

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARLENE SERRANO VAZQUEZ,

Plaintiff,

v.

SERGIO L. TORRES TORRES, individually
and as Mayor of the Municipality of Corozal;
RICARDO RODRIGUEZ, individually and as
Human Resources Director of the Municipality of
Corozal; and **MUNICIPALITY OF
COROZAL,**

Defendants.

Civil No. **14-1102 (FAB)**

ACTION FOR:

CIVIL RIGHTS,
DAMAGES, INJUNCTIVE RELIEF

PLAINTIFF DEMANDS TRIAL BY
JURY

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the Plaintiff, **MARLENE SERRANO VAZQUEZ**, through the undersigned attorneys, and to this Honorable Court respectfully states, prays and alleges:

I. NATURE OF THE ACTION

1.1 This is a civil rights action brought by plaintiff seeking declaratory and injunctive relief, back pay, front pay, compensatory and punitive damages, and any other relief this Honorable Court deems just and proper, as a result of the politically motivated discrimination and hostile environment created against plaintiffs which culminated in her deprivation of duties and functions and eventual dismissal of her position held within the Municipality of Corozal without being accorded due process and in violation of their constitutionally protected rights under the First, Fifth and Fourteenth Amendments.

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction pursuant to 28 U.S.C §1331 and 1343. Plaintiffs' claims arise under the Civil Rights Act of 1871, 42 U.S.C. §1983, 1985(3) and 1988 and the Constitution of the United States, particularly under the First, Fifth, and Fourteenth Amendments. Pursuant to 28 U.S.C. §1367, this Court also has supplemental jurisdiction over all causes of action arising under the Laws and Constitution of Puerto Rico. The amount in controversy exceeds, exclusive of interests and costs, the sum of seventy five thousand dollars (\$75,000.00). Pursuant to 28 U.S.C. § 1332, plaintiffs demand trial by jury. Venue is proper under 28 USC section 1391.

III. PARTIES

A. Plaintiffs

3.1 The Plaintiff in the present action is a citizen of the United States, resident of Puerto Rico, who at the time of the filing of the present complaint was a transitory employee of Defendant Municipality of Corozal.

3.2 The Plaintiff is actively affiliated with and is loyal supporter of the New Progressive Party ("NPP").

3.3 As is common within small Municipalities in Puerto Rico, all defendants know the Plaintiff and are aware of her political affiliation with and active participation on behalf of the NPP in Corozal and the re-election campaign of the former NPP Mayor Roberto Hernández Vélez and as having voted for the NPP.

3.4 The Plaintiff has never been affiliated with or participated in campaigns for the Popular Democratic Party ("PDP").

3.5 Plaintiff Marlene Serrano was terminated from her position by defendants,

deprived of her duties and functions, and harassed, solely due to her political affiliation with the NPP.

3.6 Plaintiff held a transitory position and was harassed, deprived of her duties and functions, and ultimately dismissed without being accorded due process, and in violation of her First Amendment rights to free speech and political affiliation.

B. Defendants

3.9 Defendant Sergio L. Torres Torres ("Torres") was elected Mayor of the Municipality of Corozal during the general elections held in November 2012. He assumed office on or about January 15, 2013, and is currently holding said position. He is an active member of the Popular Democratic Party (PDP) and was elected on the PDP ticket. He is sued in his personal and official capacity. At all relevant times, defendant Torres was acting under color of law and pursuant to his authority as mayor of the Municipality of Corozal.

3.10 Defendant Ricardo Rodríguez ("Rodríguez") is the Human Resources Director of the Municipality of Corozal. He was appointed to such position by co-defendant Torres, and is currently holding said position. Rodríguez enjoys the full trust of and is loyal to co-defendant Torres as well to the PDP. He is a well-known, loyal, and active member of the PDP party who has participated and collaborated with the party in regards to numerous activities and events. He is sued in his personal and official capacity as Human Resources Director of the Municipality of Corozal.

3.11 The Defendant Municipality of Corozal is a unit of local government under the laws of Puerto Rico that is considered a person for purposes of the Federal Civil Rights Act, 42 USC §1983. Pursuant to the Law of Autonomous Municipalities of Puerto Rico, as amended, 21 LPRA §4001, et seq., Defendant Municipality of Corozal has the legal capacity to sue and be

sued.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

4.1 On November 6, 2012, general elections were held in Puerto Rico.

4.2 In the Municipality of Corozal, the incumbent Mayor, Roberto Hernández Vélez, affiliated with the New Progressive Party ("NPP"), was defeated by defendant Torres who was the candidate for the Popular Democratic Party ("PDP"). In or around January 15, 2013, Defendant Torres took office as Mayor of the Municipality of Corozal.

4.3 Plaintiff SERRANO was an employee of the Municipality of Corozal, who is openly affiliated with, and active member of the NPP Party.

4.4 After the elections, and the defeat of the incumbent NPP candidates, there was a highly charged political atmosphere within the government offices of the Municipality of Corozal.

4.7 Plaintiff is qualified and competent to perform the duties and functions of the position which she formerly occupied.

4.8 At all times prior to plaintiff's termination, she performed her job satisfactorily.

4.9 As it will be discussed below, plaintiff's dismissal letter did not notify or inform her of her due process rights to appeal such decision.

4.10 According to her personnel file, at no time had plaintiff been reprimanded, sanctioned or disciplined prior to defendants' adverse employment actions for any matter related to her job performance.

4.11 At no time prior to defendants' adverse employment actions did any of the defendants engage in a written evaluation of any of the plaintiffs' job performance.

4.12 Plaintiff Serrano has been a transitory Municipal employee since 2006. She has

held various transitory positions within the Municipality. Specifically, she was Secretary of former Mayor Hernández Vélez during the past administration. She was appointed to the position of Visual Health Clinic Coordinator on January 2013 where she was responsible, among other things for: offer orientation to municipal residents who were interested in receiving benefits such as visual exam and/or eye glasses, filling out their applications and verifying whether they qualified or not; coordinate resident's appointments at the ophthalmologist's office.

4.13 On January 11, 2013, after the corresponding approval from OCALARH, she was appointed by the former Mayor to the transitory position of Visual Health Coordinator, a position under the Federal Programs Office. She swore into her position on January 11, 2013, when Defendant Torres had still not taken office.

4.14 Her contract was effective from January 11, 2013 through October 14, 2013.

4.15 On May 1, 2013 defendant Torres terminated plaintiff Serrano's transitory appointment, five (5) months before the termination of her contract, solely because her political affiliation. She has suffered emotional, physical and economic distress for which she has had to seek medical attention.

4.16 Plaintiff Serrano was an avid and active supporter of Defendant Torres's political rival – former NPP affiliated Corozal Mayor Roberto Hernández Vélez. Plaintiff Serrano is a Delegate of the NPP (appointed by the NPP President). She has participated in numerous motorcades, walk-a-thons, campaign closings, and worked as electoral polling officer in support of the NPP and in relation to the November 2012 elections. Specifically, she was appointed as NPP's "Coordinadora de Colegio". Her counterpart in this position, Mrs. Rosarito Rodríguez Albino is now the Municipal Administrator of the Municipality of Corozal. The defendants are aware of plaintiff's political activities and affiliation.

4.17 Immediately after the November 2012 election and up until the termination of her position, Plaintiff was harassed and persecuted based on her political affiliation to the NPP and/or non-allegiance to the PDP. The abovementioned discriminating actions continued up until her dismissal.

4.18 Examples of the above, is the fact during the transition hearings, co-defendant Torres would say that he would not renew plaintiff's contract. Also, after taking office co-defendant Torres would go to her work area and he would say hello and greet everyone except the plaintiff. Finally, on or about April 11, 2013, plaintiff was called to a staff meeting in which the Federal Programs Office Director, Mrs. Joaliz Rivera Rodríguez told her that she was a transitory employee; therefore, she "was subject to constant evaluation and exposed to changes".

4.19 Defendant Torres, the mayor of the Municipality of Corozal, is the final policy and decision-making authority in the Municipality of Corozal. As such, he has the authority in law to hire, discharge and otherwise establish the terms and conditions of employment of the public employees of the Municipality.

4.20 At all material times hereto, the Defendants acted under color of the laws, statutes ordinances, regulations, customs or usage of Puerto Rico. Defendants were negligent or acted with malice or reckless disregard for plaintiff's civil, constitutional and contractual rights.

4.22 At all material times thereto, Defendants Torres and Rodríguez acted in their official capacity as Mayor of the Municipality of Corozal, and Human Resources Director of the Municipality of Corozal, respectively, and as such municipal liability attaches to defendant Municipality of Corozal.

4.23 As a result of the deliberate, discriminatory and unlawful conduct of the defendants, plaintiff has been deprived of her functions and ultimately terminated from her job,

publicly stigmatized and humiliated, caused significant damages and occasioned severe pain, suffering, mental anguish, anxiety, stress and depression, in detriment to her emotional and physical well being, all because they are not members of the PPD.

4.24 Given that the law was clearly established at the moment that the defendants engaged in the deliberate, discriminatory and unlawful adverse actions, defendants' conduct constitutes reckless disregard of plaintiffs' constitutional rights, for which they are entitled to punitive damages.

**V. FIRST CAUSE OF ACTION
(Political Discrimination in Violation of Plaintiffs' Rights Under the First Amendment)**

5.1 Plaintiffs reproduce and reaffirm as if alleged herein each and every one of the preceding allegations.

5.2 Plaintiff was a public employee of the Municipality of Corozal that was dismissed from her position without being accorded due process, solely due to her political affiliation or due to the exercise of her right of freedom of expression and freedom of association under the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

5.3 The conduct and acts of Defendants in their adverse employment actions against the plaintiff due to her political affiliation is a violation of her freedom of expression and freedom of association under the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

5.4 But for defendants' motive to discriminate against the plaintiff because of her political beliefs and affiliation, the plaintiff would have remained in her prior transitory position up until the ending of her contract along with her prior duties and functions.

5.5 As a direct consequence of the discriminatory conduct of the defendants, Plaintiff have suffered damage to reputation and emotional distress, in an amount no less than

\$350,000.00. She had a proprietary interest over her position pursuant to the Constitution of Puerto Rico and the United States.

5.6 She has also suffered economic losses estimated in an amount of no less than \$50,000.00

5.7 All of the previously mentioned actions of the Defendants violated 42 U.S.C. 1983.

5.8 As a result of all the defendants' discriminatory actions, all of the Plaintiffs' lives have been severely altered and affected.

VI. SECOND CAUSE OF ACTION (Punitive Damages)

7.1 Plaintiff reproduces and reaffirm as if alleged herein each and every one of the preceding allegations.

7.2 The above described unlawful acts of the defendants were willful, wanton, malicious, oppressive and/or with reckless disregard or delivered indifference to Plaintiff's constitutional rights for which Plaintiff is entitled to punitive damages in an amount no less than \$350,000.00.

VII. THIRD CAUSE OF ACTION (Fault or Negligence pursuant to 31 L.P.R.A. Sections 1801 and 1802)

8.1 Plaintiff reproduces and reaffirm as if alleged herein each and every one of the preceding allegations.

8.2 Defendants have acted willfully and negligently in carrying out the termination of employment, harassment and removal of duties of the plaintiff due to her political affiliation. Said actions were without just cause and in a discriminatory fashion.

8.3 Mayor Torres's personnel actions described in the present Complaint, were with

the knowledge that such actions would inflict grave economic and personal injury upon the plaintiff.

8.4 As a result of the adverse employment actions plaintiff has suffered personal injuries, including pain and suffering and general moral damages estimated in an amount no less than \$350,000.00, pursuant to 31 L.P.R.A. sections 5141, 5142.

**VIII. FOURTH CAUSE OF ACTION
(Violation of Plaintiffs' Due Process Rights - Restitution to her prior position)**

9.1 Plaintiff reproduces and reaffirms as if alleged herein each and every one of the preceding allegations.

9.2 The plaintiff has a protected property interest in her transitory position in the Municipality of Corozal pursuant to the transitory contract between the parties, which had an expiration date of October 14, 2013, that is five (5) months after plaintiff's dismissal on May 1, 2013.

9.3 In addition to being discriminatorily dismissed prior to the expiration of her transitory appointment, plaintiff Serrano was dismissed from her job without being informed of her legal rights to appeal such decision, and without being accorded a hearing or other meaningful opportunity to be heard prior to the effective date of the adverse employment action. The plaintiff had a transitory position in the Municipality of Corozal that cannot be terminated before the appointed term, as per the contract in violation of her due process rights under the Fifth and Fourteenth Amendments of the Constitution of the United States.

9.4 The conduct and acts of all defendants in her dismissal due to her political affiliation is a violation of her due process rights under the Fifth and Fourteenth Amendments of the Constitution of the United States. Defendants' personnel actions alleged in the present complaint were made with blatant disregard to plaintiffs' Fifth and Fourteenth Amendments Due

Process Rights as temporary employee of the Municipality.

9.5 As a result of the willful violation of plaintiff's constitutional rights under the Constitution of the United States of America, plaintiff is entitled to complete restitution of her former transitory position with the salary, duties, responsibilities of said position including but not limited to salaries, raises, bonuses and fringe benefits she would have received if she had continued at her position within the Municipality of Corozal. Said amount is estimated in no less than \$150,000.00.

9.6 Plaintiff is also entitled to injunctive relief, enjoining defendants from further discrimination against her because of her political beliefs and association now and in the future.

**IX. FIFTH CAUSE OF ACTION
(Attorney's Fees)**

10.1 Plaintiff reproduces and reaffirms as if alleged herein each and every one of the preceding allegations.

10.2 The defendants are also liable for pre-judgment interests and attorneys' fees, pursuant to 42 U.S.C. Section 1988. Attorneys' fees should be imposed in an amount no less than \$250,000.00.

WHEREFORE, plaintiff respectfully demand trial by jury and pray that judgment be entered against defendants, in each and every one of the preceding causes of action and that they be ordered:

- a. injunctive relief reinstating plaintiff to her prior position, with all her duties, benefits and responsibilities; and enjoining defendants from further discrimination against the plaintiffs because of her political affiliation now and in the future;
- b. payment of back pay of no less than \$50,000.00, and/or front pay to the plaintiff;
- c. damages for violation of plaintiff's First Amendment and Due process rights in

the amount no less than \$350,000.00;

d. punitive damages in an amount of no less than \$350,000.00;

e. damages, including pain and suffering and general moral damages, for the wrongful dismissal, in an amount of no less than \$350,000.00, pursuant to Article 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. §5141, §5142; as well as economic losses estimated in an amount of no less than \$150,000.00.

f. payment of costs and attorneys fees;

g. payment of allowable prejudgment and post judgment interests;

h. any other remedy that this Honorable Court deems just and proper.

Respectfully submitted.

In San Juan, Puerto Rico this 4th day of February, 2014.

s/ Andrés Guillemard-Noble

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