

# PLAINTIFF'S ORIGINAL COMPLAINT

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out in the Texas National Guard, she was moved out of the Texas Adjutant General's Office. Then she was not selected for a promotion that the Adjutant General had previously said she was "highly qualified" for. Within weeks of not being selected, she was investigated for fraud, waste, and abuse, involving taking military leave from her civilian job, and told she would be fired. She filed complaints with the National Guard's Equal Employment Office alleging gender discrimination and retaliation for her civilian job, but they were rejected without any investigation occurring. After a successful appeal, the Office of Federal Operations told the National Guard to reinstate her complaint. Then the Texas Adjutant General stepped in and kicked it out again. Ms. Millonzi has been left with no choice but to file suit.

## II PARTIES

1. Plaintiff Cynthia Millonzi is an individual who resides in Hays County, Texas.
2. Defendant Adjutant General's Department of Texas ("TAG") is an arm of the State of Texas. TAG can be served through its Administrative Head, John F. Nichols at 2200 West 35th Street, Building 10, Camp Mabry (Austin), Texas 78763.
3. Defendant John F. Nichols is the Texas Adjutant General. He may be served at 2200 West 35th Street, Building 10, Camp Mabry (Austin), Texas 78763.

4. Defendant Joseph Lengyl is the Chief of the National Guard Bureau. He may be served at 1636 Defense Pentagon Ste. 1E169, Washington, DC 20301.
5. Defendant Heather Wilson is the Secretary of the Air Force. She may be served at 1670 Air Force Pentagon, Washington, D.C. 20330-1670.
6. Defendant United States may be served by serving the Civil Process Clerk for the U.S. Attorney in the Western District of Texas at 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216 and by sending a certified copy of the complaint and the summons to Attorney General Jeff Sessions at 950 Pennsylvania Ave., NW, Washington, DC 20530

### III JURISDICTION AND VENUE

7. This Court has original jurisdiction to hear this complaint under 28 U.S.C. § 1331, this action being brought under 42 U.S.C. § 2000e et seq., 38 U.S.C. § 4311 et seq.
8. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367, these claims being so related to the claims in the action within this Court's original jurisdiction that they form part of the same case or controversy.
9. Venue is appropriate because the acts giving rise to this lawsuit occurred within the Western District of Texas.

IV  
FACTS

**A. Ms. Millonzi was an exceptional civilian employee for the duration of her employment.**

10. Ms. Millonzi served in the military for nearly 30 years and was concurrently employed as a Federal Civil Service employee.
11. She served in Operation Iraqi Freedom. In fact, she was in the second group to cross the border into Iraq.
12. In 2008, she accepted a dual-status technician job with the Texas National Guard.
13. As a dual-status technician, Ms. Millonzi wore two hats: one purely military and one purely civilian.
14. While acting in her civilian capacity, she was not subject the Code of Military Justice. As a civilian technician, Ms. Millonzi was not entitled to representation by a military lawyer for any allegations of misconduct.
15. In 2012, Ms. Millonzi rose to the rank of colonel on the military side.
16. On the civilian side, Ms. Millonzi was a GS-14 and the Director of Manpower and Personnel, aka the HRO or Human Resource Officer, in the Texas Adjutant General's Office. In that capacity, she planned, directed, and administered the human resource programs for the National Guard.

She was also the Program Manager for fiscal resources dispersed to the state.

17. Ms. Millonzi excelled at her job. In 2012 and 2013, Ms. Millonzi was rated “Best Qualified” and “Outstanding Performance, Must Promote.” On her 2012 evaluation, John F. Nichols the Adjutant General of Texas stated that Ms. Millonzi showed “exceptional performance in every aspect of her duties [and] continues to establish herself as a Standard Bearer for organizational excellence.” On her 2013 evaluation the Adjutant General stated that “COL Millonzi is an exceptional officer who continually demonstrates the highest level of performance in her assigned duties.” The Adjutant General continued, “COL Millonzi is respected by her peers for her knowledge, respected by her subordinates for her mentoring and leadership, and respected by her superiors for her dedication and mission successes.”
18. On each evaluation, the Adjutant General stated that Ms. Millonzi would be well-suited for a promotion to Chief of Staff.

**B. In June 2013, Ms. Millonzi was featured in the “Hero’s Edition” of a local magazine for the gay community.**

19. On June 26, 2013, in the case of *U.S. v. Windsor*, the U.S. Supreme Court struck down the federal definition of marriage as being solely between a man and a woman.
20. Days later, on June 28, 2013, Ms. Millonzi was featured in the magazine *L Style G Style* about proudly and fearlessly coming out in the Texas National Guard.

21. In the article, Ms. Millonzi describes a pervasive military culture of gender discrimination and sexual assault against women in the military. She states her belief that sexual assault on trainees was prevalent. She reveals that she was a victim of sexual assault during advanced training. When she complained, this caused her to be ostracized by fellow soldiers because it was seen as her word versus their leader's word. She also details discrimination and hardships caused by being gay in the military, including the fact that she had to lie about who she was to even start her military career and witnessing fellow soldiers losing their careers over being outed.

**C. After the article was published, Ms. Millonzi experienced discrimination because of her gender and sexual orientation.**

22. While the June article states that her supervisor, the Adjutant General, "did not even bat an eye when she told him," his actions tell a different story.
23. In August, Ms. Millonzi was reassigned away from the Adjutant General's Office to serve as BG Hamilton's Support Director. After that reassignment, the Adjutant General was no longer in her direct chain of command.
24. At the beginning of September 2013, the Texas Adjutant General directed the Texas National Guard not to process ID Cards or any benefit applications for same-sex couples at state-run facilities. This order was conveyed directly and personally to Ms. Millonzi by BG Hamilton stating

they did not want anyone going to the press. Ms. Millonzi took that statement as an indirect threat to her.

25. Ms. Millonzi continued to excel in her job performance. On her 2014 evaluation, BG Hamilton stated that “COL Millonzi is a dedicated, innovative and inspiring officer to those she serves.” He states that Ms. Millonzi was handpicked by him to be his Support Director because of her demonstrated successes and exceptional leadership.

26. However, her days were numbered.

**D. When Scott Macleod became Chief of Staff over Ms. Millonzi, he almost immediately opened an investigation into her civilian employment.**

27. In April 2014, Ms. Millonzi was under consideration for a civilian Chief of Staff position, but did not get it. Instead, Scott MacLeod was selected.

28. Within weeks, MacLeod ordered an investigation into Ms. Millonzi’s conduct as a civilian employee.

29. Ostensibly, the investigation had to do with reports of absences and tardies alleged in a complaint by one of Ms. Millonzi’s subordinates. However, COL MacLeod gave COL Amy Cook unbridled discretion directing her to “make any findings you deem appropriate” and designating the investigation her primary duty.

30. The investigation was conducted by COL Cook in her capacity as a Civilian Federal Civil Service employee. This was in direct conflict with COL Cook’s position as the Federal Human Resource Officer over the civilian employment program of which both she and Ms. Millonzi were employed.

The HRO is responsible to protect the integrity of the processes of Federal Employment and remain an objective party to any investigation of the employees.

31. COL Cook has targeted and discriminated against gay women before.
32. COL Cook, in her prior position as the Public Affairs Officer, had to approve employees who wished to be photographed in Camp Mabry for magazine features. COL Cook routinely approved the requests for male and female officers. However, when Ms. Millonzi asked for permission to be photographed for her *L Style G Style* article, COL Cook refused to allow it.
33. Even more significantly, prior to be assigned to investigate Ms. Millonzi, COL Cook had been accused of creating a hostile environment for a gay female officer named Becky Vlasak. The investigating officer determined that “LTC Cook’s behavior demonstrated a pattern of offensive conduct toward employees of the USPFO-Texas and in doing so abused her authority . . . as well as her position of assignment.”
34. As soon as COL MacLeod was named Chief of Staff, he threatened Ms. Millonzi, stating that within a week he would be her boss, which meant he would be able to take action against her.
35. COL Cook’s assignment to investigate violated regulations and procedures regarding conflict of interest. Specifically, the subordinate employee who complained about Ms. Millonzi’s alleged absences was Ms. Felde. Prior to Ms. Felde filing any complaints against Ms. Millonzi, Ms. Millonzi had



spoken with COL Cook about potentially disciplining Ms. Felde for insubordination, discourtesy, and attempted misappropriation of funds. Ms. Felde knew that Ms. Millonzi was not pleased with her work performance and that she might be disciplined. Therefore, she preemptively filed complaints against Ms. Millonzi.

36. Because Ms. Millonzi is gay, COL Cook did not pursue the allegations against Ms. Felde, but focused on Ms. Millonzi instead.

37. When Ms. Millonzi complained about the conflict of interest, she was told that “leadership” had determined there was no conflict of interest.

**E. The investigation failed to turn up any actual evidence of wrongdoing or fraud.**

38. The investigation into the Complaint lasted from May 16, 2014 until June 20, 2014. During that time, COL COOK only interviewed Ms. Millonzi’s subordinates. According to the Investigation File, COL Cook made no attempt to interview either COL Kenyon, COL Millonzi’s supervisor during most of these alleged incidents, or BG Hamilton.

39. All of the incidents listed in the report concern purely civilian activities.

40. COL Cook’s investigation yielded twelve statements pertaining to the complaint by Ms. Felde. Of the twelve statements provided by Ms. Millonzi’s subordinates, seven expressed absolutely no concern over Ms. Millonzi’s status. An eighth statement said that the employee inquired about Ms. Millonzi’s timekeeping at one point, but was told that “it was properly documented and had been approved by higher level supervisors.”

The other four expressed suspicion, but admitted they were not involved in Ms. Millonzi's timekeeping or actually knew what her status was when she was allegedly gone. Furthermore, those four employees were all direct reports to Ms. Felde.

41. Despite citing 29 distinct dates of occurrence and compiling an investigative file containing 768 pages and 19 exhibits, none actually provided anything more than the conclusory statements of four disgruntled subordinate employees.
42. In fact, the documentary evidence produced actually shows Ms. Millonzi was approved for all of her civilian leave.
43. Specifically, all requests for military annual training orders attached to the report were signed by Ms. Millonzi's supervisors, including COL Kenyon and BG Hamilton, or their designated representative.
44. All eleven IDTs attached to the report were signed either by COL Kenyon, BG Hamilton, or the appropriate authority.
45. All requests and authorizations for annual leave and sick leave were signed by COL Kenyon or BG Hamilton.

**F. COL Cook accuses Ms. Millonzi of falsifying Military Leave Orders as a civilian and MacLeod recommends civilian termination for taking military leave.**

46. To get around the fact that all of the documents turned up during the investigation showed Ms. Millonzi had been properly requested and been approved for leave, COL Cook accused Ms. Millonzi of falsifying all of the

valid orders and leave approvals, including several AT Orders for Military Leave.

47. On September 24, 2014, MacLeod adopted the recommendation wholesale, recommending Ms. Millonzi's be terminated as a civilian for claiming to take military leave on at least 3 occasions. MacLeod has not recommended any male civilian employees be fired for taking military leave.
48. Because the recommendation is purely based on civilian technician activities, Ms. Millonzi's military lawyer was prohibited from representing her. In fact, COL Nettles, the senior legal advisor at Camp Mabry, put in writing that MacLeod's recommendation of termination was purely a "civilian technician action" and that a military attorney is prohibited from "assisting a civilian technician" such as Ms. Millonzi.

**G. Ms. Millonzi submitted her first EEO complaint on October 18, 2014.**

49. On October 18, 2014, Ms. Millonzi submitted an informal EEO complaint of gender discrimination based solely on her status as a civilian employee.
50. When she requested that her complaint be treated as formal, the EEO office kicked it out on December 3, 2014, refusing to even investigate due to her dual status.

**H. Eleven days after Ms. Millonzi's EEO complaint was kicked out, BG Hamilton stated he was adopting the recommendation and that she would be terminated.**

51. On December 12, 2014, BG Hamilton adopted MacLeod's recommendation, broadly stating that "the material relied upon to propose this action has

provided sufficient evidence to show a frequency of absences that are unaccounted for on your timecard.”

52. BG Hamilton provided no dates for that contention. However, the material relied upon to propose termination included dates that Ms. Millonzi had taken military leave.

53. Ms. Millonzi was then given an ultimatum to retire or be terminated and lose all of her benefits. She retired.

**I. Ms. Millonzi filed a second EEO complaint after her termination.**

54. Forty-four days later, on January 25, 2015, Ms. Millonzi filed a second EEO complaint alleging gender discrimination and reprisal.

55. Again, the complaint was kicked out without investigation.

56. However, Ms. Millonzi appealed to the Office of Federal Operations.

57. On February 17, 2017, the Office of Federal Operations reversed, stating that “the Agency has failed to substantiate the bases for its final decision” and “dismissal was not appropriate.” See attached opinion and order.

58. On May 10, 2017, without investigating Ms. Millonzi’s claims, the Texas Adjutant General tossed out her complaint, making the same conclusory statements that the Office of Federal Operations had found insufficient.

**J. Ms. Millonzi was treated differently than male and heterosexual employees.**

59. Male and heterosexual employees were not treated the same way as Ms. Millonzi.

60. For example, Chip Osborne, male, was found to have unlawfully used a government credit card to purchase personal items. He was given a new position and allowed to earn his full retirement.
61. Brandon Watkins, male, was removed from his position for insubordination, but permitted to work as a project officer until he earned full retirement.
62. Timothy Smith, male, was removed from his position for performance deficiencies, but was given a project officer position until he earned his high three for retired pay.
63. Les Edwards, male tested positive for drugs, but has not been fired.
64. Pike Word, male, was not permitted to possess a fire arm due to a civil conviction. Possessing a firearm is a requirement for military service. However, the National Guard did not revoke his clearance or discharge him. Instead the National Guard maintained his employment for over two years while he adjudicated his conviction.
65. COL Amy Cook, dual status technician, heterosexual female, was found to have engaged in an abuse of power and a pattern of offensive behavior. No disciplinary action was taken against her. Indeed, the Texas National Guard still employees Ms. Cook even after the Arizona National Guard asked her to step down by because of numerous EEO and abuse of power complaints. Currently, COL Cook is still under investigation by the Arizona National Guard.

66. A heterosexual female subordinate technician to Ms. Millonzi was accused by Amy Cook during the Millonzi investigation of falsifying documents. No discipline has been taken against her.

**K. The Texas National Guard has discriminated against at least two other gay female employees.**

67. Prior to COL Millonzi being investigated for a hostile environment, the only two other openly gay female officers were also investigated and disciplined based on hostile environment claims. Significantly, like COL Millonzi, prior to coming out as openly gay, these two officers were highly regarded.
68. LTC Alba Melgar is gay and was accused of creating a hostile environment. She was given a Letter of Reprimand and moved to a different position.
69. LTC Lindsey Doyle is gay and was accused of creating a hostile environment. She was forced out of her position with Army National Guard. Significantly, the charges against her were so flimsy that immediately after the Texas Army National Guard forced her out, the Texas Air National Guard hired her and gave her a promotion.
70. No further intra-service appeals are available and all conditions precedent to this action have been met.

V

FIRST CAUSE OF ACTION: TITLE VII DISCRIMINATION

71. Plaintiff incorporates paragraphs 1-70 as if restated herein.
72. Plaintiff is a gay female.
73. Plaintiff was qualified for her civilian job.

- 74. Plaintiff suffered an adverse action when she was proposed for termination and terminated from her civilian position.
- 75. Plaintiff was replaced by a heterosexual male or otherwise discriminated against because of her gender.
- 76. Defendants actions have caused Plaintiff damages.

VI  
SECOND CAUSE OF ACTION: TITLE VII RETALIATION

- 77. Plaintiff incorporates paragraphs 1-76 as if restated herein.
- 78. Plaintiff engaged in protected activity at least when she filed her EEO complaint on October 18, 2014.
- 79. Plaintiff suffered an adverse action when she was terminated from her civilian position less than two months later.

VII  
THIRD CAUSE OF ACTION: USERRA VIOLATION

- 80. Plaintiff incorporates paragraphs 1-70 as if restated herein.
- 81. Plaintiff was a Colonel in the National Guard.
- 82. Plaintiff took military leave from her civilian job.
- 83. Defendants used Plaintiff's military leave as the basis for proposing termination and then terminating Plaintiff from her civilian job.

VIII  
FOURTH CAUSE OF ACTION: TEX. GOV. CODE § 613.021

- 84. Plaintiff incorporates paragraphs 1-70 as if restated herein.
- 85. Plaintiff was a Colonel in the Texas National Guard.
- 86. Plaintiff took military leave from her civilian job.

87. Defendants used Plaintiff's military leave as the basis for proposing termination and then terminating Plaintiff from her civilian job.

IX  
FIFTH CAUSE OF ACTION: *MINDES* ACTION

88. Plaintiff incorporates paragraphs 1-87 as if restated herein.
89. As described above Defendants violated Plaintiff's constitutional due process, free speech, and equal protection rights.
90. As described above, Defendants violated statutes and their own regulations.
91. Plaintiff has exhausted all intra-service measures as the State Adjutant General in his May 10 decision stated there is no right of appeal beyond his office.
92. As described above, the actions complained were taken against Plaintiff in her civilian capacity involving her civilian role.

X  
JURY DEMAND

93. Plaintiff demands trial by jury and will tender the appropriate fee.

XI  
DAMAGES

94. Plaintiff seeks all damages allowed under the law, including monetary relief and:
- (a) Plaintiff seeks an injunction prohibiting Defendant from engaging in unlawful practices.
  - (b) Plaintiff seeks additional equitable relief as may be appropriate such as reinstatement, promotion, back pay, front pay, and court costs.



(c) Plaintiff seeks compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

(d) Plaintiff seeks reasonable attorney's fees and costs including reasonable expert fees.

(e) Plaintiff seeks pre- and post- judgment interest at the maximum rate allowed by law.

WHEREFORE, premises considered, Plaintiff respectfully prays that Defendant be cited to appear and, that upon a trial on the merits, that all relief requested be awarded to Plaintiff, and for such other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,  
ROB WILEY, P.C.

By:           /s/ Colin Walsh          

Robert J. Wiley\*

Texas Bar No. 24013750

Colin Walsh\*

Texas Bar No. 24079538

*\*Board Certified Specialist, Texas Board of  
Legal Specialization, Labor and Employment  
Law*

ROB WILEY, P.C.  
1011 San Jacinto Blvd., Ste. 401  
Austin, TX 78701  
Telephone: (512) 27-5527  
Facsimile: (512) 287-3084  
cwalsh@robwiley.com  
ATTORNEYS FOR PLAINTIFF