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(Appx. 0053, Reynolds Dep. p. 59:12 - 60:1); (Appx. 0061-62, Harrison Dep. p. 16:25 – 17: 14; p. 75:5 – 77:16)

**B. Shelley Turk Tried to Report Internally Within the Management Structure**

2. When Shelley Turk was initially employed by GRMC, she attempted to work internally within the GRMC management to foster change and increase patient safety and nursing skill levels. (Appx. 0001, S. Turk Declaration, ¶ 3) However, after several years of trying to implement patient safety and staff training improvements, she continued to witness adverse patient outcomes and observed that the nursing staff (particularly in the Med/Surg Department) still lacked nursing skills and training that were essential to patient safety. (Appx. 0001-0002 S. Turk Declaration, ¶ 3-4 )

**C. Shelley Turk Was Considered a Successful and Valued Employee Until She Began Documenting and Reporting Problems Outside the GRMC Management Structure**

3. On May 24, 2014, the Emergency Department issued multiple overhead trauma code calls for help from all available hospital staff and none of the floor nurses came to assist.<sup>1</sup>

4. After this Emergency Department incident, Shelley Turk contacted John Parker, a GRMC Board member, to express her concerns about patient safety at GRMC as a result of this and many other preceding incidents. He told her that he would ask Board President Chip Harrison to call her. Shelley Turk met with Chip Harrison near the same date to express her concerns about GRMC's ongoing patient safety and staff training. (Appx. 0028-0028A S. Turk

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<sup>1</sup> On May 24, 2014, the GRMC Emergency Department dealt with a trauma incident involving 5 different patients, 3 of whom needed to be prepared for helicopter transport to another hospital. Meanwhile, there were already 3 heart patients in the Emergency Department, each of whom required one-on-one care. Not even one of the floor nurses responded to multiple trauma calls, even though the three nurses on the GRMC Med/Surg floor had only one patient to care for among the 3 of them. The Med/Surg Director, the Operating Room Director, and several more nurses did not respond because they were having lunch and training. (Appx. 0026, S. Turk Dep. Vol. 2, p. 67:12 - 68:23) (Appx. 0002, S. Turk Declaration, ¶ 4)

Dep. Vol. 2, p. 73:8 - 74:9) After that, she communicated with Chip Harrison frequently about continued patient safety issues at GRMC until she retained counsel in January of 2015. (Appx. 0028 – 0028A , S. Turk Dep. Vol. 2, p. 73:8 - 74:9); (Appx. 0064, Harrison Dep. p. 82:11-17) (Appx. 0002, S. Turk Declaration, ¶ 5)

5. Shelley Turk shared information with Chip Harrison, GRMC Board President about many patient safety issues at GRMC including but not limited to:

- the absence of Ebola equipment at GRMC when that was a public health crisis in the United States; (Appx. 0063, Harrison Dep. p. 79:20 – 24)
- the fact that many of the floor nurses did not have CPR training; (Appx. 0063, Harrison Dep. p. 79:25- 80:5)
- the fact that many of the floor nurses did not have advanced cardiac life support (ACLS) training; (Appx. 0063, Harrison Dep. p. 80:6-12)
- that fact that Kelly Van Zandt, who was the Quality Director, did not even know what the acronym “ACLS” meant; (Appx. 0063, Harrison Dep. p. 80:13 - 16) and
- the fact that Quality Director Kelly Van Zandt was coming to the medication room and counting drugs under circumstances where she had no medical license that authorized her to touch the drugs.<sup>2</sup> (Appx. 0063, Harrison Dep. p. 80:17 - 81:12)

6. Shelley Turk was confronted on or about May 28, 2014, by LaDonna Green and Michael Honea who yelled at her and told her that she had to stop e-mailing because now the e-mails had to be turned over in response to an open records request. (Appx. 0002 - 0003, S. Turk Declaration, ¶ 7); (Appx. 0029, S. Turk Dep. Vol. 2, p. 81:2 - 6 )

7. It was only after Shelley Turk elevated her concerns about patient safety and unsafe medical practices at GRMC, to the GRMC Board, that she received her first written discipline notice at GRMC. (Appx. 0003, S. Turk Declaration, ¶ 8) (Appx. 0031, S. Turk Dep. Vol. 2, p.

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<sup>2</sup> When told about this, Mr. Harrison personally went to GRMC to check and observed Ms. Van Zandt counting drugs. (Appx. 0063, Harrison Dep. p. 81:1 - 19)

96:23 - 97:1-5) Shelley Turk testified that on June 13, 2014, she was called into Ray Reynolds' office to receive a document titled "Disciplinary Communication" signed by Mr. Reynolds and LaDonna Green. (Appx. 0031 S. Turk Dep. Vol. 2, p. 96:10-13) (Appx. 0049-0051, S. Turk Dep. Vol. 2, Exhibit 4)

8. Shelley Turk testified that the verbal communications during the meeting with Ray Reynolds and LaDonna Green included: instructions to "stop documenting", "not to go to any other departments, but to "help other departments when they needed help." Shelley Turk was also verbally instructed not to let anybody else leave her department, but go out of her department and help" when needed. (Appx. 0033, S. Turk Dep. Vol. 96:23 – 97:5)

9. Shelley Turk also testified that Ray Reynolds told her "You answer to me, so it doesn't matter if it's their [the doctors'] patients and there's something going wrong you go through me first." She was also told by Ray Reynolds during this meeting, words to the effect that, "whether you like it or not, whether you think Kelly Van Zandt is competent or not, she's here to stay, so you will have to learn to get along with her. (Appx. 0033, S. Turk Dep. Vol. 2, p. 97:14-18)

10. Shelley Turk further testified that she was *specifically forbidden* to directly inform doctors when there were patient safety issues, and that she was to go through Ray Reynolds if she had a concern. (Appx. 0033, S. Turk Dep. Vol. 2, p. 97:5-10)

11. In conjunction with Dr. Jay Turk, Shelley Turk, subsequently released the same information to outside organizations such as the Texas Organization of Rural & Community Hospitals (TORCH), the Texas Department of State Health Services (commonly known as DSHS) and later, to the media. (Appx 0003-0004, S. Turk Declaration, ¶ 12-13); (Appx. 0016-0018, S. Turk Dep. Vol. 1, p. 41:12 - 42:22; p. 45:21 - 46:1) On or about December 11, 2014, an Investigator from the Texas Department of State Health Services made an unannounced survey

visit to the Glen Rose Medical Center. Shelley Turk spoke personally with Investigator Jansen at that time, and had previously forwarded documents and spoken to her by telephone. Shelley Turk also spoke at length with the representative from the Joint Commission on Hospital Accreditation who appeared for an on-site at or near the same time. Although she had not reached out to the Joint Commission, Shelley Turk provided information about GRMC hospital safety and training issues to that representative when she was asked for it. (Appx. 0004, S. Turk Declaration, ¶15 )

**D. Shelley Turk's Termination Came Just Moments After Donna Miller Directed Her to Contact The Somervell County Salon and Ask to Remove Information**

12. Shelley Turk was summoned to Donna Miller's office on June 26, 2015. When she entered the office, Donna Miller and LaDonna Green were talking about information that had been recently posted about the Hospital on the Somervell County Salon, an online publication published by Debbie Harper. Shelley Turk was familiar with the most recent Somervell County Salon publication because she had directed her attorney to release some information about the hospital's adverse patient outcomes, unsafe medical practices of some of the nursing staff, the resulting retaliation towards Shelley Turk and Dr. Turk that resulted from their continued patient advocacy. That information had been published in the Salon on or about June 23, 2015 without patient names. (Appx. 0042, Dep. Vol. 2, S. Turk p. 180:1-10) ; (Appx. 0005, S. Turk Declaration ¶ 21)

13. LaDonna Green immediately asked Shelley Turk whether she knew what had been published. When Shelley Turk said that she did know, she was told to contact the Somervell County Salon and tell the publisher to take down the information that she had released about the Hospital. Shelley Turk refused to do so and told Donna Miller and LaDonna Green that the

information was true. (Appx. 0044 - 0045, S. Turk Dep. Vol. 2, p. 180:1-10, p. 182:14 - 183:1) (Appx. 0005- 0006, S. Turk Declaration ¶ 22-23)

14. Immediately after Shelley Turk's refusal to withdraw the information released to the Somervell County Salon, Donna Miller announced to Shelley Turk that she was terminating her employment because she had been told that Shelley Turk called Kelly Van Zandt a "camel toe idiot" two days earlier. (Appx. 0044-0045, S. Turk Dep. Vol. 2, p. 180:1-10, p. 182:14 - 183:1)

15. Shelley explained to Donna Miller and LaDonna Green that she did not make that comment and had not used that phrase for many months. (Appx. 0045, S. Turk Dep. Vol. 2, p. 183:2-10) Donna Miller replied, by asking words to the effect of "So, what did you say? We have a couple of witnesses." (Appx. 0045, S. Turk Dep. Vol. 2, p. 183:2 -10)

16. Shelley Turk told Donna Miller and LaDonna Green that the only comment she had made about anybody was about Susan Price, who was singing the "Birthday Song" in a loud and piercing voice, even though she had been told by Ray Reynolds, Michael Honea and others not to sing. Susan Price's singing disrupted the morning "huddle" held in the hallway. As the meeting broke up, Shelley walked into the Medical Records office commenting to herself "Gosh! She's such a loudmouth idiot." (Appx. 0044, S. Turk Dep. Vol. 2, p. 180:19 – 181:7) Shelley Turk's comment was not directed at anyone in particular and there was no response to her comment. (Appx. 0005, S. Turk Declaration, ¶ 22)

17. According to Shelley Turk, Donna Miller responded to Shelley's explanation by saying, words to the effect of "We have to agree with you, she's an idiot." and LaDonna Green added "Yes, she is a problem" (Appx. 0044, S. Turk Dep. Vol. 2, p. 181:17-19) Shelley Turk asked to see the witness statements, but Donna Miller told her that she couldn't see them and she refused to identify the witnesses. (Appx. 0005, S. Turk Declaration, ¶ 22)

18. According to Donna Miller, Shelley did not deny the accusation and that she terminated Shelley Turk for violating the “bullying policy” because Liz Morgan told her that Shelley Turk referred to Kelly Van Zandt as a “camel toe idiot.” Liz Morgan is no longer employed by Glen Rose Medical Center.<sup>3</sup> No one else reported to Donna Miller that Shelley Turk used that phrase.

19. Donna Miller testified that Liz Morgan came by to tell her of the remark on the day Ms. Morgan claimed that it happened. Ms. Miller terminated Shelley Turk approximately a day and a half or two days later. (Appx. 0071, Miller Dep. p. 54:1 - 55:4)

#### **E. The Camel Toe**

20. Shelley Turk denies that she used the phrase “camel toe” in reference to Kelly Van Zandt for many months preceding her termination. That phrase in reference to Kelly Van Zandt’s manner of dress was used many people at the GRMC. The phrase was used many individuals in reference to Kelly Van Zandt because she wore her clothes so tightly that it was common for her pants to show the crease in her labia. (Appx. 0005 - 0006, S. Turk Declaration, ¶ 23 )

21. People who used that phrase in reference to Kelly Van Zandt over a period of several years include Donna Anderson, Kitty Burns, Hayley Darnell, Sara Dickson, Jerry Harper, Jennifer Heath, Shea Jones, Craig Merritt, Debra Nabors, Leah Parks, Denise Rutledge, Veronica Serronto, Linda Smith, Sandy Smith, Dee Watson and Tammy Willis. (Appx. 0006, S. Turk Declaration, ¶ 25)

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<sup>3</sup> Ms. Morgan employment was terminated as a result of a series of criminal charges, which included alleged embezzlement from her church and DUI. Those charges entered into Mr. Reynolds decision to terminate her. (Appx. 0054, Reynolds Dep. p. 86:20-25.) He testified also that Ms. Morgan was left in place with management responsibility for medical records after the embezzlement arrest, but terminated after she admitted she had been arrested for a DUI and admitted that she had been drinking. (Appx. 0054, Reynolds Dep. p. 87:1 – p. 89:12.)

22. Many of GRMC's management used the "camel toe" phrase in reference to Kelly Van Zandt including Liz Morgan, the Medical Records Director who made the false accusation about Shelley Turk calling Kelly Van Zandt a "camel toe idiot", Michael Honea (who at the time, was Chief Financial Officer and is now Chief Operating Officer), and Joey Hammack (Housekeeping Director). Shelley Turk testified that for a period of time, Joey Hammack displayed a sign on his desk that read, "Just say no to Camel Toe." and that Becky Whittsit (Chief Financial Officer) presented her a Christmas gift of a CD with camel toe songs on it. (Appx. 0006, S. Turk Declaration, ¶ 24 )

23. Shelley Turk testified that she and LaDonna Green used the phrase in conversations at work and specifically recalls conversations with LaDonna Green about Kelly Van Zandt showing a camel toe when they worked together on trying to develop a new dress code policy in the hopes that Kelly Van Zandt would get the message and stop dressing in that manner She testified also that she and LaDonna Green exchanged camel toe jokes by text. Shelley Turk testified also that LaDonna Green told her that Ray Reynolds laughed when she mentioned the phrase "camel toe" in the context of Kelly Van Zandt. (Appx. 0006, S. Turk Declaration, ¶ 26 )

24. It should come as no surprise that few GRMC employees are willing to admit to having used the phrase "camel toe", given that Shelley Turk was ostensibly fired for this reason. However, Donna Anderson, provided a sworn statement in which she notes that "Kelly Van Zandt is "only person that displayed a camel toe at Glen Rose Medical Center" and that the phrase was commonly used in reference to Kelly Van Zandt because she "dressed in this manner on more than one occasion." (Appx. 0010-0011, Donna Anderson Declaration, ¶ 4)

25. In her sworn statement, Kitty Burns testified that she had used the phrase in reference to Kelly Van Zandt and admitted to doing so when asked about it by LaDonna Green on August 16,

2017. Ms. Green asked only that one question and when Kitty Burns replied affirmatively, told her that she was supposed to write down the names of everyone who said yes. LaDonna Green called back on Monday August 17, 2017 and told Kitty that she had to write her up for admitting that she called Kelly Van Zandt a “camel toe” and said that “the lawyers” told her that she had to write her up everyone who admitted that. Kitty said, “ Well then you are going to have to write up half of the hospital, including some of the administration.” Kitty also stated to LaDonna Green that she was sure a significant number of people would not tell the truth because they would be afraid that they would get in trouble or lose their jobs. (Appx. 0012-0013, Sworn Declaration of Kitty Burns, ¶ 2-3) Kitty Burns also stated that the “phrase camel toe was in wide use by staff and some administration because Kelly Van Zandt repeatedly chose to dress showing a camel toe. The hospital did nothing about her repeatedly showing a camel toe and nothing about the wide spread use of the phrase.” (Appx.0012-0013, Sworn Declaration of Kitty Burns, ¶ 2-3, 7)

26. LaDonna Green, GRMC’s Human Resources Director, who participated in terminating Shelley Turk admitted that there was “some history” between her and Shelley Turk referring to Kelley Van Zandt as “camel toe” or “showing a camel toe” by the way she dressed. (Appx. 0089-0090 Green Dep. p. 21:25-22:4) LaDonna Green admitted that she was not disciplined for using the phrase in reference to Kelley Van Zandt and that she and Shelley discussed the fact “that that’s the way her clothing was fitting”. (Appx. 0090, Green Dep. p. 25:17 -21)

## II. ARGUMENT

### A. Summary Judgment Standard

27. Plaintiff Shelley Turk, R.N. adopts the discussion of the Summary Judgment Standard found in the Summary Judgment Response of Plaintiff Albert J. Turk, M.D.

### B. First Amendment Standards

28. **Supreme Court Opinions:** The Supreme Court has addressed the “citizen” versus “employee” free speech issue on at least two occasions. In *Garcetti v. Cebellos*,<sup>4</sup> a deputy district attorney reported to his supervisors about inaccuracies with an affidavit used to obtain a search warrant. He recommended in a follow-up memo to his supervisors that the criminal case be dismissed, but his supervisors disagreed. The employee filed suit under § 1983, alleging that his employers retaliated against him based on his memo. The Court held:

[The employee] did not act as a citizen when he went about conducting his daily professional activities, such as supervising attorneys, investigating charges, and preparing filings. In the same way he did not speak as a citizen by writing a memo that addressed the proper disposition of a pending criminal case. When he went to work and performed the tasks he was paid to perform, [he] acted as a government employee. The fact that his duties sometimes required him to speak or write does not mean his supervisors were prohibited from evaluating his performance. (emphasis added)

Id. at 422.

29. In *Lane v. Franks*<sup>5</sup>, the Court held that the First Amendment protected a public employee who provided truthful sworn testimony compelled by a subpoena outside the course of his ordinary job responsibilities. The Court reversed the Eleventh Circuit’s interpretation of *Garcetti* holding that the employee was not entitled to First Amendment protection because he learned about the content of his testimony through the course of his employment. The Court in *Lane* stressed that “[t]he critical question under *Garcetti* is whether the speech at issue is itself *ordinarily within the scope of an employee’s duties*, not whether it merely concerns those duties.” Id. at 2379 (emphasis added). The inclusion of the word “ordinarily” was a new descriptive term not previously used by the Court in *Garcetti*.

30. **Fifth Circuit Opinions:** Since *Lane*, the Fifth Circuit addressed the “citizen” versus

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<sup>4</sup> 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed 2d 689 (2006)

<sup>5</sup> 134 S. Ct. 2369 (2014)

“employee”: free speech issue twice, as recently as 2016. See, (1) *Howell v. Town of Ball*<sup>6</sup> and (2) *Anderson v. Valdez*<sup>7</sup>. In *Howell, supra*, a police sergeant was fired after reaching out to the FBI about the mayor’s fraudulent use of disaster recovery funds. Howell then filed suit against various individuals, including the chief of police and the individual board members, bringing several causes of action, including a claim of First Amendment retaliation. Howell asserted that the defendants violated his First Amendment rights when they fired him for participating in the FBI investigation. The district court granted the board member’s motion for summary judgment on the basis that Howell’s involvement in the FBI investigation was in furtherance of his ordinary job duties.

31. The Fifth Circuit reversed holding that the district court committed an error granting the summary judgment and in finding that Howell’s involvement was in furtherance of his “ordinary job duties.” The court noted that (1) the sergeant’s duties as a police officer did not include cooperating with an FBI investigation, (2) his statements to the FBI were made outside the normal chain of command and without the knowledge or permission of anyone else in the police department, and (3) it was never part of his normal job duties “to record surreptitiously coworkers’ conversations at the FBI’s request.”<sup>8</sup>

32. In *Anderson*,<sup>9</sup> a briefing attorney for a justice on the Thirteenth Court in Texas reported malfeasance of Chief Justice Valdez to the Texas Supreme Court and the State Commission on Judicial Conduct. After his employer retired, he was initially offered another position with the court, but after Justice Valdez interfered, the employment offer was withdrawn. Anderson then filed suit, and on appeal for the denial of a Rule 12(b) (6) motion, the court held that Anderson

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<sup>6</sup> 827 F.3d 515 (5th Cir. 2016)

<sup>7</sup> 845 F.3d 580 (5th Cir. 2016)

<sup>8</sup> 827 F.3d at 524

<sup>9</sup> 845 F.3d 580

spoke as a public citizen when filing the complaint. In reaching its conclusion, the court looked at the Restatement (Third) of Agency to help determine if Anderson acted pursuant to his “ordinary” employment duties. The court then provided the following guidance<sup>10</sup>:

A public employee . . . might speak pursuant to his official duties when he does so in a course of conduct subject to the employer's control, even if the employer has not actually directed him to speak, not to speak, or how to speak. If the employer was entitled to exercise such control, the speech is made pursuant to the employee's official duties; if the employer was not entitled to exercise such control, the speech is not made pursuant to the employee's official duties. Whether the employer was entitled to control the employee's speech determines whether that speech was made pursuant to the employee's official duties.

**C. Defendants have Misapplied *Garcetti v. Caballos***

33. Whether a statement is made as a citizen protected by the First Amendment, or instead as an employee, and possibly unprotected, is a question of law. See, discussion of First Amendment Standards above. As the Supreme Court of the United States explained in *Lane v. Franks*<sup>11</sup> "the critical question---is whether the speech at issue is itself ordinarily within the scope of the employee's duties, not whether it merely concerns those duties."

34. From the beginning, Shelley Turk has acknowledged that the *Garcetti* holding applies to her internal reporting to management, when articulating her concerns about unsafe and dangerous practices at Glen Rose Medical Center, as well as her efforts with management to obtain implementation of new and better practices. When the internal reporting did not work, Shelley Turk turned outside of her ordinary job duties to the Board of Trustees of the Somervell County Hospital District, especially to Board President Chip Harrison. She and Dr. Turk also reported their concerns about unsafe practices to the State of Texas Department of State Health Services, (DSHS) and their reports resulted in an investigation and a detailed Statement of

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<sup>11</sup> 134 S.Ct. 2369, 2379 (2014)

Deficiencies and Plan of Correction by DSHS.<sup>12</sup> She also turned to the media, including the Somervell County Salon. (Appx. 0003-0004 S. Turk Sworn Statement ¶ 12, 14, 15, 20 ) These activities were not a part of Shelley Turk's ordinary job duties, a fact which is entirely omitted from discussion in the Motion for Summary Judgment.

35. Shelley Turk testified that she was fired just moments after she refused an instruction from management to tell the publisher of The Somervell County Solon to take down a posting that highlighted true patient safety issues and other events that made the hospital look bad. That fact sequence is also not cited or discussed in the Defendants' pending Motion for Summary Judgment (Doc. No. 88). Nor is the vigorously disputed testimony about what actually happened in the hallway and the Medical Records office two days before.

36. Defendants have presented what apparently is an obligatory *Garcetti* summary judgment argument in this case, although the facts do not support it.

**D. Shelley Turk's Communications Were a Matter of Public Concern**

37. Defendants cite no case or statutory authority whatsoever for the proposition that safe operations and avoiding adverse outcomes for patients at a public hospital, are not matters of public concern.

38. Defendants' cite *Terrell v. University of Texas System Police*<sup>13</sup>, in support of their claim

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<sup>12</sup> The DSHS report was based on a hospital survey visit which occurred on 12/15/14. The report was posted on the Glen Rose Medical Center website. Shelly Turk testified that she downloaded it and produced it to Defendants in discovery. (Appx. 0037, S. Turk Dep Vol. 2, p.155:13-15, Appx. 0096-0121, TURK 1001-1025) Multiple deficiencies in staffing and delivery of *nursing services* were described including missing patient assessments, abnormal vital signs not reported to physicians on multiple occasions, dopamine administered with no blood pressure and heart rate documented by nursing staff for over 12 hours afterwards, no documentation of a code blue, hospital not enforcing its staffing level policy for nurses, hospital not implementing statutorily required peer review policy, and no peer review committee minutes or policy available for review. *Quality deficiencies* were also documented including failure to analyze and track adverse patient events and failure to report incidents to the Quality Committee.

<sup>13</sup> 792 F.2d 1360,1362 (5th Cir. 1986)

that Shelley Turk's Speech is not protected. Defendants do not mention that Mr. Terrell was denied the First Amendment protection because he kept a *secret diary* critical of his supervisor and made *no effort to communicate its contents to the public*. The poor analogy to Shelley Turk's numerous public outcries is obvious.

39. Defendants next suggest an analogy to *Salge v. Edna Independent School District*<sup>14</sup>. Defendants argue that *Salge* stands for the proposition that "speech is not a matter of public concern if it is made *solely* in furtherance of a *personal* employer-employee dispute" (emphasis added). In this case, Shelley Turk's repeated testimony demonstrates that she was motivated to speak by concern for her patients and discharging the responsibilities of her license to act as an advocate for patients.

40. Further in *Salge*, a public school secretary's answer to a reporter's question about the resignation of the school principal was deemed by the Fifth Circuit to be a *protected act under the First Amendment*, even though there may have been a "mixed motive." Summary judgment, in favor of, Ms. Salge was upheld by the Fifth Circuit. Defendants quoted excerpt from *Salge* requiring *sole personal* motive in order to escape from First Amendment protected citizen speech is not helpful to Defendants in this case.

**E. Shelley Turk's Interest in Promoting Speech on Matters of Public Concern Outweighed Somervell County Hospital District's Interest in Promoting Efficiency - There Was No Disruption of Hospital Operations to Weigh in the Balance**

41. Defendants' arguments on this matter pre-suppose that Shelley Turk did in fact breach an important internal policy relating to her job duties. As discussed above in the Statement of Facts, Shelley Turk was terminated, supposedly for causing a disruptive situation and violating the, "bullying policy" by referring to Kelly Van Zandt as a, "camel toe idiot" on a specific occasion

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<sup>14</sup> 411 F. 3d 178, 187-188 (5<sup>th</sup> Cir. 2005)

two days before Mrs. Turk was terminated. (Appx. 0071A Miller Dep page 59:1-22).

42. The summary judgment record on this matter is full of fact disputes not mentioned in the pending Motion. According to Shelley Turk, the conversation in the Medical Records office two days before she was fired was not about Kelly Van Zandt at all. Shelley Turk did not use the phrase, "camel toe" at that time and had not used that phrase for several months. No one in the Medical Records office responded to her actual remarks, which were about the disruptive conduct of Susan Price earlier in the hallway, during the morning management huddle. (Appx. S. Turk Declaration, ¶ 22) (Appx. 0044-0045, Dep S. Turk Vol. 2, p. 180:20 - 181:19; 183:11-20)

43. Plaintiff Shelley Turk respectfully asserts that the *Pickering* balancing test does not apply to this case at this time. Considering the record in the light most favorable to Shelley Turk, there was no disruption to hospital operations at all caused by her remarks, because the allegedly disruptive remarks about Kelly Van Zandt did not occur.

**F. The Record is Full of Evidence That Shelley Turk's Speech Was a Motivating Factor in Her Termination**

44. Defendants' argument about this matter supposes the truth of the claim that Donna Miller decided to fire Shelley Turk for making a remark about Kelly Van Zandt being a "camel toe idiot" two days before Shelley Turk's termination. As discussed above, the truthfulness of that proposition is one of the central fact disputes in that case. The Court must assume at this stage in the proceedings, based upon Shelley Turk's testimony, that no such remark was made and that the comment in the Medical Records office was one about Susan Price, being a "loudmouth idiot" *and not* one about Kelley Van Zandt at all. (Appx. 0044-0045, S. Turk Dep. Vol. 2, p. 180:20 - 181:19; 183:11-20)

45. The Court must also accept as true, Shelley Turk's testimony that she was fired moments

after refusing to ask the publisher of the Somervell County Salon to take down a truthful posting that made the Hospital look bad. (Appx. 0005. S. Turk Declaration, ¶ 21) The Court should draw all reasonable inferences in favor of Shelley Turk. Those inferences would include the conclusion that the subject moved on immediately to termination because Shelley Turk refused to take down the posting and told Donna Miller and LaDonna Green that the Salon publication was true. (Appx. 0005, S. Turk Declaration, ¶ 21)

46. The Court should also now assume the truth of Chip Harrison's deposition testimony and Shelley Turk's corresponding deposition testimony discussed above, where both agreed that Chip Harrison, President of the Board of the Somervell County Hospital District, presciently told Shelley Turk that she needed to hire an attorney because retaliation against her was coming. (Appx. 0061A Harrison Dep. p. 34:20 - 36:11)

**G. The First Amendment Retaliation Claim against  
Ray Reynolds Should Not Be Dismissed**

47. Defendant Reynolds' argument on this point is based on the proposition that Mrs. Turk has presented *no evidence* that Mr. Reynolds made the decision to terminate her employment. Defendant fails to mention Board President Chip Harrison's testimony, discussed above, that Mr. Reynolds called him in advance to ask permission to terminate Shelley Turk. They had a conversation about whether Shelley Turk had referred to Kelly Van Zandt as a camel toe idiot in public or in a private conversation, because the distinction was important to Mr. Harrison. According to Mr. Harrison's testimony, Mr. Reynolds assured him that the specific remark was made and that it was made to multiple witnesses. With those assurances, Mr. Harrison gave his permission to terminate Shelley Turk. (Appx. 0064, Harrison Dep. p.82:21- 83:14)

48. Assuming this testimony is true, which the Court must do at this juncture, it places Defendant Reynolds in the position of being a key actor, who was personally involved with

Shelley Turk's termination.

49. Further, as discussed above, Donna Miller testified that she told Ray Reynolds about the termination in advance. (Appx. 0071, Miller Dep. p. 55:5-13) This testimony also places Ray Reynolds out of the room when the termination occurred, but personally involved before Shelley Turk was fired.

#### **H. The First Amendment Petitions Claim**

50. Chip Harrison testified that Shelly Turk and Dr. Jay Turk filed grievances, but that none of their grievances made it to the Board of Trustees and that Defendant Reynolds told Board President Harrison on multiple occasions that, "There were never any grievances filed at Glen Rose Medical Center." (Chip Harrison Dep. p. 86:11- 87:3) Mr. Harrison testified that the Board had taken an action specifying that all grievances were supposed to be handled on a quarterly basis by the Board, but in Mr. Harrison's 24 months as President of the Board, not one grievance was presented for resolution. (Chip Harrison Dep. p. 88:21- 89:3) Board member Paul Harper confirmed that the Board of Trustees of the Somervell County Hospital District did not consider or decide any employee grievances while he served and attended meetings. (Paul Harper Dep. p. 106:10-17)

51. In Exhibit 22 to his deposition, Paul Harper presented a written request to Defendant Reynolds dated August 10, 2015, for several items including "complaints by Turks." Defendant Reynolds responded to that particular request on August 21, 2015 producing nothing and stating that the information requested is, "in the public domain and no longer subject to disclosure under the Texas Public Information Act." (Deposition of Paul Harper, Exhibit 22)

52. The Defendants have argued that no action at all needs to be taken under the First Amendment when a citizen petitions the government for redress of a grievance. As a generality,

it is correct to say that a public entity in Texas is not required to have a grievance procedure or consider a grievance if one is lodged. However, when a grievance procedure exists, a public entity may not refuse to process grievances in order to retaliate or discriminate. In *Professional Association of College Educators v. El Paso Community College District*<sup>15</sup>, the Association alleged that El Paso Community College District refused access to the college mail system and refused to process *member grievances* in order to discourage union membership or association. The Fifth Circuit recognized that such allegations, if they could be proven, would constitute violations of the First Amendment.

53. The present case is more insidious. In the light most favorable to Shelley Turk:

- 1) The Board of Trustees of the Somervell County Hospital District established a quarterly Board level grievance resolution process;
- 2) Defendant Reynolds regularly told the President of the Board an untruth, which was that there were “never any grievances filed”; and
- 3) In the terms of Board members Harrison and Harper, not one employee grievance was ever presented to the Board, quarterly or otherwise, for resolution.

54. Admittedly, this may be a case of first impression about the highest administrator of a public entity thwarting the policy of that governing body of that entity, where that policy called for quarterly resolution of grievances at the Board of Trustees level. Chip Harrison specifically testified that he knew that Shelly Turk and Dr. Turk had filed grievances. At the same time, the Chief Executive Officer Ray Reynolds repeatedly told Mr. Harrison that there were no grievances whatsoever at Glen Rose Medical Center. Mr. Harrison acknowledged that, "those two things don't match." (Appx. 0065, Harrison Dep. p. 88:1-13) As to this matter, The Court should consider the full record at trial.

55. Plaintiff respectfully notes that the pending Summary Judgment Motion does not address

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<sup>15</sup> 730 F2d. 258 (5th Cir. 1984)

her petitioning the government for redress of grievances claim under Article I, Section 27 of the Texas Constitution, Article I, Section 27, confers broader rights on citizens than the federal First Amendment, but we reserve that argument for a time when the matter is actually before the Court.

### **III. CONCLUSION**

56. For the reasons discussed above, the Motion for Summary Judgment directed to the claims of Plaintiff Shelley Turk, R.N. (Doc. No. 88) should be denied in all respects.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon all counsel of record in accordance with F.R.C.P. 5(b), on the 9<sup>TH</sup> day of October, 2017, as follows:

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