

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

MICHAEL DUNN

CIVIL ACTION NO.

VERSUS

JURY TRIAL DEMANDED

**CITY OF EUNICE and
RANDY FONTENOT, Individually and in
his Official Capacity as Chief of Police of
the Eunice Police Department**

COMPLAINT

NOW COMES Plaintiff, Michael Dunn, a person of the full age of majority residing in the State of Louisiana, Parish of St. Landry, who respectfully represents as follows:

1.

Made Defendants herein are the **City of Eunice**, a political subdivision of the State of Louisiana, and **Randy Fontenot, Individually and in his Official Capacity as Chief of Police of the Eunice Police Department**, a department or agency of the City of Eunice.

2.

Jurisdiction is proper in this Honorable Court pursuant to 28 U.S.C §§1331 and 1367, inasmuch as this matter arises under 42 U.S.C. §1983, *et seq.*, the First and Fourteenth Amendments to the United State Constitution, and Louisiana state law, including Article I, § 7 of the Louisiana Constitution.

3.

Venue is proper in this Honorable Court pursuant to 28 U.S.C §1391 inasmuch as a substantial part of the events or omissions giving rise to the claim occurred within the Western

District of Louisiana.

4.

At all times material hereto, Defendants were persons acting under color of law within the meaning of 42 U.S.C. §1983. At all times material hereto, Fontenot was acting in the course and scope of his employment with the City of Eunice as Chief of the Eunice Police Department.

5.

Dunn is a Eunice Police Department lieutenant and was at all times material hereto employed by Defendants as an officer of the Eunice Police Department.

Factual Background

6.

The Knights of Columbus (“KC”) Hall in Eunice, Louisiana, has been the scene of numerous incidences of gun fire, drug use, reckless driving, loud music, and other threats to public safety and nuisances affecting the Eunice residents who live near the KC Hall.

7.

On information and belief, the managers of the KC Hall are personnel friends of Defendant Randy Fontenot.

8.

Dunn and his family live near the KC Hall.

9.

On or about July 21, 2019, Dunn was off duty at his residence and saw a gathering of known members of a violent gang at the KC Hall. Later that night, Dunn was awakened by the sound of someone screaming and the sound of tires screeching. Dunn hurried to his front door and saw a car performing “donut” maneuvers in front of his residence, nearly hitting his parked

personal vehicle and marked patrol car. Dunn yelled at the occupants to “knock it off.” As the car made a U-turn and drove away, Dunn heard at least two gunshots.

10.

Once the shots were fired, Dunn saw many people exit the KC Hall and begin running up and down the street.

11.

Dunn called the Eunice Police Department and reported the incident but did not see any police car respond, and no Eunice Police Department officer spoke to Dunn about his report.

12.

Dunn later learned that the KC Hall had been rented for a graduation party and that the rental agreement did not required the presence of security personnel.

13.

The next day, Dunn reported the reckless driving and gun fire that occurred at the KC Hall, and in front of Dunn’s residence, to Defendant Randy Fontenot.

14.

In response, Fontenot laughed and said, “I guess you did not catch them.”

15.

Dunn then asked Fontenot if he would talk to the operators of the KC Hall about the incident and their failure to require security. Fontenot responded that Dunn could talk to either “Cal” or call Bayou State Homes and speak to the person in charge of renting out the Hall.

16.

Dunn later spoke to a “Cal,” making a complaint about the events at the KC Hall, and asking him to have police security at KC Hall events to help curtail criminal acts and make the

neighborhood safer.

17.

On August 24, 2019, Dunn received a call from another officer who told Dunn of a tip that there would be a shooting at the KC Hall that night. In particular, the officer told Dunn that a gang-affiliated rapper would be coming to the KC Hall and that members of another gang intended to retaliate against the rapper for a previous gang-related murder. The officer also told Dunn that he had reported the information to the on-duty supervisor.

18.

Later that night, Dunn saw several cars speeding to and from the KC Hall, running stop signs and playing extremely loud music. Dunn's three-year-old child and wife were awakened several times as a result. Dunn called the on-duty officers to monitor the area.

19.

As more people arrived at the KC Hall, Dunn saw the cars of known drug dealers arrive and be surrounded by people. He also saw other cars continually circling the area without stopping.

20.

At 11:03 pm, Dunn made a public Facebook post about the history of criminality at the KC Hall (including gun fire, drag racing, loud music, and the stench of marijuana), his complaints that the KC Hall operators ignored, and the ongoing gang activity, and the possible shooting taking place that night. Dunn requested anyone in the area to report any criminal or suspicious activities to the Eunice Police Department. Dunn later made an updated post after a shooting did in fact occur at the KC Hall in the early morning hours of August 25, 2019.

21.

Dunn made his Facebook post to warn the public of an ongoing threat to public safety. He posted that his “biggest fear is bullets ripping through my house where my wife and kid sleep. The reason for this post is to inform the public of [an] unsafe condition and pray this changes soon before someone loses their life.”

22.

On August 26, 2019, Fontenot made a public Facebook post addressing a report of gun fire at the KC Hall on the night of August 24-25, 2019. Fontenot wrote that there was no evidence of gun fire.

23.

In his Facebook post, Fontenot also disputed Dunn’s account of criminal activity at the KC Hall and disputed Dunn’s complaints about the KC Hall, writing “I have reviewed the reports and police logs. I have also reviewed some Facebook posts and the complaints reported therein. The posts on Facebook are not based on the factual information found in the police reports, logs and officer accounts.”

24.

On September 6, 2019, Fontenot notified Dunn – a permanent civil service employee – that Fontenot was investigating Dunn over Dunn’s August 24-25, 2019 Facebook post about the KC Hall. Fontenot alleged that Dunn’s Facebook post violated Eunice Police Department Procedures Order 15-7 Code of Conduct and Ethics B.2 Conduct Unbecoming of an officer (iii) impairs the operation of efficiency of the department, the officer, or city service.

25.

Thereafter, Fontenot placed Dunn on administrative leave because of Dunn's Facebook post.

26.

Dunn appealed Fontenot's discipline of him to Eunice Municipal Fire and Police Civil Service Board who ruled in Dunn's favor. Thereafter, the Eunice Board of Alderman removed Fontenot as the appointing authority and took away his authority to discipline officers such as Dunn.

27.

Since then Fontenot has continued to retaliate against Dunn, negatively affecting Dunn's conditions of employment and attempting to force Dunn's resignation.

28.

Fontenot's retaliation against Dunn was and is extreme and outrageous and done either maliciously or with reckless disregard for Dunn's rights, including specifically Dunn's constitutionally protected right to speak freely on matters of public concern.

Count I. Fontenot Retaliated Against Dunn Because of Dunn's Speech

29.

Dunn re-avers and re-alleges the preceding allegations of this Complaint which establish that Fontenot retaliated against him in retaliation for his engaging in speech protected by the First Amendment to the United States Constitution and by Article I, § 7, of the Louisiana Constitution.

30.

Dunn, as a public employee, may succeed on a claim for First Amendment freedom of speech retaliation by showing that (1) he suffered an adverse employment action; (2) he spoke as a

citizen on a matter of public concern; (3) his interest in the speech outweighs the government's interest in the efficient provision of public service; and (4) the speech precipitated the adverse employment action.

31.

Dunn suffered an adverse employment action – he was placed on administrative leave and has thereafter been retaliated against in the conditions of his employment.

32.

Dunn spoke as a citizen, on his own time, on Facebook - a public forum.

33.

Dunn spoke in the context of ongoing criminal conduct and threats to public safety emanating from the KC Hall.

34.

As a resident of Eunice and neighbor of the KC Hall, Dunn has a strong interest in ensuring that the safety and well-being of his family and other Eunice residents are protected against criminal conduct occurring at the KC Hall.

35.

Defendants have no countervailing interest.

Count II. Fontenot's Retaliation Was Motivated by Defendants' Unconstitutional Policy

36.

Dunn re-avers and re-alleges the preceding allegations of this Complaint which establish that the moving force for his discipline and other retaliation was Defendants' unconstitutional policy.

37.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. provides

2. Conduct Unbecoming an Officer

a. Officers shall conduct themselves at all times, both on duty and off duty, in such a manner as to reflect most favorably on the Department. He/She shall not conduct himself/herself in a manner that is unbecoming to a police officer.

b. Unbecoming conduct is that conduct which:

i. Brings the Department into disrepute;

ii. Reflects discredit upon the officer as a member of the Department;

iii. Impairs the operations or efficiency of the Department, the officer, or City service;

iv. Detrimentally affects the morale of the Department's personnel;

v. May reasonably be expected to destroy public respect for Eunice Police Officers and/or confidence in the Eunice Police Department.

Defendant's policy is invalid on its face.

38.

This policy entails a content-based restriction on speech and as such is presumptively unconstitutional.

39.

Government regulation of speech must be content-neutral, meaning it must be both viewpoint and subject matter neutral.

40.

The regulation of speech based on the ideology or expressive intent of the message is not viewpoint neutral and is therefore unconstitutional.

41.

Defendants' policy prohibits speech that is critical of the Eunice Police Department or which lowers the public perception of the Eunice Police Department, regardless of whether such speech is true and regardless of whether such speech is made on a matter of public concern.

42.

Inasmuch as Defendants' policy allows only positive speech about the Eunice Police Department and prohibits all negative speech, it restricts speech on matters of public concern and is therefore overbroad.

43.

A law is facially overbroad if it regulates substantially more speech than the United States and Louisiana Constitutions allow to be regulated, even if the law can be validly applied to regulate some unprotected speech.

44.

A law is facially overbroad where its plain language impermissibly punishes otherwise constitutionally protected speech beyond the law's allegedly legitimate purpose.

45.

Defendants' policy regulates all conduct, expression, and communication of thoughts. It is not restricted to conduct and speech during working hours or on work computers but applies twenty-four hours a day, seven days a week, year in and year out, in all places.

46.

Because Defendants' policy allows only positive speech about the Eunice Police Department and prohibits all negative speech, it restricts speech on matters of public concern and is therefore overbroad.

47.

An overbroad social media policy that prohibits negative speech or expressive communication about official misconduct, incompetence, corruption, cronyism, etc., is unconstitutional and any adverse employment action taken pursuant to such a policy is impermissible.

48.

Defendants' policy is also void for vagueness.

49.

A provision is unconstitutionally vague and violates due process when people of common intelligence must necessarily guess at its meaning and thus cannot tell what is prohibited and what is permitted.

50.

Defendant's policy is void for vagueness because its language is vague, uncertain and undefined.

51.

The policy's regulation of conduct and speech that brings the Department into disrepute, impairs the operations or efficiency of the Department, the officer, or City service, detrimentally affects the morale of the Department's personnel, and may reasonably be expected to destroy public respect for Eunice Police Officers and/or confidence in the Eunice Police Department, is

inherently vague and employs terms that are inherently vague and can mean different things to different people based upon their own individual perceptions of what is speech regarding public safety, what is constructive criticism, what constitutes the exposure of malfeasance, or what matters of public interest are and are not allowed to be discussed.

52.

The policy does not give adequate notice as to what speech is prohibited and what is allowed because it is impossible for a speaker to know the effect of his speech on others, including others who are determined to object to protected speech on matters of public concern.

Defendant's policy is invalid as applied

53.

Even if Defendants' policy were not facially invalid, it is invalid as applied to Dunn in this case.

54.

As set forth, Fontenot retaliated against Dunn because Dunn's speech on Facebook allegedly impaired the operations or efficiency of the Department, the officer, or city service.

55.

Nevertheless, Dunn's Facebook post did no more than warn the public of an ongoing threat to public safety, including an imminent threat of gang-related gun fire.

56.

Accordingly, Dunn's speech did not and could not impair the operations or efficiency of the Department, the officer, or city service.

Count III. Declaratory and injunctive relief.

57.

Dunn re-avers and re-alleges the foregoing allegations of this Complaint.

58.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. punishes and restricts protected speech on matters of public concern.

59.

The First Amendment to the United States Constitution guarantees to the people the freedom of speech and the right to petition the government for a redress of grievances.

60.

Article I, Section 7, of the Louisiana Constitution provides, “No law shall curtail or restrain the freedom of speech or of the press.”

61.

Article I, Section 9, of the Louisiana Constitution provides, “No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.”

62.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. regulates both speech and the right to petition.

63.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. is vague and overbroad, both on its face and as applied to Dunn in this case.

64.

Fontenot's retaliation against Dunn for engaging in protected speech objectively chills speech and has chilled Dunn from engaging in speech on matters of public concern and importance.

65.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. deters and chills citizens' speech on a matter of the highest public concern – public safety.

66.

Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. Gretna City Ordinance 16-66.1 is a presumptively-unconstitutional content-based regulation of the freedom of speech and of the right to petition the government for a redress of grievances guaranteed by the Constitutions of the United States and the State of Louisiana, and this Honorable Court should therefore declare Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. to be an unconstitutional violation of the First Amendment of the United States Constitution and of the Louisiana Constitution, Article I, §§ 7, and 9

67.

This Honorable Court should therefore enjoin Defendants from further enforcement of Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. against Dunn and other officers.

Damages

68.

In light of Defendants' retaliation against Dunn under the guise of enforcing an unconstitutional policy, Defendants are liable unto Dunn for the following:

- A. Past and future mental and emotional distress and outrage.
- B. Past and future loss of enjoyment of life.
- C. Punitive and exemplary damages owed by Fontenot in his individual capacity.
- D. Attorney's fees.
- E. Costs and expenses.
- F. Interest on all damages, attorney's fees, costs, and other damages or elements of recovery.
- G. All other damages and legal or equitable relief for which the law provides recovery.

Jury Demand

69.

Dunn demands a trial by jury for all claims and issues so triable.

WHEREFORE, Plaintiff, Michael Dunn, prays that this Complaint be deemed good and sufficient and that after due proceedings are had, judgment be rendered on behalf of Dunn and against Defendants jointly, severally, and *in solido*, for all of the damages set forth above. Dunn additionally prays for a declaration that Eunice Police Department Procedures Order #15-7 Code of Conduct and Ethics I.B.2. is unconstitutional and for an injunction against its further enforcement by Defendants. Dunn further prays for all other legal and equitable relief to which he may be entitled.

Respectfully submitted:

/s/ Kearney S. Loughlin

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Attorney for Michael Dunn

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Michael Dunn

(b) County of Residence of First Listed Plaintiff St. Landry
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Kearney S. Loughlin, Kearney Loughlin, LLC, 602 Boudier Creek Parkway, Lafayette, LA 70508; (337) 534-8803

DEFENDANTS
 City of Eunice and Randy Fontenot, Individually and in his Official Capacity as Chief of Police of the Eunice Police Department

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 FEDERAL TAX SUITS

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
First Amendment retaliation and declaratory judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 08/17/2020 SIGNATURE OF ATTORNEY OF RECORD: /s/ Kearney S. Loughlin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____