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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ANTHONY L. BLANFORD and)
JOHN K. BELLVILLE,)

Plaintiffs,)

v.)

MICHAEL J. DUNLEAVY, in his)
individual and official capacities;)
TUCKERMAN BABCOCK; and the)
STATE OF ALASKA,)

Defendants.)

Case No. 3AN-19-04445 CI

Complaint for Damages and Injunctive Relief

Plaintiffs Anthony L. Blanford, M.D., and John K. Bellville, M.D.,

complain and allege as follows:

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Introduction

1. Doctors Blanford and Bellville bring this action to vindicate their right to freedom of speech under the Alaska Constitution and the Constitution of the United States.

2. The right to free speech “includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

3. “The right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’” *Id.*

4. The right not to speak also prohibits the state from compelling its citizens to pledge allegiance to any particular political brand of government.

5. Drs. Blanford and Bellville are psychiatrists who worked at the Alaska Psychiatric Institute (API) and were employed by the State of Alaska.

6. Defendants Michael J. Dunleavy and Tuckerman Babcock demanded that Drs. Blanford and Bellville, along with hundreds of other state employees, pledge allegiance to Gov. Dunleavy’s political

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agenda when Mr. Dunleavy assumed the office of Governor on December 3, 2018.

7. Drs. Blanford and Bellville refused to swear allegiance to the Dunleavy agenda, believing that their first obligation was to their patients and that making such a pledge would violate their duties as doctors.

8. Dr. Blanford explained his refusal in a letter to the editor in the Anchorage Daily News, saying that a compelled “symbolic gesture of deference” didn’t “settle well” with him, and that he was not “in favor of further cuts and hiring freezes,” the only agenda of Mr. Dunleavy’s that he had heard of for API.

9. Defendants thereafter fired Drs. Blanford and Bellville for their refusal to offer their pledges of allegiance to the new administration and, as to Dr. Blanford, for the views he expressed in his letter to the editor.

10. By firing Drs. Blanford and Bellville for these reasons, Defendants Dunleavy and Babcock violated the doctors’ right to speak freely, as well as their right not to speak at all.

11. Drs. Blanford and Bellville seek in this action to defend and advance the constitutional principle that public employees may not be

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coerced by the head of a government into a pledge of loyalty, or retaliated against for speaking out on matters of public concern.

Jurisdiction and Venue

12. This is a complaint for declaratory and injunctive relief and damages brought pursuant to AS 22.10.020(a) and (g). This court has original jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

13. Venue is proper in this district pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

Parties

14. Plaintiff Anthony Blanford is a resident of Anchorage, Alaska.

15. Plaintiff John Bellville is a resident of McMinnville, Oregon. Prior to and during the events complained of in this matter, Dr. Bellville was a resident of Anchorage, Alaska.

16. Defendant Michael J. Dunleavy is the Governor of the State of Alaska and is responsible, in whole or in part, for the decision to terminate Dr. Blanford's and Dr. Bellville's employment. Mr. Dunleavy is sued in his official and individual capacities.

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17. Defendant Tuckerman Babcock is the chief of staff to Governor Dunleavy, and was the chair of Gov. Dunleavy's transition team after Mr. Dunleavy was elected on November 6, 2018. Mr. Babcock is responsible, in whole or in part, for the decision to terminate Dr. Blanford's and Dr. Bellville's employment. Mr. Babcock is sued in his individual capacity.

18. Defendant State of Alaska is a sovereign entity organized in accordance with the laws of the United States.

Factual Statement

19. Anthony Blanford was employed by the State of Alaska as the director of psychiatry at API. He worked in this position, and as a staff psychiatrist, from April 2016 to December 2018. Dr. Blanford also worked at API as a *locum tenens*, or temporary, psychiatrist, from July 2013 to March 2015.

20. John Bellville was employed by the State of Alaska as a staff psychiatrist at API from June to December 2018.

21. API is a state-run acute-care facility meant to provide emergency and court-ordered inpatient psychiatric services.

22. Both Dr. Blanford's and Dr. Bellville's primary responsibilities at API were to care for psychiatric patients who were in

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crisis or who had been admitted voluntarily or committed to the institution involuntarily by court order.

23. Neither Dr. Blanford nor Dr. Bellville was in what is considered a “policymaking” role during his employment. Neither affiliation with a particular political party nor allegiance to or eschewing of any political points of view was an appropriate requirement for the effective performance of Dr. Blanford’s or Dr. Bellville’s jobs.

24. On November 6, 2018, Michael Dunleavy was elected Governor of Alaska. On November 8, 2018, the Governor-elect announced that Tuckerman Babcock would serve as his chief of staff and as the chair of Mr. Dunleavy’s transition team.

25. Immediately prior to being selected as Mr. Dunleavy’s chief of staff and transition chair, Mr. Babcock served for two-and-a-half years as the chair of the Alaska Republican Party.

26. Mr. Babcock’s primary role as chair of the Alaska Republican Party was to promote Republican candidates and get them elected to State offices.

27. As the chair of the Alaska Republican Party, Mr. Babcock was well known for his criticisms of Republicans who, once elected,

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attempted to work in bipartisan coalitions or who attempted to work in a bipartisan manner to address important policy issues in Alaska.

28. As the chair of the Alaska Republican Party, Mr. Babcock also attempted to undermine Republican elected officials who worked in a bipartisan manner and attempted to facilitate, sometimes successfully, their removal from office.

29. On November 16, 2018, Mr. Babcock sent a memorandum to more than 1,200 at-will State of Alaska employees requesting their resignations. The Babcock memorandum states in part that “the incoming administration will be making numerous personnel decisions” and that Mr. Dunleavy “is committed to bringing his own brand of energy and direction to state government.” Exhibit 1.

30. Although characterized as “customary during the transition from one administration to the next,” the request for resignations was sent to an unprecedented number of State of Alaska employees, including, according to several Alaska legislators who criticized the move, “medical doctors, psychiatrists, pharmacists, fiscal analysts, state tax code specialists, investment managers, petroleum geologists, trust managers, accountants, research analysts, IT professionals, loan officers, military & veterans affairs coordinators, marine transportation

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managers, administrative law judges, and state attorneys presently working on behalf of the public on important and complicated legal issues, including prosecutors on criminal cases.” Exhibit 2.

31. When asked about the memorandum the day after it was issued, Mr. Babcock said that then-Governor-elect Dunleavy “just wants all of the state employees who are at-will . . . to affirmatively say, ‘Yes, I want to work for the Dunleavy administration.’” Exhibit 3 at 2.

32. Mr. Babcock further stated that the requests for resignations were meant to solicit a pledge of allegiance from state employees to Mr. Dunleavy’s political positions by asking, “Do you want to work on this agenda, do you want to work in this administration? Just let us know.” *Id.*

33. Mr. Babcock also announced that any state employee who refused or failed to offer her or his allegiance to Mr. Dunleavy risked being fired. “If you don’t want to express a positive desire, just don’t submit your letter of resignation,” Babcock said. “And then you’ve let us know you just wish to be terminated.” *Id.* at 3.

34. Mr. Dunleavy echoed Mr. Babcock’s description of the resignation requests, saying they were meant “to give people an

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opportunity to think about whether they want to remain with this administration” *Id.* at 2.

35. The Babcock memorandum states that the resignations would not be “automatic,” but that “consideration will be given” to each employee’s “statement of interest in continuing in [her or his] current or another appointment-based state position.” Exhibit 2.

36. The Babcock memorandum set a deadline of November 30, 2018, for employees to submit their resignations and statements of allegiance to the Dunleavy transition team.

37. All the staff psychiatrists at API received the Babcock memorandum requesting their resignations, despite the fact that none of the psychiatrists, including Drs. Blanford and Bellville, was a “policymaker” whose affiliation with a particular political party or allegiance to a political point of view was an appropriate requirement for his effective job performance.

38. On November 19, 2018, the Anchorage Daily News published a letter to the editor from Dr. Blanford in which he said he did not plan to offer his resignation in response to the Babcock memorandum. Exhibit 4.

39. Dr. Blanford explained in his letter that the State of Alaska had hired him for his “expertise,” and not his “political allegiance.” He noted too that his “moral allegiance” was “to the mentally ill and the staff who care for them,” and that the “symbolic gesture of deference” demanded by the Babcock memorandum didn’t “settle well” with him. *Id.*

40. Dr. Blanford also pointed out that the only Dunleavy “agenda” he was aware of was “further cuts and hiring freezes,” and that he did not support such a plan for API because it would cause Alaska’s mental health crisis “to continue or get worse.” *Id.*

41. Neither Dr. Blanford nor Dr. Bellville submitted his resignation to Mr. Dunleavy’s transition team by the stated deadline of November 30, 2018.

42. On December 3, 2018, at 9:46 and 9:47 a.m., respectively, Mr. Babcock fired Drs. Bellville and Blanford, effective at noon that day. Exhibit 5; Exhibit 6.

43. Mr. Dunleavy was sworn in as the Governor of Alaska at 12:00 p.m. on December 3, 2018.

44. On information and belief, several other State of Alaska employees intended, but were unable, to submit resignation notices on

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November 30 because a strong earthquake that occurred in Southcentral Alaska on that day disrupted their ability to get to work or send and receive email. These employees were also fired from their jobs on the morning of December 3.

45. On information and belief, these employees submitted their resignation letters immediately after learning that they had been fired, explaining the reason for their inability to meet the Babcock memorandum's November 30 deadline, and their termination notices were rescinded.

46. At least one other non-policymaking State of Alaska employee refused to submit a resignation to the Dunleavy transition team because she did not believe that her job required her to offer a pledge of allegiance to the new Governor. This employee was also fired by Mr. Babcock as soon as Mr. Dunleavy became Governor.

**First Cause of Action: 42 U.S.C. § 1983
Violation of the Right to Freedom of Speech Under the First
Amendment of the U.S. Constitution**

47. The First Amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."

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48. Inherent in the First Amendment's guarantee is the principle that public employees in non-policymaking roles cannot constitutionally be compelled to relinquish the free speech rights they otherwise enjoy as citizens to comment on matters of public interest.

49. The right to free speech includes both the right to speak freely and the right to refrain from speaking at all. The right not to speak also prohibits the state from compelling non-policymaking public employees to pledge allegiance to any particular political brand of government.

50. Plaintiffs Anthony Blanford and John Bellville both exercised their constitutional right not to speak when they refused to offer their letters of resignation to Messrs. Dunleavy and Babcock.

51. Plaintiff Anthony Blanford also exercised his right to free speech when he publicly announced that he did not plan to resign and did not agree with potential plans to reduce funding for mentally ill patients.

52. Drs. Blanford and Bellville were employed in non-policymaking roles as psychiatrists for the State of Alaska.

53. Defendants retaliated against Drs. Blanford and Bellville for their exercise of their free speech rights by terminating their employment.

54. Defendants had no legitimate reason for terminating Dr. Blanford's or Dr. Bellville's employment.

55. By terminating Dr. Blanford's and Dr. Bellville's employment, Defendants violated, and continue to violate Drs. Blanford's and Bellville's rights to free speech guaranteed by the First Amendment to the United States Constitution.

56. Defendants' violation of Dr. Blanford's and Dr. Bellville's free speech rights was done with intent, malice, and gross and reckless disregard for Dr. Blanford's and Dr. Bellville's constitutional rights.

57. Drs. Blanford and Bellville have suffered harm in the form of lost wages, benefits, other remuneration, and damages as a result of Defendants' termination of their employment.

Second Cause of Action: Violation of the Right to Freedom of Speech Under Article I, § 5 of the Alaska Constitution

58. Article I, § 5 of the Alaska Constitution provides: "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

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59. Like the United States Constitution, the Alaska Constitution's free speech guarantee includes the principle that public employees in non-policymaking roles cannot constitutionally be compelled to relinquish the free speech rights they otherwise enjoy as citizens to comment on matters of public interest.

60. Like the United States Constitution, the Alaska Constitution's free speech guarantee includes both the right to speak freely and the right to refrain from speaking at all. The right not to speak also prohibits the state from compelling non-policymaking public employees to pledge allegiance to any particular political brand of government.

61. Plaintiffs Anthony Blanford and John Bellville both exercised their constitutional right not to speak when they refused to offer their letters of resignation to Messrs. Dunleavy and Babcock.

62. Plaintiff Anthony Blanford also exercised his right to free speech when he publicly announced that he did not plan to resign and did not agree with potential plans to reduce funding for mentally ill patients.

63. Drs. Blanford and Bellville were employed in non-policymaking roles as psychiatrists for the State of Alaska.

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64. Defendants retaliated against Drs. Blanford and Bellville for their exercise of their free speech rights by terminating their employment.

65. Defendants had no legitimate reason for terminating Dr. Blanford's or Dr. Bellville's employment.

66. By terminating Dr. Blanford's and Dr. Bellville's employment, Defendants violated, and continue to violate Drs. Blanford's and Bellville's rights to free speech guaranteed by Article I, § 5 of the Alaska Constitution.

67. Defendants' violation of Dr. Blanford's and Dr. Bellville's free speech rights was done with intent, malice, and gross and reckless disregard for Dr. Blanford's and Dr. Bellville's constitutional rights.

68. Drs. Blanford and Bellville have suffered harm in the form of lost wages, benefits, other remuneration, and damages as a result of Defendants' termination of their employment.

Third Cause of Action: Violation of the Implied Covenant of Good Faith and Fair Dealing

69. Every at-will employment contract in Alaska is subject to the implied covenant of good faith and fair dealing.

70. The implied covenant of good faith and fair dealing has two components, a subjective component and an objective component. If an

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employer breaches either component, the employer breaches the implied covenant.

71. An employer breaches the subjective component of the implied covenant of good faith and fair dealing when it terminates an employee's employment and the termination decision is motivated by an improper or impermissible objective.

72. An employer breaches the objective component of the covenant of good faith and fair dealing if it treats an employee in a manner that a reasonable person would regard as unfair.

73. Under either component an employer cannot legally terminate an employee on unconstitutional grounds or for reasons that violate public policy.

74. It is the public policy of the State of Alaska, embodied in Article XII, § 6 of the Alaska Constitution, that the employment of persons by the State be governed by the merit principle.

75. It is also the policy of the State of Alaska, embodied in AS 44.17.040, that the principal executive officer of each State department be responsible for the appointment and removal of employees. In accordance with this policy, Drs. Blanford and Bellville were hired with the understanding that they were subject to removal

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only by the Commissioner of the Department of Health and Social Services.

76. Defendants Michael Dunleavy and Tuckerman Babcock unconstitutionally terminated the employment of Drs. Blanford and Bellville.

77. Defendants Michael Dunleavy and Tuckerman Babcock also violated the public policy of the State when they terminated the employment of Drs. Blanford and Bellville.

78. Defendants violated both the subjective and objective components of the implied covenant of good faith and fair dealing when they terminated the employment of Drs. Blanford and Bellville.

79. Defendants' violation of the covenant has caused Drs. Blanford and Bellville harm in the form of lost wages, benefits, and other remuneration.

Prayer for Relief

Based on the facts set forth above, Plaintiffs request that judgment be entered in their favor as follows:

1. For declaratory judgment that Defendants violated Dr. Blanford's and Dr. Bellville's First Amendment rights to free speech by terminating their employment;

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2. For declaratory judgment that Defendants violated Dr. Blanford's and Dr. Bellville's rights to free speech guaranteed by the Alaska Constitution by terminating their employment;

3. For declaratory judgment that Defendants violated the implied covenant of good faith and fair dealing by terminating Dr. Blanford's and Dr. Bellville's employment;

4. For an injunction ordering Gov. Dunleavy in his official capacity and the State of Alaska to reinstate Drs. Blanford and Bellville to their positions as director of psychiatry and staff psychiatrist, respectively, and pay them back pay and front pay and make them whole with respect to any other diminishment of remuneration or compensation resulting from the loss of their jobs;

5. For an injunction ordering Defendants to refrain from any future retaliation against Drs. Blanford and Bellville and any other similarly situated non-policymaking State of Alaska employees;

6. For damages, including punitive damages, against Defendants Dunleavy and Babcock in their individual capacities for the unlawful deprivation of Dr. Blanford's and Dr. Bellville's free speech rights, in an amount to be adduced by the evidence at trial;

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7. For Plaintiffs' costs and attorneys' fees incurred in obtaining the relief sought in this proceeding; and

8. For such other relief as this court may deem just and equitable.

Dated January 10, 2019.



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