

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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2017 JUL 31 P 3:07

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

ROSE MCCOY,

Plaintiff,

v.

CIVIL ACTION NO.: 17-C-1075

Judge Bloom

WEST VIRGINIA SECRETARY OF STATE,

Defendant.

**COMPLAINT**

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1. The plaintiff, Rose McCoy, brings this action against the defendant for its discriminatory actions against the plaintiff.

**PARTIES**

2. The plaintiff, Rose McCoy, was at all times relevant herein, a resident of Kanawha County, West Virginia.

3. The defendant, West Virginia Secretary of State, is an office of the State of West Virginia.

**FACTS**

4. The plaintiff, Rose McCoy, is seventy-nine years old.

5. The plaintiff, Rose McCoy, is African American.

6. The plaintiff, Rose McCoy, is female.

7. The plaintiff, Rose McCoy, is a registered Democrat.

1-3

8. The plaintiff, Rose McCoy, was employed by the defendant for approximately fifty years.

9. Most recently, the plaintiff, Rose McCoy, was employed by the defendant as a Business Clerk in the Business and Licensing Division.

10. The plaintiff's position was not a confidential or policy-making position.

11. During her employment, Rose McCoy consistently performed her duties in a satisfactory manner and met the reasonable expectations of her employer.

12. On or about January 16, 2017, the defendant willfully, maliciously and unlawfully terminated the plaintiff's employment.

13. On or about January 16, 2017, the defendant willfully, maliciously and unlawfully terminated the employment of fifteen other employees.

14. Regarding these terminations, the Deputy Chief of Staff and Communications Director for the Office of the West Virginia Secretary of State, Mike Queen, said West Virginia Secretary of State Mac Warner was "assuming each constitutional office [wa]s going to be asked to reduce its budget."

15. Further, Mr. Queen stated about these terminations, "[w]e're hoping we can demonstrate to the Legislature we're operating more efficiently."

16. Mr. Queen also stated about these terminations, "[e]verybody has to try to become more lean. Secretary Warner will have his team on the ground ready to run, and do more with less, and do it the best we can."

17. Following the willful, malicious, and unlawful termination of employment of the above-referenced sixteen employees on or about January 16, 2017, the defendant hired twenty-two new employees to replace those sixteen employees.

18. The plaintiff, Rose McCoy, was replaced in her employment with the defendant by Matthew Gallagher.

19. Matthew Gallagher is twenty-six years old.

20. Matthew Gallagher is Caucasian.

21. Matthew Gallagher is male.

22. Matthew Gallagher is a registered Republican.

23. Fifteen of the sixteen employees terminated by the defendant were registered Democrats.

24. None of the sixteen employees terminated by the defendant were registered Republicans.

25. Nineteen of the twenty-two employees hired by the defendant are registered Republicans.

### **FIRST CAUSE OF ACTION**

26. The defendant's actions constitute an unlawful retaliatory discharge motivated by the contravention of substantial public policies of the State of West Virginia as articulated in the decision of the West Virginia Supreme Court of Appeals in Harless v. First National Bank in Fairmont, 162 W. Va. 116, 246 S.E.2d 270 (1978), in that the plaintiff was retaliated against, discriminated against, and/or terminated in part, because of her political affiliation. The source of the substantial public policies upon which the plaintiff's claim is based are the constitutional rights guaranteed to the plaintiff under Article III, Section 7 and/or Article III, Section 3 of the West Virginia Constitution and under the First Amendment of the United States Constitution.

27. As a direct and proximate result of the aforesaid actions, the plaintiff has suffered, and will continue to suffer, lost wages and benefits in an amount to be proven at trial.

28. As a direct and proximate result of the defendant's actions, the plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

29. The actions of the defendant were willful and malicious, entitling the plaintiff to attorney fees and costs.

30. The defendant maintains liability insurance coverage pursuant to W.Va. Code § 29-12-5, which coverage is implicated to satisfy the plaintiff's claims as set forth herein.

31. The defendant's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

### **SECOND CAUSE OF ACTION**

32. This count alleges a state constitutional tort action against the defendant under the West Virginia Constitution, pursuant to the common law of West Virginia.

33. The actions of the defendant violated the constitutional rights guaranteed to the plaintiff under Article III, Section 7 and/or Article III, Section 3 of the West Virginia Constitution.

34. The actions of the defendant also violated the constitutional rights guaranteed to the plaintiff under the First Amendment to the United States Constitution.

35. The provisions of the United States Constitution are cited in this Complaint because, with some limited exceptions, the rights guaranteed to the plaintiff under the West Virginia and United States Constitutions are so parallel that the violation of one similarly would constitute the violation of the other. In civil rights litigation, plaintiffs often cite the state and federal constitutional provisions implicated so that the issues in the case are federalized to allow for possible review by the United States Supreme Court in the unlikely event that either the trial court or the West Virginia Supreme Court interprets a constitutional right contrary to decisions of the United States Supreme Court.

36. By alleging that the defendant violated the plaintiff's rights under the West Virginia and United States Constitutions, the plaintiff clearly and unambiguously has not created any federal cause of action to warrant the removal of this case to federal court.

37. In fact, in three other cases—*Taylor v. Kanawha County Board of Education*, Civil Action No. 2:05-00877, *Lilly v. City of Clendenin*, Civil Action No. 2:05-0303, and *McGhee v. City of South Charleston*, 2:01-1308— where the defendants removed cases asserting this same or similar state constitutional action, three different judges in the United States District Court for the Southern District of West Virginia concluded that removal was improper and those cases were remanded to state court. In the *Taylor* case, the District Court awarded attorneys' fees and costs in granting the motion to remand. Furthermore, by alleging violations of the United States Constitution, the Governmental Tort Claims and Insurance Reform Act is inapplicable.



38. As a direct and proximate result of the defendant's aforesaid actions, the plaintiff is entitled to damages for lost wages and benefits, indignity, embarrassment, humiliation, annoyance, inconvenience as well as all other allowable compensatory damages in an amount to be determined by the jury.

39. The actions of the defendant were willful and malicious, entitling the plaintiff to an award of attorney fees and costs.

40. The defendant maintains liability insurance coverage pursuant to W.Va. Code § 29-12-5, which coverage is implicated to satisfy the plaintiff's claims as set forth herein.

41. The defendant's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

### **THIRD CAUSE OF ACTION**

42. The plaintiff Rose McCoy's termination from her employment was based upon, in whole or in part, the plaintiff's age, in violation of the West Virginia Human Rights Act, West Virginia Code §5-11-9(1).

43. As a direct and proximate result of the defendant's actions, the plaintiff has suffered and will continue to suffer lost wages and benefits in an amount to be determined by the jury.

44. As a direct and proximate result of the defendant's actions, the plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

45. The defendant's actions were willful and malicious and violated the West Virginia Human Rights Act entitling the plaintiff to attorney fees and costs pursuant to West Virginia Code §5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

46. The defendant's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

#### **FOURTH CAUSE OF ACTION**

47. The plaintiff Rose McCoy's termination from her employment was based upon, in whole or in part, the plaintiff's race, in violation of the West Virginia Human Rights Act, West Virginia Code §5-11-9(1).

48. As a direct and proximate result of the defendant's actions, the plaintiff has suffered and will continue to suffer lost wages and benefits in an amount to be determined by the jury.

49. As a direct and proximate result of the defendant's actions, the plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

50. The defendant's actions were willful and malicious and violated the West Virginia Human Rights Act entitling the plaintiff to attorney fees and costs pursuant to West Virginia Code §5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

51. The defendant's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

#### **FIFTH CAUSE OF ACTION**

52. The plaintiff Rose McCoy's termination from her employment was based upon, in whole or in part, the plaintiff's gender, in violation of the West Virginia Human Rights Act, West Virginia Code §5-11-9(1).

53. As a direct and proximate result of the defendant's actions, the plaintiff has suffered and will continue to suffer lost wages and benefits in an amount to be determined by the jury.

54. As a direct and proximate result of the defendant's actions, the plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

55. The defendant's actions were willful and malicious and violated the West Virginia Human Rights Act entitling the plaintiff to attorney fees and costs pursuant to West Virginia Code §5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

56. The defendant's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.



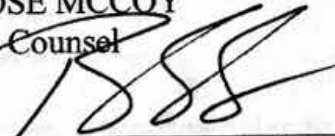
**PRAYER FOR RELIEF**

WHEREFORE, the plaintiff prays for the following relief:

1. Damages set forth in this Complaint, including lost wages and benefits, back pay, front pay, and damages for indignity, embarrassment, humiliation, annoyance, inconvenience, and punitive damages in an amount to be determined by the jury;
2. Prejudgment interest as provided by law;
3. Attorney fees and costs; and
4. Such further relief as this court may deem just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE TO A  
JURY.

ROSE MCCOY  
By Counsel



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