of all major City departments and his senior policy advisors. (KRT, 18:20-19:5).

A. Plaintiff Was Subject to the City's Facially Neutral Conflict-of-Interest Rules.

Under the City's Code of Ordinances, all employees, regardless of position, are required to obtain the approval of their department head prior to accepting additional paid outside employment to ensure that no conflict of interest exists with their City employment. (City Code, § 114-436; KCT, 19:11-24, 20:7-12; NHT, relevant portions attached as **Ex. C**, 54:11-55:15).[2] Plaintiff fully subscribed to this requirement as a department head, as he was charged with reviewing outside employment requests submitted by subordinate firefighters. (KCT, 63:3-20).

City employees are also subject to the City's Ethics Code, which is interpreted and enforced by the City's Ethics Office.[3] Given Plaintiff's high-level position, this ordinance required him to also obtain written approval from the City's Board of Ethics ("the Board") before engaging in any outside employment for remuneration. (KCT, 23:12-24:8, Ex. 4; 55:18-23; 56:8-57:10, Ex. 10 at § 2-820(d)).

---

[2] This requirement is reflected in the City's Ethics Pledge, which Plaintiff signed and agreed to abide by at the commencement of his 2010 employment. (KCT, 72:1-3, 72:22-73:5, Ex. 12, at ¶ 7).

[3] During the relevant period, the Ethics Office was led by Ethics Officer Nina Hickson, who reported to a seven-member Board of Ethics. (NHT, 15:3-20).

B. As Fire Chief, Plaintiff Authored *Who Told You That You Were Naked?*

Plaintiff describes himself as a well-known, devout evangelical Christian. (KCT, 34:3-20; 206:8-17). Indeed, Mayor Reed hired Plaintiff with full knowledge of Plaintiff's strong religious faith.[4] (KCT, 31:4-32:1).

In January 2013, Plaintiff decided to turn his bible study materials into a book. (KCT, 115:1-12). In May 2013, he contacted a publisher about self-publishing a book, which he titled *Who Told You That You Were Naked?,* (KCT, Ex. 25). In or around November/December 2013, Plaintiff submitted his book for publication , (KCT, 138:6-11; 139:5-10), and thereafter began selling it via outlets such as Barnes and Noble and Amazon. (*Id*., 122:1-25, Ex. 25, at ¶ IV).

Plaintiff targeted his book to Christian men struggling with overcoming condemnation. (KCT, 108:15-109:11; 143:1-3). Therein, Plaintiff presents the dichotomy of the words "naked" and "clothed" as used throughout the Bible. (KCT, 172:15-19). According to Plaintiff, a "naked" man is one who lacks a working relationship with God. Conversely, a "clothed" man is one who enjoys a working relationship with God because he has accepted Jesus Christ as his Lord and Savior. (KCT, 173:3-174:8). To be clothed, a man must be a born-again Christian. (KCT,

[4] Plaintiff also highlighted his evangelical faith on the resume he submitted to Mayor Reed. (*See* KCT 29:14-22; 30:2-11, Ex. 5, at p. 7).

174:9-10). Those who are clothed are righteous; those who are naked are sinners. (KCT, 176:2-4). Further, no gradations or degrees of nakedness exist -- every person, if naked, is equally sinful. (KCT, 176:5-9).

Based on this framework, Plaintiff identifies broad categories of people he considers naked. This list includes homosexuals, murderers, rapists, pedophiles, those who have sex outside of marriage, those who engage in bestiality, and all non-Christians. (KCT, 191:11-22; 193:2-4, Ex. 36, at 82; 195:12-15; 196:17-24; 197:1-10). Plaintiff characterizes these individuals as "wicked," "un-Godly," "deceitful," "loathsome," and "evildoer[s]," (KCT, 176:24-177:5; 178:18-23), and writes that there will be "celebration" when they perish. (KCT, 177:6-178:17).

Plaintiff's book also presents his view on women, including his belief that mankind would never have fallen from grace if Eve had consulted with Adam before eating the forbidden fruit.[5] (KCT, 183:17-24; 182:15-183:4; 186:20-187:4). Positive examples of women are conspicuously absent. (KCT, 188:18-190:2).

Plaintiff also identifies himself as AFRD's Fire Chief throughout his book. In the "About the Author" Section, Plaintiff states that he "is currently serving as Fire

[5] Specifically, Plaintiff writes about Eve's response to the serpent: "Ever wondered what would have happened if Eve would have said, *'You need to talk to my husband*[?]" … Unfortunately, that's not what happened." (*Who Told You That You Were Naked?*, at p. 47, attached as **Exhibit O**).

Chief of the City of Atlanta Fire Rescue Department (GA)." (KCT, 171: 2-6, Ex. 34). Plaintiff also asserts that his religious beliefs govern the manner in which he leads AFRD: "My job description as a fire chief of Atlanta Fire Rescue Department is [t]o cultivate its culture for the glory of God." (KCT, 180:2-10, Ex. 35 at p. 76).

Notwithstanding the clear language of the ordinances that required Plaintiff to obtain permission before engaging in outside employment, Plaintiff never sought or received written permission from the Ethics Board to sell his book. (KCT, 76:3-13). Plaintiff also never discussed his plan to sell his book with Geisler or Mayor Reed. (KCT, 152:11-14; MGT, relevant portions attached as **Ex. D**, at 27:17-23; 28:21-23). Plaintiff contends instead that he obtained verbal approval from Ethics Officer Hickson; Hickson denies this. (KCT 110:9-18; NHT, 45:14-18). This discrepancy is immaterial, however, as it is undisputed that Hickson lacked the authority to grant Plaintiff approval. (KCT, 110:9-18, Ex. 10 at §2-820(d)).

C. Plaintiff Distributed Copies of His Book To His Work Subordinates, While Actively Marketing and Selling It to the Public.

Plaintiff distributed copies of his book to between nine and twelve of his subordinates, including all of his direct reports (deputy chiefs) and four of the six assistant chiefs who reported to them. (KCT, 139:16-20; 142:8-11; 216:21-217:18). Plaintiff contends that several of these individuals requested a copy, but he admits that

he handed out at least three unsolicited copies as well. (KCT, 140:2-141:15; 142:8-11; 216:21-217:18).[6]

By mid-2014, Plaintiff was actively selling his book for a profit, as well as incorporating the sale of his book into paid and unpaid speaking engagements. In all of these venues, Plaintiff discussed his book and its contents while identifying himself as AFRD's Fire Chief. (KCT, 149:18-25, 150:1-2, 151:6-23, 152:11-16, 153:17-155:6, 156:3-158:6, Ex. 30).

D. One of Plaintiff's Subordinates Raised Concerns about the Content of His Book.

In or around late October 2014, Assistant Chief Wessels, one of Plaintiff's subordinates, brought Plaintiff's book to the attention of Stephen Borders, president of the firefighters' union. (SBT, relevant portions attached as **Ex. E**, at 54:5-11, 55:5-7; KCT, 142:2-4; 217:6-15). Wessels informed Borders that Plaintiff gave him a copy "during a work event," and that he found that the book contained statements related to homosexuality that concerned him, particularly in light of the fact that Plaintiff had also "very clearly and explicitly" identified himself as AFRD's Fire Chief in the book. (SBT, 55:17-20; SBT, 62:2-9; 63:21-64:2).

[6] Plaintiff gave one of those unsolicited copies to Stephen Hill, a then-battalion chief, at the conclusion of Hill's annual one-on-one counseling discussion at which Hill's career and opportunities for advancement within AFRD were discussed. (KCT, 211:12-213:19).

Borders, in turn, brought Wessels' complaint and a copy of Plaintiff's book to the attention of Atlanta City Councilman Alex Wan. (SBT, 60:9-12, 64:25-65:16, 65:17-25; AWT, relevant portions attached as **Ex. F**, at 46:3-11). Councilman Wan concluded that the book constituted a Human Resources ("HR") matter and took the book to the City's HR Commissioner, Yvonne Yancy. (AWT, 51:22-52:2).

Yancy read Plaintiff's book, informed Geisler and the Mayor of its existence, and asked if either knew about or had approved its publication. Neither did. (YYT, relevant portions attached as **Ex. G**, at 22:10-18; 26:1-6, 26:11-27:2). Yancy informed Mayor Reed that she was concerned that Plaintiff had referenced his position with the City without permission, and that she personally found parts of the book offensive, especially those related to women, as well as members of the Jewish and LGBT communities. (YYT, 26:11-27:2; KRT, 93:13-15; 94:18-21).

Yancy also expressed concern to the Mayor that Plaintiff's decision to distribute his book in the workplace could create a hostile work environment under Title VII of the Civil Rights Act and local law. (YYT, 87:9-13, 94:7-19, 97:15-20). In response, Mayor Reed asked Yancy to investigate whether Plaintiff had received the Ethics Board's written approval to sell the book, and to forward her concerns to City Attorney Cathy Hampton. (YYT, 32:21-33:7; KRT, 99:1-2, 16-23).

Several days later, Yancy informed the Mayor that Plaintiff had published his book during his administration; that Plaintiff's book was for sale on Amazon; and that she did not believe Plaintiff had obtained the required written consent from the Board of Ethics to sell his book. (YYT, 42:15-43:18; 45:20-24; 47:2-4; 49:2-7). Yancy further confirmed that Plaintiff explicitly identified himself as the AFRD Fire Chief in his book and that he had distributed copies of his book to City employees. (KRT, 100:2-11). Yancy recommended terminating Plaintiff's employment, but the Mayor declined to do so. (YYT, 47:4-6; KRT, 101:6-9).

Instead, Mayor Reed opted to suspend Plaintiff for thirty days without pay in order to discipline Plaintiff for selling his book without providing the requisite notice or obtaining written approval, and to investigate AFRD's potential Title VII liability. (KRT, 102:19-103:1; 104:12-13; YYT, 47:9-16, 48:17-50:10; KRT, 119:2-9, 119:17-21, 119:21-120:1, 121:10-14).

Yancy, Chief of Staff Candace Byrd, and Chief Counsel Bob Godfrey then met with Plaintiff to inform him of his suspension. (YYT, 74:17-23; 75:22-76:2; 76:3-7; 93:13-94:1). Byrd also conveyed to Plaintiff that Mayor Reed instructed that he refrain from public comment on his suspension during his leave. (YYT,76:22-25; CBT, relevant portions attached as **Ex. H**, at 40:7-11, 43:1-3, 43:20-44:2; KRT, 105:3-7; KCT, 222:13-223:2).

E. Rather Than Comply with the Mayor's Instruction, Plaintiff Publicly Portrayed Himself As a Religious Martyr, Spurring a Public Relations Campaign against Mayor Reed.

Almost immediately, Plaintiff ignored the Mayor's directive. He responded to emails of public support from his work account with statements such as: "I am grateful for this divine opportunity **to suffer this for Christ** and rejoicing every day," and "The Lord [is] with me during **this time of spiritual warfare**." (KCT, 247:12-24, 248:14-17, Exs. 46-47) (emphasis added).

Plaintiff also spoke at the Georgia Baptist Convention's ("GBC") executive committee meeting consisting of approximately 200 pastors. (KCT, 255:3-19). During his speech, Plaintiff referenced his suspension at least once. (KCT, 259:24-260:6). The following week, Plaintiff enlisted the GBC's assistance in creating a comprehensive public relations "battle plan" to fight his suspension, including the publication of a web-based editorial criticizing his suspension, which Plaintiff reviewed and approved; an online petition linked to a forum on which to purchase Plaintiff's book; a social media campaign directed at pressuring the Mayor to reconsider Plaintiff's suspension; and the posting of a recording of Plaintiff's GBC speech to the GBC website. (KCT, 251:21-252:18; 257:16-18; 261:22-262:14; 264:16-24, Exs. 49, 50 at PL 001902).

(*See also* GBC Mission Board, "Help Us Defend Religious Liberty!", *available at* https://gabaptist.org/petition/, last visited April 17, 2017, attached as **Ex. I**).[7]

In mid-December, Plaintiff approved yet another public relations "offensive fire attack" against the City, which included a social media campaign calling on the public to contact the Mayor and demand that the Mayor apologize to Plaintiff for violating his First Amendment rights. (KCT, 268:10-18, 269:12-270:15, Ex. 51). Plaintiff also spoke to the congregations of two churches, arguing once again that the Mayor suspended him solely because of his religious beliefs. (KCT, 274:13-22).[8]

As a result, the Mayor received more than 17,000 angry emails, phone calls to his home, and even death threats. Among other things, Plaintiff's supporters called him a "nigger", a "terrorist", and the "anti-Christ". (KRT, 136:17-137:24; 151:18-22; 138:20-139:5).

---

[7] *See also* December 15, 2014 Georgia Baptist Convention Press Release, *available at* https://gabaptist.org/wp-content/uploads/2014/12/GBC_News_Religious_Liberty_12-15-14.pdf (last visited April 19, 2017), attached as **Ex. J**).

[8] In one of his speeches, Plaintiff stated:

> In the book I deal with sexuality as God intended it. God intended for a man and a woman to be married and to have children to populate the earth, and that any sex outside of marriage and outside of a man and a woman, outside of holy matrimony is against the word of God, and **for that stand, I've been laid off for 30 days without pay.**

(KCT, 275:15-277:15) (emphasis added).

F. Plaintiff's Conduct During His Suspension, as Well as the Law Department's Investigation, Led to His Termination.

Meanwhile, the City's Law Department conducted a Title VII investigation, the results of which were compiled in an investigative summary. (KRT, Ex. 13). The Law Department concluded that Plaintiff had not obtained the Ethics Board's written authorization prior to selling his book, in violation of Section 2-820(d) of the City's Ethics Code. (KRT, Ex. 13, at p.2). The Law Department also concluded that though there was no evidence that Plaintiff engaged in unlawful discrimination, "[t]here … is general agreement the contents of the book have eroded trust and have compromised the ability of the chief to provide leadership in the future." (KRT, Ex. 13, at 3-4).

After learning of Plaintiff's speeches and suspecting his involvement in the orchestration of the PR campaigns during his suspension, and upon reviewing the Law Department's findings, Mayor Reed decided to terminate Plaintiff's employment given his lack of confidence in him and his belief that Plaintiff "could not continue with the support of the people that worked for him." (KRT,136:17-137:24;151:18-22;169:8-20).

II. ARGUMENT AND CITATION TO AUTHORITY

A. Plaintiff's Retaliation Claim Fails on Several Grounds.

To establish a First Amendment retaliation claim, Plaintiff must show that:

> (1) []he was speaking as a citizen on a matter of public concern; (2) h[is] interests as a citizen outweighed the interests of the State as an employer;

> (3) the speech played a substantial or motivating role in the adverse employment action.

Leslie v. Hancock Cnty. Bd. of Educ., 720 F.3d 1338, 1346 (11th Cir. 2013) (quoting *Vila v. Padron*, 484 F.3d 1334, 1339 (11th Cir. 2007)). "If the plaintiff establishes these elements, the burden shifts to the defendant to prove it would have made the same adverse employment decision absent the employee's speech." *Id.* (quoting *Vila,* 484 F.3d at 1339). The content of Plaintiff's book played no role in Mayor Reed's decision to suspend or terminate him. Even if it did, the City's interests as an employer vastly outweigh Plaintiff's First Amendment rights as AFRD Chief given the damaging nature of his speech. Plaintiff's claim thus fails.

1. The City's Interests as Plaintiff's Employer Vastly Outweigh Plaintiff's Limited First Amendment Rights as AFRD Chief.

The second element of Plaintiff's retaliation claim calls on the Court to scrutinize "whether an employee's interest as a citizen outweighed the interests of the state as an employer."[9] *Leslie,* 720 F.3d at 1346. To do so, this Court must apply the *Pickering* balancing test, which "seeks 'to arrive at a balance between the interests of the public employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of public services

[9] This is a question of law for the Court to decide. *See Jackson v. State of Ala. State Tenure Com'n*, 405 F.3d 1276 ("When the facts underlying the balance are clear, courts can and do decide the *Pickering* balance issue without the aid of a jury.").

it performs through its employees.'" *Id*. (quoting *Pickering v. Bd. of Educ*., 391 U.S. 563, 568 (1968)). "'The manner, time, and place of the employee's expression' and the 'context in which the dispute arose' are relevant to" this analysis. *Id*. (quoting *Rankin v. McPherson*, 483 U.S. 378, 388 (1987)).

> Other relevant considerations at this stage include:
>
> > whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.

Leslie, 720 F.3d at 1346 (quoting *Rankin*, 483 U.S. at 388).

The nature and scope of the employee's position with his employer is another key factor in this equation. *Bates v. Hunt*, 3 F.3d 374, 378 (11th Cir. 1993). Further, fire departments in particular "'have a strong interest in the promotion of camaraderie and efficiency' as well as 'internal harmony and trust,' and therefore [courts] accord 'substantial weight' to a fire department's interest in limiting dissension and discord." *Grutzmacher v. Howard Cnty*., 851 F.3d 332, 345 (4th Cir. 2017) (quoting *Goldstein v. Chestnut Ridge Volunteer Fire Co*., 218 F.3d 337, 352-53 (4th Cir. 2000)).

In his Motion, Plaintiff argues that the *Pickering* balancing test weighs in his favor by strategically declining to detail the exact nature of his speech. Plaintiff provides only a vague description of his book's content, stating merely that it

"discusses the Christian teaching concerning original sin and the ability of Christians to overcome its influence in their lives," and that "a small portion of it addresses sexual morality from a Biblical standpoint." (Plaintiff's Motion, 5). Plaintiff's reticence is not surprising, as close examination of the substance of his speech immediately reveals a host of legitimate concerns for the City as Plaintiff's employer.

Plaintiff's book does far more than discuss Christian teaching on the topic of original sin -- it condemns, in no uncertain terms, broad swathes of the workforce Plaintiff led and the community AFRD serves. (*See supra,* pp. 5-6). AFRD's mission is to provide fire and rescue, homeland security, and emergency medical services to the City of Atlanta. Plaintiff's responsibility was to ensure that AFRD was successful in its mission. (KCT, 51:10-20; 52:4-24). To do so, a key component of Plaintiff's job was to attract and retain an inclusive and diverse workforce necessary to garner the trust and respect of Atlanta's diverse community. (KCT, 47:25-48:6). According to Plaintiff, this requires AFRD to be "ism free," or free of racism, sexism, favoritism, and all forms of prejudice and discrimination, including that based on religious identity, sexual orientation, and/or marital status. (KCT, 47:2-20; 85:10-20; 130:22-25). Plaintiff testified that absent a positive relationship with the community, AFRD's core mission is threatened. (KCT, 49:13-20).

Plaintiff's condemnation of non-Christians, the LGBT community, women, and others threatened AFRD's ability to operate effectively and risked destroying the public's trust in the Department. As AFRD Chief, he conveyed the message that there will be "celebration" when those who do not follow his religious beliefs *perish*. His language is directly contrary to myriad federal and local non-discrimination laws. The First Amendment does not protect such behavior. *See Lumpkin v. Brown*, 109 F.3d 1498, 1500 (9th Cir. 1997) (upholding termination of state human rights commissioner fired after making public statements as a reverend condemning homosexuality as a sin; the First Amendment does not assure him job security when he preaches homophobia while serving as a City official charged with the responsibility of 'eliminating prejudice and discrimination.'); *McMullen v. Carson*, 754 F.2d 936, 939 (11th Cir. 1985) (affirming termination of clerical employee in sheriff's office after publicly identifying himself as KKK member; even as a low-level employee, association of sheriff's office with KKK endangered the public's trust in the police as a whole); *Grutzmacher*, 851 F.3d at 346 (upholding battalion chief firing for Facebook posts; "expressive activities of a highly placed supervisory employee will be more disruptive to the operation of the workplace than similar activity by a low level employee with little authority and discretion") (quoting *McEvoy v. Spencer*, 124 F.3d 92, 103 (2d Cir. 1997)).

Plaintiff relies heavily on the fact that the City's Law Department found no evidence that he discriminated against any member of AFRD during his tenure to argue that his speech did not interfere with his role as Fire Chief. In doing so, Plaintiff omits key portions of the Law Department's findings, in particular that "[t]here … is general agreement the contents of the book have eroded trust and have compromised the ability of the chief to provide leadership in the future." (KRT, Ex. 13, at pp. 3-4). Plaintiff's speech undermined his subordinates' confidence in him, interfering with his ability to fulfill his responsibilities as Fire Chief.

Moreover, "[t]he government's legitimate interest in avoiding disruption does not require proof of actual disruption. Reasonable possibility of adverse harm is all that is required." *Moss v. City of Pembroke Pines*, 782 F.3d 613, 622 (11th Cir. 2015) (internal citations omitted). Given the importance of the public's perception of AFRD, and Plaintiff's role as its most visible spokesperson, it was reasonably foreseeable that the content of his book would harm AFRD's reputation and, in turn, its ability to serve the community. Indeed, Plaintiff's own experience proves this to be true. In August 2012, an AFRD firefighter posted a comment on a Facebook photo of AFRD firefighters, dressed in uniform, in which he used the word "fags." (KCT, 293:14-294:2, 294:25-295:5). A member of the public saw the posting and submitted a complaint to Plaintiff, explaining that the comment made him question the firefighter's

-- and AFRD's -- ability to serve the LGBT community. (S. Deaderick Email to K. Cochran, attached as **Ex. K**). Plaintiff promptly responded by suspending the perpetrating AFRD employee for thirty days without pay. (KCT, 300:21-24).

Like that firefighter's use of the word "fags," Plaintiff's condemnation of non-Christians, the LGBT community, women, and others -- while identifying himself as AFRD Chief -- threatened AFRD's ability to operate effectively and risked destroying the public's trust in the Department. Plaintiff also brought his speech into the workplace, distributing his book to most of his subordinates (without their request) and, in at least one instance, at the conclusion of a career-related meeting, thereby raising a host of Title VII concerns for the City. It is not surprising, then, that Plaintiff's speech also eroded his subordinates' trust in him and compromised his ability to lead. Plaintiff cannot survive the *Pickering* balancing test on such facts.[10] His request for summary judgment must be denied.

---

[10] The cases to which Plaintiff cites, in which courts found that the plaintiff's speech outweighed the employer's interest in maintaining the efficiency of its operations, are distinguishable from the present case in key respects. *See Berger v. Battaglia*, 779 F.2d 992 (4th Cir. 1985) (policeman's First Amendment right to perform in blackface on his personal time and *without identifying himself as a police officer* outweighed police department's interests in maintaining the efficiency of its operations; only disruption was external to department, rather than within the department); *Flanagan v. Munger*, 890 F.2d 1557 (10th Cir. 1989) (police officers' right to own interests in video store that rented sexually explicit videos outweighed interests of police department where officers made *no* connection between their ownership and their employment as

2. Plaintiff's Beliefs Played No Role in the Mayor's Decision to Suspend and Then Terminate His Employment.

To advance his retaliation claim, Plaintiff must also prove that his speech "played a substantial or motivating role in the adverse employment action." *Leslie*, 720 F.3d at 1346. This Plaintiff has failed to do. Thereafter, in the event Plaintiff establishes a *prima facie* retaliation claim, the evidentiary burden shifts to Defendant "to prove that it would have terminated Plaintiff even in the absence of his speech." *Moss v. City of Pembroke Pines*, 782 F.3d 613, 618 (11th Cir. 2015). Defendants have met this burden; Plaintiff has failed to meet his. Plaintiff's motion should be denied.

a. Plaintiff's Misconduct Alone Led to His Suspension and Termination.

By publishing, selling, and distributing his book at work without permission, Plaintiff violated the City Code and ethics rules, and risked Title VII liability for his employer. Plaintiff cannot dispute that each of these legitimate, non-retaliatory reasons unrelated to his personal beliefs were before the Mayor when he suspended Plaintiff. (KRT, 102:19-103:1, 104:2-13, 119:17-21) (YYT, 47:9-16, 48:17-50:10; CBT, 32:22-33:1; 33:20-24; Deposition Transcript of Robin Shahar ("RST"), relevant portions attached as Ex. L, at 44:22-45:6). *See Thaeter v. Palm Beach Cnty. Sheriff's Off.*, 449

---

police, and only proof of disruption was external backlash rather than internal interference with operations).

F.3d 1342, 1357 (11th Cir. 2006) (deputy sheriffs' First Amendment claim failed when terminated for violating rule requiring written approval for off-duty employment).

Nor can Plaintiff show that the Mayor fired him because of his religious beliefs. Instead: (1) Plaintiff's decision to ignore the Mayor's instruction and speak repeatedly and publicly about his suspension;[11] (2) the Mayor's (correct) suspicion that Plaintiff helped orchestrate a public relations campaign challenging his suspension; and (3) the Law Department's conclusion that AFRD subordinates lacked faith in Plaintiff's continued leadership, led the Mayor to that outcome.

One can hardly posit a more combative response to his suspension than Plaintiff's, which saw him endorse a public relations "battle plan" and "offensive fire attack" premised on an inflammatory narrative that his boss was engaging in "spiritual warfare" designed to undermine Christians' religious freedoms.[12] This reckless course

[11] While Plaintiff insists that Byrd only advised him not to hold any press conferences or respond to any requests for interviews, he admits that the intent behind Byrd's directive was clear: "she didn't want me to publicly disclose my side of the story." (KCT, 257:4-13).

[12] As Yancy testified, in discussing the circumstances leading to Plaintiff's termination:

> [T]o suggest that the City was impugning upon his freedom of religion and that he was in this trial by God because of how he espoused his views was just -- not just offensive, but false. And so we found ourselves explaining that to people continuously when we shouldn't have had to talk about it at all.

of action led to the Mayor receiving thousands of angry emails, hateful calls to his home, and even death threats. Indeed, given the ferocity of this response, it is difficult to fathom how, after unleashing this public attack on his supervisor, Plaintiff could possibly have intended to return to his job. (MGT, 87:13-24; YYT, 115:7-22).

b. Plaintiff's Attempt to Distract the Court from His Misconduct Fails.

Rather than address these obvious reasons for his suspension and termination, Plaintiff grasps for evidence that Defendants suspended and then terminated him by contending that the book's content "pervaded Defendant's entire handling of the disciplinary process." Plaintiff also points to Defendants' public expressions of disagreement with the book's content as further proof of their alleged motivation in suspending and firing him.

Neither of these points merits the weight Plaintiff gives them. While the content of the book was certainly considered by the Mayor and his team, their consideration focused on the Title VII concerns that content necessarily implicated. (YYT, 87:9-13, 94:7-19, 97:15-20; RST, 44:13-45:6). Given Plaintiff's decision to tie the beliefs expressed in his book directly to his position with AFRD and to distribute the book at work (prompting at least one subordinate to report concerns about it), Defendants were

---

(YYT, 115:7-22).

forced to consider the legal risks and impact of the message he was conveying.[13] (RST, 56:9-16).

Moreover, the overriding driver of Plaintiff's suspension and termination was Plaintiff's refusal to comply with the City's pre-approval requirements prior to publishing and selling his book. (YYT, 42:15-43:18; 45:20-24; 47:2-4; 49:2-7; MGT, 84:18-85:9; NHT, 70:2-72:5; MMT, 32:14-33:1).[14] Plaintiff argues that the Mayor must have based his decision to terminate him on the content of his book rather than his failure to obtain the requisite approval because Mayor Reed had already based his suspension decision on that fact. This argument ignores the other legitimate, non-retaliatory reasons for his termination that arose after he was suspended -- including the PR campaign Plaintiff launched against his employer and the Law Department's

[13] These risks were significant, as the message of inequality Plaintiff espoused is antithetical to and in violation of federal and local laws prohibiting workplace discrimination.

[14] Yancy testified that after she informed the Mayor of the existence of Plaintiff's book and relayed her concerns about its contents, his immediate concern was related to whether Plaintiff had gotten the requisite permission to publish it. (*See* YYT, 32:14-22). Geisler also testified that Yancy and Mayor Reed raised concerns about Plaintiff's compliance with the ethics requirements from the very beginning. (MGT, 84:18-85:9). Ethics Officer Hickson also confirmed this early focus, testifying that the Law Department and Yancy approached her almost immediately after discovering the book to determine whether Plaintiff had obtained approval from the Ethics Board. (NHT, 70:2-72:5).

findings that he had lost the trust of his subordinates -- all of which culminated in the Mayor's decision that Plaintiff no longer had his confidence. (MRT, 169:13).

Defendants' public expressions of disagreement with Plaintiff's views are also insufficient to undermine the Mayor's stated reasons for suspending and then terminating him. It is unsurprising that Mayor Reed and the City sought to distance themselves from -- and even reject outright -- the message of condemnation and judgment Plaintiff conveys in his book. Mayor Reed is an outspoken advocate of equality, including LGBT equality. (KRT, 143:17-145:8; RST, 21:19-25, 120:6-16; AWT, 32:15-20). The Atlanta City Council, acting as the legislative arm of the City, has outlawed discrimination on the basis of sexual orientation, gender identity, and domestic relationship status in a variety of contexts, including City employment. (*See, e.g.,* City Code, § 94-111 *et seq*., § 94-91 *et seq*., § 94-68, *et seq*.). In December 2014, the City Council adopted a resolution in support of same-sex marriage. (AWT, 32:21-33:2). Most importantly, the City's role as an employer *mandates* that it reject discrimination in all its forms. Defendants' public expressions of disagreement are, therefore, merely consistent with the City's history of embracing diversity and ensuring compliance with the law, not evidence of unlawful pretext.[15]

[15] As Mayor Reed testified:

C. Plaintiff's Viewpoint Discrimination Claim Also Lacks Merit.

Plaintiff also alleges that the City engaged in viewpoint discrimination by firing him for his opposition to same-sex marriage and homosexuality. As a threshold matter, Plaintiff can point to no other public safety head who ignored the City's Ethics Code, distributed unauthorized materials to work subordinates, ignored the Mayor's directive during his suspension, and sacrificed his subordinates' trust as he did yet was allowed to remain employed due to his support of LGBT rights. Indeed, Plaintiff does not even attempt to identify *any* City employees with opposing views who received better treatment than he. On this count alone, his claim fails. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 971 (9th Cir. 2009) (viewpoint discrimination claims fail where plaintiff claims disparate treatment as compared to a party that is not similarly situated); *Pine v. W. Palm Beach,* No. 13–80577–CIV, 2013 WL 5817651, at *7 (S.D. Fla. Oct. 29, 2013) (viewpoint discrimination claim failed where no disparate treatment of plaintiff).

D. Plaintiff's Challenge of the City's Pre-Approval Rules Fails.

> Atlanta has a tradition of being a welcoming city, and I think that since the time that the City of Atlanta worked through issues related to the civil rights movement to the present, it is a very important part of our character that we be welcoming to all people. And a book that had comments that were offensive to Jewish people and women and homosexuals is inconsistent with our reputation, in my opinion.

(KRT, 141:17-25).

Plaintiff next contends that the City's pre-approval requirements -- Sec. 2-820(d) and Sec. 114-436-7 of the City Code (the "Pre-Approval Requirements") -- constitute an unconstitutional prior restraint on public speech .[16] Plaintiff does not dispute that he violated these ordinances, nor that, as Fire Chief, he understood and approved of their purpose. Now, however, he challenges their very constitutionality. As with all of Plaintiff's claims, this one, too, fails.

As in the First Amendment retaliation context:

---

[16] Plaintiff specifically challenges Sec. 2-820(d) and Defendants' "informal policy requiring those working for the Mayor to get pre-clearance from him - personally - before writing and/or publishing *any* work." This "informal policy" is, in fact, codified in Secs. 114-436-37 of the City Code, which require that all employees obtain approval from their department head prior to accepting paid outside employment. Accordingly, Defendants interpret Plaintiff's claim as a challenge to those provisions.

To the extent Plaintiff argues there is a more expansive practice that requires subordinates to obtain the Mayor's approval f prior to writing and/or publishing a work, regardless of whether that work earns money, Defendants deny the existence of such a practice. Rather, the Mayor expects that those in his Cabinet -- his most trusted, high-level employees -- give him the professional courtesy of informing him of any outside activities that might trigger publicity or necessitate a response from the City. Plaintiff's failure to do so with respect to his book thus caused the Mayor to lose trust and confidence in him. (*See* KRT, 121:10-14) ("Q: The concern about him not talking with you first, is that based upon any kind of policy or is that just a practice? A: No. It's based upon professional courtesy, being a colleague."). (*See also* RST, 32:14-33:4; 33:21-22) (Shahar testifying as a 22-year employee of the City and one of the Mayor's senior advisors that "you talk to your boss about things that may affect them or you[,] so that you can work out in advance what that would look like, how that would take place … [o]ut of professional obligation in that role of cabinet member"). This is not a violation of a "policy" to which a Constitutional challenge can be heard.

> [r]estraints on the speech of government employees on 'matters of public concern' are governed by a balancing test; they are permissible where the government interest in 'promoting the efficiency of the public services it performs through its employees' outweighs the interests of prospective speakers and their audiences in free dissemination of the speakers' views.

Weaver v. U.S. Info. Agency, 87 F.3d 1429, 1439 (D.C. Cir. 1996) (quoting *United States v. Nat'l Treasury Emps. Union* ("*NTEU*"), 115 S.Ct. 1003, 1012-14 (1995)). "Where a restraint is accomplished through a generally applicable statute or regulation … the regulation's sweep [must be] reasonably necessary to protect the efficiency of the public service." *Id*. (quoting *NTEU*, 115 S.Ct. at 1017). This analysis is known as the *Pickering/NTEU* test. *Sanjour v. E.P.A.,* 56 F.3d 85, 91 (D.C. Cir. 1995). In applying this analysis, courts consider several factors, including the extent to which protected employee speech is burdened; the risk of government utilizing unbridled discretion to engage in viewpoint discrimination under the challenged policy; the legitimacy of the government's interests underlying the challenged policy; and the extent to which the challenged policy is narrowly tailored to protect those interests. *See Sanjour*, 56 F.3d at 94-98.

1. The Pre-Approval Requirements Are Reasonably Tailored to Legitimate Government Interests.

The challenged ordinances require that all City employees obtain prior approval from their department heads before engaging in paid outside employment, and that

high-level employees obtain written approval from the Board of Ethics prior to doing so. City Code, §§ 114-436-37, 2-820(d). As such, they allow the City to ensure that its employees do not have conflicts of interest or otherwise engage in outside activities that could improperly influence or interfere with their official City duties (or even appear to).[17] These are important goals of any governmental entity long recognized by the courts. *See, e.g., Wolfe v. Barnhart*, 446 F.3d 1096 (10th Cir. 2006) ("The importance of the government's interest in avoiding impropriety or the appearance thereof among its employees is well established. … Underlying this concern is the 'legitimate interest in maintaining the public's confidence in the integrity of the [public] service, which in turn contributes to the government's effectiveness.'") (quoting *Crandon v. United States*, 494 U.S. 152, 164 (1990)). Even Plaintiff admits that he

---

[17] The introductory provision of the City's Ethics Code -- in which Sec. 2-820(d) is found -- explains:

> It is the purpose of this division to promote the objective of protecting the integrity of the government of the city by prohibiting any official or employee from engaging in any business, employment or transactions, from rendering services or from having contractual, financial, or personal interests, direct or indirect, which are in conflict with or would create the justifiable impression in the public of conflict with the proper discharge of the official or employee's official duties or the best interest of the city or which would tend to impair independence or objectivity of judgment or action in the performance of official duties.

(City Code, § 2-802).

believed these requirements were necessary to prevent conflicts of interest and work that might distract from AFRD duties. (KCT, 64:25-65:14).

Accordingly, pre-approval requirements such as these are routinely upheld as a reasonable way of pursuing these legitimate government interests. *See, e.g., Gibson v. Office of Atty. Gen., State of Ca.,* 561 F.3d 920, 928 (9th Cir. 2009) (state OAG's requirement that its attorneys obtain approval prior to engaging in private practice of law reasonably related to OAG's "legitimate interest" in avoiding conflicts of interest and ensuring that its employees were devoting their full attention to its business); *Williams v. IRS*, 919 F.2d 745, 746-7 (D.C. Cir. 1990) (requirement that IRS employees obtain written permission from agency before engaging in outside employment or business activities was "tailored to the government's interest in efficiency and avoiding the appearance of impropriety"); *Reichelderfer v. Ihrie*, 59 F.2d 873 (D.C. Cir. 1932) (total ban on outside remunerative employment by DC firemen upheld "to prevent firemen from dividing their strength as well as their interest and attention between their departmental duties and outside pursuits").

2. Employee Speech Is Neither Targeted Nor Burdened by the Pre-Approval Requirements.

Further, neither of these ordinances specifically targets expressive activities, let alone protected public speech, notwithstanding Plaintiff's best efforts to

mischaracterize them as such. Sec. 114-437 merely requires employees to obtain approval from their department heads prior to engaging in paid outside employment, while Sec. 2-820(d) requires a select group of high-level City employees to obtain written approval from the Board of Ethics prior to doing so. Employees remain free to speak, write, or otherwise express whatever they choose without seeking approval pursuant to these provisions so long as they do not receive compensation for doing so. Moreover, Sec. 2-820(d) *excepts* "single speaking engagements" and "participation in conferences or on professional panels" from its purview. No evidence exists that the Pre-Approval Requirements have ever been used to prohibit employee speech, and Plaintiff himself admits he never interpreted Sec. 2-820(d) as governing expressive activity. (KCT, 58:1-15, 159:10-19).

This is a far cry from the cases on which Plaintiff relies, which involve regulations that specifically target speech and operate as either an outright ban on such speech or strongly discourage it. *See, e.g., NTEU*, 513 U.S. 454 (striking down complete ban on lower-level federal employees accepting any compensation, including honoraria, for making speeches or writing articles); *Liverman v. City of Petersburg,* 844 F.3d 400, 404 (4th Cir. 2016) (striking down police department regulation "prohibit[ing] in sweeping terms the dissemination of any information 'that would tend

to discredit or reflect unfavorably upon the Department or any other City of Petersburg Department or its employees"); *Crue v. Aiken*, 370 F.3d 668 (7th Cir. 2004) (striking down university chancellor's preclearance directive banning all speech directed toward prospective student athletes without prior permission); *Harman v. City of N.Y.*, 140 F.3d 111, 117-18 (2d Cir. 1998) (striking down social service agency's policies requiring staff to obtain permission prior to speaking with media about agency's operations); *Tucker v. State of Cal. Dept. of Educ.*, 97 F.3d 1204 (9th Cir. 1996) (striking down prohibitions on all written or oral religious advocacy and the storage or display of religious artifacts, tracts, information and materials in the workplace).

3. The Pre-Approval Requirements Do Not Grant the City Unbridled Discretion to Engage in Viewpoint Discrimination.

Government regulations that vest "essentially unbridled discretion in the agency to make … determination[s] on the basis of the viewpoint expressed by the employee" are often held unconstitutional. *See Sanjour*, 56 F.3d at 96 (striking down regulation in part because it allowed "official approval only for speech that is 'within the mission of the agency'"). Plaintiff argues that the Pre-Approval Requirements are "silent" with respect to the criteria used in applying them. This is simply incorrect.

Approval of these requests is based solely on whether the outside employment creates a conflict of interest or otherwise interferes with the employee's City

employment. Sec. 114-436 outlines the specific elements an outside employment request must satisfy to be approved under Sec. 114-437, including that it does not: "interfere with or affect the performance of the employee's duties;" "involve a conflict of interest or a conflict with the employee's duties;" "involve the performance of duties which the employee should perform as part of such employee's employment with the city;" or "involve the use of records or equipment of the city." As a department head, Plaintiff based his decisions on outside business requests on these considerations. (KCT, 64:25-65:12).

> Sec. 2-820(d) reflects a similar focus, providing that:
>
> City employment shall remain the first priority of the employee, and if at any time the outside employment interferes with the city job requirements or performance, the official or employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the city employment.

(*See also* Declaration of Nina Hickson ("Hickson Dec."), attached as **Ex. M**, at ¶¶ 5-6).

Accordingly, the Pre-Approval Requirements are sufficiently limited to pass Constitutional muster. *See Gibson*, 561 F.3d at 927 (requirement that OAG attorneys obtain prior approval before engaging in private practice of law was not unlawful prior restraint; policy was reasonably tailored to allow AG to evaluate whether outside work would create a conflict of interest or adversely affect job performance); *Williams*, 919

F.2d at 747 (upholding IRS's prior approval requirement for outside employment under First Amendment). Plaintiff's challenge fails.

E. Plaintiff's Procedural Due Process Claim Lacks All Merit.

Finally, Plaintiff alleges that Defendants violated his right to procedural due process. However, it is well-settled that "[a] public employee's claim that an employer violated his or her procedural due process rights must fail unless the employee had a protected interest in his or her employment." *City of St. Mary's v. Brinko*, 324 Ga. App. 417, 419 (2013). Further:

> [u]nder Georgia law, a public employee has a property interest in employment when that employee can be fired only for cause. In the absence of a contractual or statutory 'for cause' requirement, however, the employee serves 'at will' and may be discharged at any time for any reason or no reason, with no cause of action for wrongful termination under state law. Such 'at-will' employees have no legitimate claim of entitlement to continued employment and, thus, have no property interest protected by the due process clause.

Id. (quoting *Wilson v. City of Sardis*, 264 Ga. App. 178, 179 (2003)).

Plaintiff was an "unclassified" employee who was employed at-will and could be fired for any reason. (KCT, 37:2-7; 60:22-61:14; 17:9-17; 83:16-84:1, Ex. 15, at p. 2). Unclassified employees have no due process rights with respect to their employment, and Plaintiff freely admits as much. (KCT, 39:25-40:11; KCT, 61:10-24, Ex. 11, at §§ 9.1-9.2). Accordingly, Plaintiff had no property interest in his

employment. *See Sykes v. City of Atl.*, 235 Ga. App. 345, 347 (1998) (unclassified employee had no property interest in her employment with the City, and thus no due process claim); *Harris v. City of Atl.*, No. 2015CV264583, at *7 (Ga. Sup. Ct. Apr. 12, 2017), attached hereto as **Ex. N** (same).

Plaintiff instead argues that he had a property interest in his employment because the City Code provides that "[n]o employee shall be dismissed from employment or otherwise adversely affected as to compensation or employment status except for cause." (City Code, § 114-528(a)). As that section is not expressly limited to classified employees, Plaintiff argues, it must apply to all, including him. Plaintiff further argues that even if Sec. 114-528 is insufficient to create a property interest in his employment, the due process provisions of the City's Ethics Code are. Plaintiff's reliance on these provisions is misplaced, as the City Charter expressly provides that Plaintiff's position is at-will. (City of Atl. Charter, §§ 3-305(a) and 3-301(c)) (AFRD Chief "may be removed at the pleasure of the Mayor"). In the event of a discrepancy between the City Code and the City Charter, the Charter controls. *See* O.C.G.A. § 36-35-3(a) (granting municipalities the power to adopt ordinances "for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto"). *See also City of Buchanan v. Pope*, 222 Ga.

App. 716, 719 (1996) (police department manual could not create property interest in employment in conflict with city charter; "a city's charter must control where inconsistent with personnel regulations"); *Waters v. Buckner*, 699 F. Supp. 900, 902 (N.D. Ga. 1988), aff'd 889 F.2d 274 (11th Cir. 1989) (police chief had no property interest in employment where city charter stated he could be terminated without cause; "[a]ny part of the personnel regulations that purport to say the police chief can only be fired for cause … would be void under Georgia law"). Plaintiff's claim fails.[18]

III. CONCLUSION

In light of the foregoing, as well as Defendants' Response to Plaintiff's Statement of Material Undisputed Facts, Defendants respectfully request that the Court deny Plaintiff's Motion for Summary Judgment in its entirety.

Respectfully submitted this 20th day of June, 2017.

[18] Plaintiff's claim also fails because he cannot show that he sought a writ of mandamus prior to bringing suit, a procedural prerequisite for bringing a due process claim. *See Bradford v. City of Roswell*, No. 1:11-cv-0787-JEC, 2014 WL 3767794, *5 (N.D. Ga. Jul. 31, 2014) (quoting *Goodman v. City of Cape Coral*, 581 Fed. Appx. 736 (11th Cir. 2014)); *Joiner v. Glenn*, 288 Ga. 208, 210 (2010); *Harris*, No. 2015CV264583, at *9.

s/Kathryn J. Hinton
David E. Gevertz
GA Bar No. 292430
Kathryn J. Hinton
GA Bar No. 542930
Hannah Jarrells
GA Bar No. 784478
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.
3414 Peachtree Rd NE
Monarch Plaza, Suite 1600
Atlanta, Georgia 30326
Phone: 404-221-6512
Fax: 678-406-8816
dgevertz@bakerdonelson.com
khinton@bakerdonelson.com

Attorneys for Defendants

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in local rule 5.1(C) and 7.1(D).

This 20th day of June, 2017.

s/ Kathryn Hinton
Kathryn J. Hinton
GA Bar No. 542930

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Defendants' Response to Plaintiff's Motion for Summary Judgment* via the Court's ECF filing notification which will automatically send an electronic copy of the foregoing to the following attorney of record for Plaintiff:

Kevin Theriot, Esq.
Jeana Hallock, Esq.
Ken Connelly, Esq.
Alliance Defending Freedom
1000 Hurricane Shoals Road, NE
Suite D-1100
Lawrenceville, Georgia 30043

This 20th day of June, 2017.

s/ Kathryn Hinton
Kathryn J. Hinton
GA Bar No. 542930