

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KELVIN J. COCHRAN, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) VS. )  
 )  
 ) CITY OF ATLANTA, GEORGIA, )  
 ) ET AL. )  
 )  
 ) DEFENDANTS. )  
 )  
 )  
 )

DOCKET NUMBER  
1:15-CV-477-LMM  
  
ATLANTA, GEORGIA  
OCTOBER 14, 2015

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LEIGH MARTIN MAY,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: KEVIN THERIOT & DAVID CORTMAN  
ALLIANCE DEFENDING FREEDOM  
SCOTTSDALE, ARIZONA 85260  
LAWRENCEVILLE, GEORGIA 30043

FOR THE DEFENDANT: ROBERT GODFREY, TIMOTHY BOUGHEY &  
Y. SOO JO  
CITY OF ATLANTA LAW DEPARTMENT  
ATLANTA, GEORGIA 30303

*MECHANICAL STENOGRAPHY OF PROCEEDINGS  
AND COMPUTER-AIDED TRANSCRIPT PRODUCED BY*

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1 (IN ATLANTA, FULTON COUNTY, GEORGIA, OCTOBER 14, 2015, IN  
2 OPEN COURT.)

3 THE COURT: GOOD MORNING. YOU MAY BE SEATED. OKAY.  
4 WE ARE HERE THIS MORNING IN CIVIL ACTION 15-CV-477, COCHRAN VS.  
5 CITY OF ATLANTA GEORGIA, ET AL. AND IF COUNSEL CAN INTRODUCE  
6 THEMSELVES AND THEIR CLIENTS FOR THE RECORD, PLEASE.

7 MR. THERIOT: KEVIN THERIOT. I'M COUNSEL FOR  
8 PLAINTIFF, AND DAVE CORTMAN, COUNSEL FOR PLAINTIFF, AND THIS IS  
9 OUR CLIENT, CHIEF KELVIN COCHRAN.

10 THE COURT: OKAY. GOOD MORNING. THANK YOU VERY MUCH.

11 MR. GODFREY: GOOD MORNING, JUDGE. I'M ROBERT GODFREY  
12 COUNSEL FOR CITY OF ATLANTA AND MAYOR REED. WITH ME AT COUNSEL  
13 TABLE IS CITY ATTORNEY KATHY HAMPTON, Y. SOO JO, AND TIMOTHY  
14 BOUGHEY.

15 THE COURT: OKAY. THANK YOU VERY MUCH. GOOD MORNING.

16 (COUNSEL RESPONDED, "GOOD MORNING.")

17 THE COURT: AS YOU ALL KNOW, WE'RE HERE ON THE CITY  
18 AND MAYOR REED'S MOTION TO DISMISS THE CLAIMS THAT HAVE BEEN  
19 FILED BY THE PLAINTIFF. THERE ARE A LARGER NUMBER OF FOLKS IN  
20 THE AUDIENCE TODAY. AND JUST BEFORE WE START OUT, I JUST WANTED  
21 TO LET EVERYONE KNOW WHAT THIS HEARING IS ABOUT TODAY. MANY OF  
22 YOU MAY BE LAWYERS AND MAY ALREADY KNOW THIS, BUT WHAT A MOTION  
23 TO DISMISS IS, IS THAT THE CITY AND MAYOR REED ARE SAYING THAT  
24 THE CLAIMS IN THE COMPLAINT THAT MR. COCHRAN HAS BROUGHT SHOULD  
25 BE DISMISSED AS A MATTER OF LAW. AND WHAT WE DO IN A PROCEEDING

1 LIKE THIS IS, BECAUSE IT'S A VERY INITIAL PROCEEDING, WE ASSUME  
2 BASICALLY ALL THE FACTS THERE IN THE COMPLAINT ARE TAKEN AS  
3 TRUE. SO THIS IS NOT A DAY WHERE FACTUAL DISPUTES ARE TO BE  
4 DECIDED. INSTEAD, THE COURT TAKES ALL OF THE ALLEGATIONS IN THE  
5 COMPLAINT AS TRUE AT THIS STAGE IN THE LITIGATION AND DETERMINES  
6 WHETHER OR NOT THERE IS A LEGAL CLAIM THAT HAS BEEN PROPERLY  
7 ASSERTED IN THE COMPLAINT. SO THAT'S WHAT THE PURPOSE OF  
8 TODAY'S HEARING WILL DO. AND THE ORDER THAT WILL BE ISSUED AT A  
9 LATER TIME WILL ADDRESS THE LEGAL MERITS OF THE CLAIMS THAT THE  
10 PLAINTIFF HAS BROUGHT IN THIS CASE.

11 AND WHAT I WANTED TO LET THE PARTIES KNOW, IS THAT I HAVE  
12 READ THE BRIEFS MORE THAN ONE TIME, SO I AM VERY FAMILIAR WITH  
13 THE CONTENT OF THE BRIEFS. I TEND TO HAVE A LOT OF QUESTIONS,  
14 AND THAT'S WHY I HAVE HEARINGS. SO I'LL BE INTERRUPTING YOUR  
15 PRESENTATION AT MULTIPLE POINTS TO ANSWER QUESTIONS, AND THAT'S  
16 BECAUSE THAT'S WHY I'M HERE, IS TO GET A LITTLE BIT MORE  
17 INFORMATION ON CERTAIN POINTS. AND THE WAY THAT I THINK IT'S  
18 BEST HANDLED, JUST SO THAT I GET THE BEST INFORMATION I CAN, IS  
19 I'LL LET EACH PARTY START OUT WITH KIND OF THEIR INTRODUCTION  
20 AND GO INTO THE FIRST ISSUE, AND THEN I WILL STOP THE DEFENDANT  
21 AND GET THE PLAINTIFF TO ADDRESS THAT ISSUE AS WELL. AND WE'LL  
22 GO THROUGH THEM ONE BY ONE IN THAT MANNER SO THAT THE ARGUMENTS  
23 ARE MORE RESPONSIVE AND MY QUESTIONS ARE MORE FRESH TO BOTH  
24 SIDES SO WE DON'T GET ALL THE WAY THROUGH THE ENTIRETY OF THE  
25 ARGUMENT AND HAVE TO STEP THROUGH IT AGAIN AND EVERYONE HAS

1 FORGOTTEN ON WHAT HAPPENED ON EACH INDIVIDUAL ISSUE.

2 SO WHAT I'D LIKE TO DO IS, BECAUSE IT IS THE DEFENDANT'S  
3 MOTION, HEAR FROM THEM FIRST, AND, LIKE I SAID, GO INTO WHAT YOU  
4 WANTED TO SAY IN THE BEGINNING, AND THEN WE'LL GO INTO THE COUNT  
5 ONE RETALIATION CLAIM WHICH IS THE FIRST COUNT THAT'S ADDRESSED  
6 IN YOUR MOTION. SO WITH THAT, YOU MAY PROCEED, MR. GODFREY.

7 MR. GODFREY: THANK YOU, JUDGE. WHAT YOU HAVE BEFORE  
8 YOU, YOUR HONOR, IS A COMPLAINT THAT, ALTHOUGH IT COVERS 54  
9 PAGES AND 362 PARAGRAPHS OF ALLEGATIONS AND NINE COUNTS, REALLY  
10 BOILS DOWN TO VERY LIMITED NUMBER OF FACTS. AND WHAT THE  
11 COMPLAINT TELLS YOU IS THAT KELVIN COCHRAN, WHO AT THE TIME WAS  
12 THE CHIEF OF THE ATLANTA FIRE RESCUE DEPARTMENT, TOOK IT UPON  
13 HIMSELF TO PUBLISH A BOOK, A BOOK THAT EXPRESSES HIS  
14 INTERPRETATION OF THE BIBLE. HE PUBLISHED THIS BOOK. THE BOOK  
15 CONTAINS REFERENCES TO HOW WOMEN SHOULD BE CONSIDERED AS  
16 INFERIOR BEINGS, HOW GAYS AND LESBIANS ARE EQUATED WITH BEING  
17 INVOLVED IN BESTIALITY. AND MR. COCHRAN THEN, IN ADDITION TO  
18 PUBLISHING THIS BOOK AND MAKING IT AVAILABLE ON AMAZON, BRINGS  
19 THE BOOK INTO THE WORKPLACE. HE DISTRIBUTES THE BOOK TO SOME 20  
20 PEOPLE, MANY OF WHOM WERE PEOPLE WHO REPORTED TO HIM WHO ARE  
21 PART OF HIS TEAM, ASSISTANT CHIEFS, DEPUTY CHIEFS, PEOPLE WHO HE  
22 SUPERVISED AND PEOPLE WHO WERE CARRYING OUT A MISSION ON BEHALF  
23 OF THE CITY. THE CITY OF ATLANTA THROUGH ITS GOVERNING BODY HAS  
24 A POLICY OF NON-DISCRIMINATION. IT IS PUBLISHED IN ITS  
25 ORDINANCES. IT'S AN INCLUSIVE NON-DISCRIMINATION PROVISION.

1 AND CHIEF COCHRAN AS A MEMBER OF THE CABINET, OF MAYOR REED'S  
2 CABINET, IS BOUND BY THAT GOVERNING PRINCIPLE. THE BOOK THAT HE  
3 PUBLISHED RUNS COMPLETELY AFOUL OF THOSE PRINCIPLES. MAYOR  
4 REED, AS THE COMPLAINT INDICATES, WAS VERY CONCERNED ABOUT THIS  
5 BECAUSE LEGALLY, AND WHEN WE GET INTO TALKING ABOUT THE LAW AT  
6 SOME POINT, LEGALLY THE MAYOR HAS THE ABILITY TO DEMAND FROM  
7 THOSE IN HIS INNER CIRCLE TRUST AND COMMITMENT TO THE MISSION.  
8 CHIEF COCHRAN BY PUBLISHING THIS BOOK AND BRINGING IT INTO THE  
9 WORKPLACE, DISSEMINATING IT TO PEOPLE WITHIN THE WORKPLACE,  
10 CLEARLY SHOWED THE MAYOR THAT HE WAS OFF THE RESERVATION, HE WAS  
11 NOT SUPPORTING THE MISSION. HE WAS MAKING STATEMENTS THAT,  
12 ACCORDING TO THE COMPLAINT, UPSET A LOT OF PEOPLE. IT UPSET  
13 PEOPLE ON THE CITY COUNCIL. IT UPSET EMPLOYEES. IT MADE PEOPLE  
14 BELIEVE THAT THE CITY'S SYSTEM OF NON-DISCRIMINATION THAT IT  
15 ESPOUSES EVERY DAY DIDN'T MEAN ANYTHING, THAT INSTEAD PEOPLE IN  
16 THE L.G.B.T. COMMUNITY, FEMALES IN THE WORKPLACE, POTENTIAL  
17 APPLICANTS FOR EMPLOYMENT IN THE FIRE DEPARTMENT WOULD NOT BE  
18 TREATED FAIRLY.

19 IN ADDITION TO THIS, THE CITY HAS A PROVISION WITHIN ITS  
20 CODE OF ORDINANCES THAT SETS APART PEOPLE WHO ARE IN THE MAYOR'S  
21 CABINET AND IT TELLS THESE FOLKS, YOU CANNOT DEVIATE FROM YOUR  
22 MISSION OR REMUNERATION OUTSIDE OF WHAT YOU ARE SUPPOSED TO BE  
23 DOING FOR THE CITY UNLESS AND UNTIL YOU GET A WRITTEN APPROVAL  
24 FROM THE BOARD OF ETHICS TO DO THAT. THE COMPLAINT INDICATES  
25 THAT HE DID NOT DO THAT. SO IT'S CLEAR TO ME, AND IT SHOULD BE

1 CLEAR ON THE FACE OF THE COMPLAINT, THAT CHIEF COCHRAN DID NOT  
2 IN FACT DO WHAT HE WAS SUPPOSED TO DO. HE DID NOT GO WITH THE  
3 MISSION.

4 NOW, YOU WILL FIND AS YOU READ THE COMPLAINT THAT THE  
5 PLAINTIFF AND HIS COUNSEL BELIEVE THAT THIS IS ABOUT RELIGION.  
6 I CAN THINK OF NOTHING THAT IS FARTHER AWAY FROM RELIGION AND A  
7 PUBLIC CONCERN ABOUT RELIGION THAN AN INDIVIDUAL'S READING OF  
8 THE BIBLE. THAT IS A PERSONAL CONCERN. WAS ADAM AND EVE THE  
9 MOTHER AND FATHER OF ALL MANKIND? WAS THE VIRGIN BIRTH A TRUE  
10 VIRGIN BIRTH? WAS THE ENTIRE PLANET FLOODED AND THE ONLY  
11 SURVIVORS WERE NOAH AND HIS FAMILY AND SOME ANIMALS WHO ARE ON  
12 THE ARK AT THE TOP OF MOUNT ARARAT? DID JESUS TURN WATER INTO  
13 WINE AT THE MARRIAGE FEAST IN CANA? THESE ARE THINGS THAT  
14 INDIVIDUALS IN A CHURCH IN A RELIGION DETERMINE FOR THEMSELVES.  
15 THEY INTERPRET THESE THINGS FOR THEMSELVES. IT IS THEIR  
16 PERSONAL BELIEFS. TAKING YOUR PERSONAL BELIEF THAT, IN THIS  
17 CASE, THE BIBLE TELLS YOU THAT GAYS AND LESBIANS ARE SECOND  
18 CLASS CITIZENS IS NOT A MATTER OF PUBLIC CONCERN. IT'S A MATTER  
19 OF PERSONAL CONCERN. THE MERE PUBLICATION OF THAT PERSONAL  
20 CONCERN TO THE GENERAL PUBLIC THROUGH AMAZON.COM OR BY BRINGING  
21 THE BOOK INTO THE WORKPLACE DOES NOT MAKE IT A MATTER OF PUBLIC  
22 CONCERN. IT SIMPLY MEANS THAT YOU HAVE TAKEN UPON YOURSELF TO  
23 PUT YOUR PERSONAL CONCERNS OUT THERE. YOU HAVE PUBLISHED IT.  
24 THE LAW SAYS THAT THAT IS NOT ENOUGH TO MAKE A PERSONAL MATTER A  
25 MATTER OF PUBLIC CONCERN.

1 SO WHAT DO WE HAVE? WE HAVE AN INDIVIDUAL WHO'S SUPPOSED  
2 TO BE COMMITTED TO THE MISSION OF NON-DISCRIMINATION, A PERSON  
3 WHO IS A MEMBER OF THE MAYOR'S INNER CIRCLE WHO SIMPLY TAKES IT  
4 UPON HIMSELF TO SAY, YOU KNOW, I HAVE THESE PERSONAL BELIEFS AND  
5 I REALLY JUST DON'T GIVE A DARN WHAT THE CITY COUNCIL THINKS, I  
6 DON'T GIVE A DARN WHAT THE MAYOR THINKS, I DON'T EVEN CARE WHAT  
7 THE EMPLOYEES OR THE CITIZENS OF THIS COMMUNITY THINK. I'M  
8 GOING TO TELL THE WORLD THAT THE ATLANTA FIRE RESCUE DEPARTMENT  
9 CHIEF, AND HE IDENTIFIES HIMSELF IN THE BOOK AS THE CHIEF,  
10 BELIEVES THAT THAT MISSION IS HOGWASH, THAT IF YOU'RE GAY OR A  
11 LESBIAN, YOU'RE DIFFERENT, YOU'RE DOWN THERE WITH THE BEASTS.  
12 IF YOU'RE A WOMAN, YOU'RE A SECOND CLASS CITIZEN. THE BOOK  
13 SAYS, FOR EXAMPLE, THAT WE WOULDN'T BE IN THIS CONDITION NOW --  
14 THERE WOULD BE NO ORIGINAL SIN IF EVE HAD SIMPLY TOLD THE  
15 SERPENT, YOU NEED TO TALK TO ADAM.

16 WHAT KIND OF MESSAGE DOES THAT SEND? IT CERTAINLY DOESN'T  
17 SEND A MESSAGE OF INCLUSIVENESS. IT DOESN'T SEND A MESSAGE OF  
18 RESPECT, MUTUAL RESPECT OF MAN FOR WOMAN. IT'S A JAUNDICED VIEW  
19 OF ONE INDIVIDUAL THAT PEOPLE SIMPLY DON'T NEED TO KNOW ABOUT.  
20 THAT'S HIS ISSUE. THE COMPLAINT DOESN'T SAY THAT ANYBODY AT  
21 CITY HALL, THE MAYOR OR ANYBODY ELSE TOLD HIM THAT HE COULDN'T  
22 BELIEVE THAT AT HOME, THAT HE COULDN'T BELIEVE THAT IN HIS  
23 CHURCH, THAT HE COULDN'T BELIEVE THAT IN HIS BIBLE STUDY. BUT  
24 HE CERTAINLY CAN'T BRING THAT MESS IN THE CITY HALL, AND THAT'S  
25 WHAT HE DID.

1           NOW, AS YOU LOOK AT THE COMPLAINT AND YOU BEGIN TO APPLY  
2 THE ANALYSIS THAT YOU WILL HAVE TO APPLY TO THIS UNDER  
3 PICKERING, THE LAW SAYS THAT YOU HAVE TO FIRST MAKE THE  
4 THRESHOLD DETERMINATION. AND ALL THE CASES SAY THIS. EVEN  
5 BEFORE YOU GET TO THE PICKERING BALANCE TEST, YOU HAVE TO MAKE  
6 THE THRESHOLD CONSIDERATION. IS THIS SPEECH ON A MATTER OF  
7 PUBLIC CONCERN? IS IT A MATTER OF PUBLIC CONCERN WHAT  
8 MR. COCHRAN THINKS ABOUT GAYS, LESBIANS AND WOMEN? IS IT A  
9 MATTER OF PUBLIC CONCERN WHAT HE THINKS ABOUT WOMEN? IS IT A  
10 MATTER OF PUBLIC CONCERN WHAT HE THINKS ABOUT OTHER FOLKS IN  
11 OTHER RELIGIONS, FOLKS WHO HAVE SEX OUTSIDE OF MARRIAGE? THOSE  
12 ARE THE PEOPLE THAT COMPRISE THIS COMMUNITY. HE THINKS THERE'S  
13 SOMETHING WRONG WITH THOSE FOLKS, ALL OF THEM. HE THINKS THAT.  
14 THAT'S HIS INTERPRETATION OF WHAT THE BIBLE SAYS. IT IS NOT THE  
15 SAME AS IF HE IS IN HIS BIBLE STUDY AND HE'S HAVING DISCUSSIONS  
16 WITH LIKE-MINDED CHRISTIANS ABOUT WHAT THE BIBLE MEANS. IT'S  
17 ESSENTIALLY PROSELYTIZING HIS BELIEFS AND WHAT THE BIBLE MEANS  
18 WITHIN THE WORKPLACE. AND IT'S ALSO PROSELYTIZING HIS PERSONAL  
19 ISOLATED BELIEFS WITHIN THE GENERAL PUBLIC. IT'S SENDING A  
20 VERY, VERY NEGATIVE MESSAGE NOT ONLY TO EMPLOYEES, NOT ONLY TO  
21 THE CITY COUNCIL, BUT TO THE PUBLIC AT LARGE. IT TELLS FOLKS  
22 WHO LIVE IN DENVER WHO MAY BE CONSIDERING A CAREER IN  
23 FIREFIGHTING IN THE CITY OF ATLANTA THAT, COME HERE IF YOU WANT  
24 TO, BUT THE FIRE CHIEF BELIEVES THAT IF YOU HAVE A DIFFERENT  
25 LIFESTYLE, IF YOU'RE A WOMAN, IF YOU'VE EVER HAD SEX OUT OF



1 MARRIAGE, HE'S GOING TO THINK THAT THERE'S SOMETHING WRONG WITH  
2 YOU.

3 THE COURT: MR. GODFREY, I UNDERSTAND YOUR POSITION  
4 THAT IT'S NOT A MATTER OF PUBLIC CONCERN, AND I THINK THAT'S  
5 VERY WELL-BRIEFED INSIDE YOUR BRIEF AND AS IT RELATES TO THE  
6 PICKERING TEST AND THE RETALIATION CLAIM, BUT I HAVE SOME  
7 CONCERNS WITH YOUR ARGUMENT ABOUT KIND OF THE SECOND PRONG IN  
8 YOUR BRIEF, WHICH IS THE CITY'S INTEREST IN RESTRICTING THE  
9 SPEECH OUTWEIGHING THE PLAINTIFF'S FIRST AMENDMENT CONCERNS.  
10 AND THE REASON I HAVE A CONCERN WITH IT IS AT THIS STAGE OF THE  
11 LITIGATION WHERE WE'RE DEALING WITH THE COMPLAINT AS DRAFTED BY  
12 THE PLAINTIFF, IT'S DIFFICULT TO DO THE BALANCING TEST BECAUSE  
13 WE DON'T HAVE A LOT OF INFORMATION ABOUT THE CITY'S CONCERNS AND  
14 THEIR INTERESTS IN THE RECORD AT THIS POINT IN THE PROCEEDING.  
15 AND I COULDN'T FIND ANY CITATION IN YOUR BRIEFS TO ANY CASES  
16 WHERE MOTIONS TO DISMISS HAVE BEEN GRANTED IN A PICKERING  
17 ANALYSIS WHEN YOU DON'T HAVE THESE ARGUMENTS ON BEHALF OF THE  
18 CITY IN THE RECORD AT THIS POINT IN TIME, AND WANTED YOU TO  
19 ADDRESS THAT AND IF YOU COULD PROVIDE ME ANY CITATION TO A CASE  
20 THAT'S DEALT WITH THIS IN A WAY THAT'S BROUGHT IN THIS OUTSIDE  
21 INFORMATION AT THIS STAGE OF THE LITIGATION.

22 MR. GODFREY: WELL, THE COMPLAINT ITSELF CONTAINS SOME  
23 OF THAT INFORMATION. THE COMPLAINT STATES THAT AT LEAST ONE  
24 EMPLOYEE WHO SAW THE BOOK WAS CONCERNED ENOUGH ABOUT IT TO TAKE  
25 IT TO A CITY COUNCIL PERSON, AND THAT CITY COUNCIL PERSON WAS

1 CONCERNED ENOUGH TO TAKE THE ISSUE UP WITH THE MAYOR AND WITH  
2 OTHER MEMBERS OF THE CABINET. THAT IN AND OF ITSELF ESTABLISHES  
3 IMMEDIATELY DISRUPTION WEIGHING ON THE SIDE OF THE CITY'S  
4 LEGITIMATE CONCERNS ABOUT THE SPEECH. BUT EVEN BEYOND THAT, IF  
5 YOU LOOK AT EVERYTHING THAT'S SAID IN THE COMPLAINT, IT'S CLEAR  
6 TO ME AT LEAST THAT CHIEF COCHRAN ACKNOWLEDGES THAT EVERYBODY,  
7 EXCEPT HE AND HIS INNER CIRCLE OF BIBLE STUDY FOLKS, THOUGHT  
8 THAT THE BOOK SHOULD NOT HAVE BEEN BROUGHT INTO THE WORKPLACE.  
9 IT'S BRINGING THE BOOK INTO THE WORKPLACE THAT BRIDGES THE GAP  
10 AND TAKES THE COMPLAINT INTO THAT REALM THAT TELLS YOU AS THE  
11 JUDGE LOOKING AT IT THAT THE CITY'S INTEREST OUTWEIGH HIS  
12 INTEREST IN MAKING THESE PERSONAL STATEMENTS.

13 THE COURT: BUT I DON'T THINK THAT THE PLAINTIFF'S  
14 COMPLAINT IS THAT NARROW. THE WAY I READ THE PLAINTIFF'S  
15 COMPLAINT IS THEY'RE NOT LIMITING IT TO THE ISSUE OF BRINGING  
16 THE BOOK INTO THE WORKPLACE. THEY'RE ALSO SAYING THAT THEY'RE  
17 DISCRIMINATING AND RETALIATING AGAINST MR. COCHRAN FOR HAVING  
18 THESE VIEWS HIMSELF. SO IT'S NOT JUST TIED TO THE BOOK COMING  
19 INTO THE WORKPLACE. IT'S ALSO BECAUSE HE HAS THESE BELIEFS.  
20 AND WE'RE NOT AT THE POINT WHERE WE'RE SAYING THE REAL REASON  
21 AND THE TRUTH AND ALL THAT. WE'RE JUST LOOKING AT WHAT'S BEEN  
22 ALLEGED. AND I SEE THAT THE PLAINTIFF'S COMPLAINT HAS CERTAIN  
23 LAYERS. THERE'S THE ISSUE ABOUT IT BEING IN THE WORKPLACE, BUT  
24 IT'S ALSO THE ISSUE WHERE THE PLAINTIFF BELIEVES THAT HE WAS  
25 RETALIATED AGAINST BECAUSE HE HAS THESE VIEWS, NOT JUST BECAUSE

1 HE HAS THEM IN THE WORKPLACE. SO WHEN I LOOK AT THE COMPLAINT,  
2 AND I'M KIND OF LOOKING AT THE CITY'S INTEREST IN THE COMPLAINT,  
3 I DO ACKNOWLEDGE THOSE TWO FACTS THAT YOU'VE SEEN THERE. BUT I  
4 DON'T SEE ANY OTHER FACTS THAT PRESENT THE CITY'S POSITION AND I  
5 ALSO HAVEN'T HAD YOU ADDRESS THE CASE LAW ISSUE. ARE THERE ANY  
6 CASES THAT GRANT A MOTION TO DISMISS IN A PICKERING SCENARIO?

7 MR. GODFREY: I CAN'T CITE YOU A CASE SITTING HERE,  
8 STANDING HERE TODAY, YOUR HONOR, BUT IT'S JUST PATENT TO ME THAT  
9 THE COMPLAINT, ALTHOUGH IT KIND OF NIPS AT THE FACT THAT HE  
10 BELIEVES HE WAS DISCHARGED BECAUSE OF HIS BELIEFS, IT'S JUST  
11 ABUNDANTLY CLEAR IN THE COMPLAINT THAT HE KNOWS THAT HE WAS  
12 DISCHARGED BECAUSE HE DID NOT GET THE ETHICS BOARD'S APPROVAL  
13 AND HE KNOWS THAT THE MAYOR WAS TERRIBLY, TERRIBLY UPSET BY THE  
14 FACT THAT HE BROUGHT THIS BOOK AND HIS MESSAGE INTO THE  
15 WORKPLACE RUNNING COMPLETELY HEAD-ON INTO THE MAYOR'S POSITION  
16 AND THE CITY COUNCIL'S POSITION AND THIS CITY'S POSITION ON HOW  
17 FOLKS SHOULD BE TREATED IN THE WORKPLACE

18 THE COURT: AND I UNDERSTAND YOUR POSITION ON THAT,  
19 BUT AT THIS STAGE IN THE LITIGATION I CAN'T GRANT YOUR MOTION  
20 UNLESS YOU GET AROUND THE ISSUE THAT THE PLAINTIFF HAS RAISED,  
21 THAT IS, AT THE STAGE OF THE LITIGATION WHEN APPLYING THE  
22 PICKERING ANALYSIS, THE STANDARD IS THAT THERE'S A CITY'S  
23 INTEREST THAT OUTWEIGHS THE PLAINTIFF'S FIRST AMENDMENT INTEREST  
24 AS THE WAY THE PLAINTIFF HAS PLED IT, NOT AS IN KIND OF YOUR  
25 POSITION IS KIND OF THE TRUTH WILL WIN OUT. BUT AT THIS STAGE

1 WE'VE GOT A SERIES OF CASES FOLLOWING PICKERING THAT REQUIRE  
2 BASIC EVIDENCE AND INFORMATION ON THE CITY'S POSITION THAT'S  
3 UNDISPUTED. AND THAT DOESN'T APPEAR TO BE IN THE RECORD IN  
4 FRONT OF ME. SO BASED ON YOUR BRIEFING AND THE CASE LAW I'VE  
5 SEEN, I'M NOT FINDING A GOOD WAY FOR THE CITY TO REFUTE THE  
6 ARGUMENT FROM THE PLAINTIFF THAT MAYBE THIS IS AN ISSUE IN TERMS  
7 OF SUMMARY JUDGMENT, BUT ON THE MOTION TO DISMISS GIVING THIS  
8 PICKERING BALANCING TEST, THE RECORD ISN'T DEVELOPED TO THE  
9 POINT THAT THAT'S A MOTION THAT CAN BE GRANTED AT THIS STAGE OF  
10 THE LITIGATION. SO MUCH OF WHAT YOU'RE SAYING IS DISPUTED AND  
11 CONTRARY TO WHAT THE PLAINTIFF'S POSITION IS. I HAVE TO STICK  
12 WITH WHAT THE PLAINTIFF'S POSITION IS AND THIS PICKERING  
13 FRAMEWORK THAT I'M DEALING WITH.

14 MR. GODFREY: I UNDERSTAND THAT, YOUR HONOR. BUT THE  
15 CASE LAW, AND I CAN GIVE YOU A CITATION ON THIS PRINCIPLE, IS  
16 THAT BEFORE YOU EVEN GET TO THE PICKERING ANALYSIS, BEFORE YOU  
17 EVEN HAVE TO HAVE THE EVIDENCE OF THE CITY'S INTEREST, YOU HAVE  
18 TO MAKE A DETERMINATION OF WHETHER THIS WAS AN EXPRESSION OF  
19 PUBLIC CONCERN.

20 THE COURT: AND I UNDERSTAND THAT. AND WHAT I'M  
21 SAYING IS I TOTALLY UNDERSTAND YOUR ARGUMENT ON THAT AND I THINK  
22 THAT'S WELL-DEVELOPED IN YOUR BRIEF, BUT IF YOU LOSE ON THAT  
23 ARGUMENT, DO YOU LOSE THE REST OF YOUR PICKERING ANALYSIS POINT?  
24 AND THAT'S I GUESS WHAT I'M REALLY GETTING AT. ARE THE CITY'S  
25 KIND OF EGGS IN THE PUBLIC -- WHETHER OR NOT THIS IS A MATTER OF

1 PUBLIC CONCERN BASKET? AND THAT'S FINE AND I'M NOT SAYING THAT  
2 I DON'T FIND YOUR ARGUMENTS GOOD ON THAT ISSUE, I JUST REALLY  
3 UNDERSTAND THEM. SO WHAT I DON'T UNDERSTAND IS IF YOU LOSE ON  
4 THE PUBLIC CONCERN BASIS, DO YOU STILL HAVE A GOOD ARGUMENT THAT  
5 YOU WIN ON THE BALANCING TEST AT THIS STAGE, AND, IF SO, WHAT'S  
6 THE SUPPORT FOR THAT? BECAUSE THAT'S THE PIECE THAT IS NOT  
7 CLEAR TO ME FROM YOUR BRIEF.

8 MR. GODFREY: WELL, I THINK WE WIN ON THE PUBLIC  
9 CONCERN ISSUE, BUT I CAN'T DISPUTE THAT THE COMPLAINT DOESN'T  
10 PROVIDE ALL THE INFORMATION YOU WOULD NEED TO MAKE -- DO THE  
11 PICKERING ANALYSIS ON THAT PARTICULAR CLAIM. BUT I STILL THINK  
12 THERE'S ENOUGH IN THE COMPLAINT, AS I'VE INDICATED, THAT YOU  
13 COULD TIE IN THE ABSENCE OR EVEN THE CLOSE QUESTION OF WHETHER  
14 THERE'S A MATTER OF PUBLIC CONCERN WITH THE BALANCING, YES.

15 THE COURT: NOW, IN TERMS OF THE COUNT ONE ARGUMENT ON  
16 THE RETALIATION, MY UNDERSTANDING IS THAT WE'VE TALKED ABOUT THE  
17 PUBLIC CONCERN ISSUE WHICH, AS I STATED, TO ME IS VERY CLEAR  
18 FROM YOUR BRIEF, AND WE'VE TALKED ABOUT THE SECOND PICKERING  
19 FACTOR THAT YOU MOVED FOR IN YOUR BRIEF. WAS THERE ANYTHING  
20 THAT YOU WANTED TO SPEAK TO IN TERMS OF THE LEGAL ARGUMENTS ON  
21 THE RETALIATION ARGUMENT BEFORE I ALLOW THE PLAINTIFF TO SPEAK  
22 JUST TO THOSE ISSUES?

23 MR. GODFREY: NO. THERE'S REALLY NOTHING IN THE  
24 COMPLAINT OTHER THAN HIS ALLEGATION THAT HE BELIEVES THERE WAS  
25 RETALIATION. THERE'S NOTHING THAT I CAN GRAB OUT OF THE

1 COMPLAINT TO OFFER YOU AT THIS POINT.

2 THE COURT: OKAY. WELL, LET ME HEAR FROM THE  
3 PLAINTIFFS THEN, AND THEN WE'LL COME BACK AND DEAL WITH THE  
4 STANDING ARGUMENTS NEXT. SO THANK YOU MR. GODFREY.

5 MR. THERIOT.

6 MR. THERIOT: THANK YOU, YOUR HONOR. IF I MAY, I'D  
7 JUST LIKE TO ADDRESS THE QUESTION -- I THINK IT WAS THE MOST  
8 RECENT QUESTION, IS WHETHER THERE IS ANY CASE LAW OUT THERE  
9 WHERE THE WEIGHING ANALYSIS WAS APPLIED AND THE COURT ACTUALLY  
10 GRANTED A MOTION TO DISMISS AND IT WAS UPHELD. WE WEREN'T ABLE  
11 TO FIND ANY EITHER. THE ONLY CASES, THERE ARE ABOUT 110 CASES  
12 CITED IN ALL THE BRIEFING, BUT THE ONLY CASES WE FOUND WHERE A  
13 MOTION TO DISMISS WAS GRANTED WERE THOSE THAT INVOLVED  
14 SITUATIONS WHERE A MATTER OF PUBLIC CONCERN WASN'T AT ISSUE.  
15 AND THOSE WERE THE MAGGIO CASE, THE THAETER CASE AND THE WATT'S  
16 CASE. BUT ALL OF THE OTHER CASES CITED AND ALL THE CASES THAT  
17 WE COULD FIND, FRANKLY, IT WAS AT THE SUMMARY JUDGMENT STAGE.  
18 SO WE COMPLETELY AGREE WITH THAT ASSESSMENT OF THE WEIGHING  
19 ANALYSIS, AND THIS IS TOO EARLY AND WE'RE -- THE -- AND THE  
20 STANDARD IS TOO HIGH. ALL THE FACTS HAVE TO BE CONSIDERED IN  
21 THE LIGHT MOST FAVORABLE TO OUR CLIENTS FOR THAT TO -- FOR THAT  
22 TO OCCUR.

23 THE COURT: AND ONE THING I WANTED TO MAKE SURE THAT  
24 YOU ADDRESSED IN YOUR ARGUMENT IS THAT IT WILL BE A LITTLE  
25 CONFUSING BECAUSE SOME OF THE FORMATION THAT IS IN THE BRIEF

1 THAT I UNDERSTAND VERY WELL, I DON'T KNOW THAT IT MAKES A LOT OF  
2 GOOD USE OF OUR TIME IN TERMS OF GETTING A GOOD ORDER TO SPEND A  
3 LOT OF TIME ON THOSE AREAS. SO I'M CERTAINLY GOING TO ALLOW YOU  
4 TO ADDRESS THEM, BUT WHAT I THINK IT MAKES MORE SENSE FOR YOU TO  
5 FOCUS ON IN TERMS OF YOUR ARGUMENT IS MAYBE SINCE THERE IS A  
6 LITTLE BIT OF CONFUSION AS TO WHAT EXACTLY THE PLAINTIFF'S  
7 RETALIATION CLAIM IS, MAYBE IF YOU CAN START WITH TELLING THE  
8 COURT EXACTLY WHAT THAT CLAIM IS AND THEN ADDRESS IN MORE DETAIL  
9 THE PUBLIC CONCERN ARGUMENT THAT IS PRESENTED IN DEFENDANT'S  
10 BRIEF SINCE I THINK WE'VE GOTTEN WHAT WE NEED IN TERMS OF THE  
11 PICKERING SECOND FACTOR, THE BALANCING ISSUES.

12 MR. THERIOT: RIGHT, RIGHT. SO IT REALLY STARTS WITH  
13 THE FACT THAT, YOU KNOW, TAKING THE FACTS IN THE COMPLAINT AS  
14 TRUE AND THAT HE WAS FIRED SOLELY BECAUSE OF HIS SPEECH AND HIS  
15 BELIEFS THAT WERE EXPRESSED BY THAT SPEECH. THAT'S IN PARAGRAPH  
16 11 AND PARAGRAPH 236 OF THE COMPLAINT. SO THAT'S NUMBER ONE.  
17 AND, NUMBER TWO, AS WE'VE ALREADY DISCUSSED, THAT DIDN'T RESULT  
18 IN ANY DISRUPTION, AND THAT HAS TO BE TAKEN AS TRUE. IT WASN'T  
19 LIKELY TO. AND LASTLY AND I THINK MOST IMPORTANT, MAYBE MOST  
20 IMPORTANTLY IN VIEW OF MR. GODFREY'S COMMENTS, HE HAS NEVER  
21 DISCRIMINATED OR BEEN ACCUSED OF DISCRIMINATING AGAINST ANYONE,  
22 AND THAT HAS TO BE TAKEN AS TRUE. SO IF YOU BOIL ALL THOSE  
23 THINGS DOWN AND THEN LOOK AT THE STATEMENTS THAT MAYOR REED MADE  
24 THAT SAID WHEN HE SUSPENDED HIM ON NOVEMBER 24TH, IT WAS BECAUSE  
25 OF THE SENTIMENTS EXPRESSED IN THE BOOK, IT WASN'T FOR ANY OTHER

1 REASON. WHEN -- WHEN COUNCILMAN WAN SAID THAT, WELL, HE'S FREE  
2 TO HAVE HIS BELIEFS, HE JUST HAS TO CHECK THEM AT THE DOOR. AND  
3 MY COLLEAGUE, MR. GODFREY, BASICALLY CONFIRMED THAT IN HIS  
4 PRESENTATION. YEAH, HE'S FREE TO HAVE HIS BELIEFS, HE JUST  
5 CAN'T BRING THOSE INTO THE WORKPLACE AND MAKE THEM KNOWN. AND  
6 SO I THINK IT'S CLEAR THAT THOSE ARE THE REASONS AND THE FACTS  
7 IN THE COMPLAINT SET OUT VERY FORTH -- VERY CLEARLY THAT THOSE  
8 ARE THE REASONS THAT HE WAS FIRED, FOR HIS SPEECH AND FOR HIS  
9 CONVICTIONS. AND THAT WAS THE RETALIATION THAT VIOLATES THE  
10 FIRST AMENDMENT.

11 AND, AS I UNDERSTAND IT, YOU WANTED ME TO ADDRESS THE  
12 MATTER OF PUBLIC CONCERN?

13 THE COURT: YES. AND SPECIFICALLY THE DEFENDANT'S  
14 ARGUMENT THAT THE INFORMATION IN THE SPEECH AT ISSUE IS MORE  
15 AKIN TO AN INDIVIDUAL'S INTERPRETATION OF THE BIBLE RATHER THAN  
16 WEIGHTIER BIGGER MATTERS OF PUBLIC CONCERN. SO THAT POINT IS  
17 ONE THAT I THINK IS IMPORTANT FOR YOU TO ADDRESS IN A LITTLE  
18 MORE DETAIL.

19 MR. THERIOT: OKAY. SO INITIALLY THE MATTER OF PUBLIC  
20 CONCERN IS EXTREMELY BROAD, AS THE SUPREME COURT DEFINES IT IN  
21 U.S. VS. NATIONAL TREASURY. IT'S ANY MATTER OF POLITICAL OR  
22 OTHER CONCERN TO THE COMMUNITY OF -- SO -- A SOCIAL OR OTHER  
23 CONCERN OF THE COMMUNITY. THAT'S EXTREMELY BROAD. SO, FOR  
24 INSTANCE, IN THE U.S. VS. NATIONAL TREASURY, THE COURT, THE  
25 SUPREME COURT DETERMINED THAT LECTURES ON THE QUAKER RELIGION



1 WERE A MATTER OF PUBLIC CONCERN BY U.S. TREASURY PEOPLE. SO  
2 THAT WASN'T SOMETHING THAT WAS LIMITED TO -- IT WAS SOMETHING  
3 THAT WAS LIMITED TO A PARTICULAR PERSON. IT WAS REVIEWS ON  
4 DANCE RECITALS. AS A MATTER OF FACT, THAT WAS A PUBLIC CONCERN.  
5 A -- AN ASSESSMENT OF IRON CLADS DURING THE CIVIL WAR, PROBABLY  
6 A PRETTY NARROW AUDIENCE FOR THAT. SO YOU TAKE THAT AS A  
7 STARTING POINT AND THEN SEE WHAT THE NINTH CIRCUIT DID IN THE  
8 TUCKER CASE, AND THEY SPECIFICALLY HELD THAT RELIGION IS A  
9 MATTER OF PUBLIC CONCERN EVEN THOUGH IN THAT CASE, THAT  
10 INDIVIDUAL COMMUNICATED THAT INFORMATION ONLY TO HIS COLLEAGUES  
11 IN THE WORKPLACE AT THE DEPARTMENT OF EDUCATION IN CALIFORNIA,  
12 DIDN'T HAVE ANYTHING TO DO WITH HIS WORK, BUT THAT WAS  
13 CONSIDERED A MATTER OF PUBLIC CONCERN. AND THEN THE SIXTH  
14 CIRCUIT IN THE SCARBROUGH CASE HELD THAT A POTENTIAL  
15 SUPERINTENDENT OF SCHOOLS WAS ENGAGED IN A MATTER OF PUBLIC  
16 CONCERN AND SPEECH ON A MATTER OF PUBLIC CONCERN WHEN HE WAS  
17 TALKING ABOUT HIS FAITH, AND SPECIFICALLY ABOUT HOW THAT RELATED  
18 TO HOMOSEXUALITY. SO YOU HAVE AT LEAST THREE COURTS OUT THERE  
19 SAYING THAT THIS TYPE OF SPEECH CLEARLY IS A MATTER OF PUBLIC  
20 CONCERN. AND INCIDENTALLY -- AND IT DOESN'T MATTER IF THERE WAS  
21 AN ATTEMPT TO COMMUNICATE THAT TO THE PUBLIC AT LARGE, AND  
22 CERTAINLY THERE WAS HERE. HE SOLD HIS BOOK ON AMAZON. BUT EVEN  
23 IN RANKIN VS. MCPHERSON WHERE THE EMPLOYEE, THE FEDERAL EMPLOYEE  
24 SAID AFTER PRESIDENT REAGAN -- AN ATTEMPT ON PRESIDENT REAGAN'S  
25 LIFE WAS MADE, I HOPE THEY GET HIM NEXT TIME, SHE JUST SAID THAT

1 TO HER COLLEAGUE SITTING NEXT TO HER, DIDN'T EVER ATTEMPT TO  
2 COMMUNICATE THAT TO THE PUBLIC, AND THAT WAS CONSIDERED TO BE A  
3 MATTER OF PUBLIC CONCERN AND THE PICKERING ANALYSIS APPLIED. SO  
4 YOU TAKE ALL THOSE CASES TOGETHER AND THEN YOU LOOK AT THE TWO  
5 CASES THAT THEY'VE CITED, MAGGIO VS. SIPPLE AND MORGAN VS. FORD,  
6 BOTH OF -- OF THOSE WERE SITUATIONS THAT WEREN'T MATTERS OF  
7 PUBLIC CONCERN, BUT THEY WERE INTERNAL MATTERS, APPEAL  
8 PROCESSES, GRIEVANCES, INTERNAL GRIEVANCES, AND THERE WAS NO  
9 ATTEMPT OR NO EVEN MOTIVE TO INFORM THE PUBLIC AT LARGE, BUT  
10 CERTAINLY I DON'T THINK -- I THINK VERY DIFFICULT TO DISPUTE AT  
11 THIS STAGE OF THE LITIGATION WHERE ALL THE FACTS HAVE TO BE  
12 TAKEN AS TRUE, THAT CHIEF COCHRAN WAS ATTEMPTING TO TALK TO  
13 INDIVIDUALS, NOT JUST PEOPLE THAT WERE AT HIS CHURCH, ABOUT HIS  
14 CONVICTIONS.

15 THE COURT: DO YOU HAVE ANY CONCERN -- I KNOW IN THE  
16 MORGAN VS. FORD, ELEVENTH CIRCUIT CASE, THERE IS SOME LANGUAGE  
17 THAT WHEN YOU ANALYZE THIS PUBLIC CONCERN, THAT YOU LOOK AT WHAT  
18 THE MAIN THRUST OF THE SPEECH IS AND THE MAIN PURPOSE OF THE  
19 SPEECH. I KNOW THAT SOME OF THESE OTHER CIRCUITS HAVE DEALT  
20 MORE WITH THIS RELIGIOUS SPEECH AREA THAN THE ELEVENTH CIRCUIT  
21 HAS. WHAT INDICATION DO YOU HAVE THAT THE ELEVENTH CIRCUIT IS  
22 GOING TO FOLLOW THESE OTHER CIRCUITS WHEN DEALING WITH THIS MORE  
23 RELIGIOUS CONTENT SPEECH?

24 MR. THERIOT: WELL, THE ONLY CASE THAT WE'VE CITED  
25 DOESN'T -- DOESN'T ADDRESS IT DIRECTLY, BUT THE WATTS CASE TALKS

1 ABOUT -- SAID THAT HE STATED A FREE EXERCISE -- FREE EXERCISE  
2 CLAIM WHEN HE WAS COMMUNICATING HIS CONVICTIONS TO A -- TO  
3 SOMEBODY IN A COUNSELING SESSION. AND IN THAT PARTICULAR CASE  
4 THE COURT DETERMINED THAT CERTAINLY RELIGIOUS -- THAT RELIGIOUS  
5 EXPRESSION WAS PROTECTED. IT WASN'T A MATTER OF PUBLIC CONCERN  
6 BECAUSE IT WAS A PRIVATE COUNSELING SESSION, BUT IT WAS RELIGION  
7 IN THAT -- RELIGIOUS SPEECH THAT IS PROTECTED BY THE FIRST  
8 AMENDMENT. NOW, YOU KNOW, THAT'S ELEVENTH CIRCUIT CASE.  
9 THERE ARE -- AS FAR AS I'M AWARE, THERE AREN'T ANY OTHERS  
10 SPECIFICALLY TALKING ABOUT RELIGION IN THE WORKPLACE AND WHETHER  
11 IT'S A MATTER OF PUBLIC CONCERN. BUT I THINK U.S. VS. NATIONAL  
12 TREASURY IN THE -- INDICATION THAT LECTURES ON THE QUAKER  
13 RELIGION ARE A MATTER OF PUBLIC CONCERN, I MEAN, THAT'S --  
14 THAT'S FAIRLY NARROW. I DON'T SEE HOW THE ELEVENTH CIRCUIT  
15 COULD COME TO ANY OTHER CONCLUSION. AND WE'RE NOT AWARE OF ANY  
16 OTHER CIRCUIT THAT HAS EVER HELD THAT RELIGION IN GENERAL WAS  
17 NOT A MATTER OF PUBLIC CONCERN.

18 THE COURT: OKAY.

19 MR. THERIOT: I THINK -- THOSE ARE THE TWO MAIN ISSUES  
20 I THINK YOU WANTED ME TO RESPOND TO. WOULD YOU LIKE FOR ME TO  
21 ADDRESS ANYTHING ELSE AT THIS STAGE?

22 THE COURT: NOT AT THIS STAGE. I DON'T NECESSARILY  
23 WANT TO CUT YOU OFF, BUT WHAT I NOTICED IN THE MOTION TO DISMISS  
24 IS THAT THERE ARE VERY SPECIFIC GROUNDS FOR MOVING FOR  
25 DISMISSAL, AND THOSE ARE THE GROUNDS THAT I'M GOING TO BE

1 ANALYZING. SO TO THE EXTENT THAT WE DEAL WITH THE TWO ARGUMENTS  
2 THAT THE CITY MADE AND MAKE YOUR PRESENTATION ON THOSE, I THINK  
3 THAT THAT'S WHAT I NEED TODAY, IS TO DEAL WITH THAT. I KNOW  
4 THAT THERE ARE BIGGER ISSUES THAT ARE GOING TO COME UP AT A  
5 LATER TIME, BUT WE'RE DEALING WITH THE VERY SPECIFIC ARGUMENTS  
6 THAT THE CITY HAS MADE, AND I THINK THAT ADDRESSES THE QUESTIONS  
7 I HAVE IN REGARD TO THOSE.

8 MR. THERIOT: OKAY. ALL RIGHT. SO YOU WANT ME TO  
9 ADDRESS THE NEXT ONE -- LIKE, FOR INSTANCE, THE STANDING ISSUE?

10 THE COURT: WELL, LET ME HEAR FROM THE DEFENDANT FIRST  
11 ON STANDING, AND THEN I'LL HEAR FROM YOU ON STANDING.

12 MR. THERIOT: OKAY. THANK YOU.

13 THE COURT: SO THANK YOU VERY MUCH.

14 AND, MR. GODFREY, ON THE STANDING ISSUE, ONE THING I FOUND  
15 A BIT CONFUSING IS THAT IN COUNT TWO THE WAY I READ THE  
16 COMPLAINT, THAT THERE ARE ESSENTIALLY FOUR DIFFERENT CLAIMS  
17 WITHIN COUNT TWO. AND WHEN I LOOK AT THE STANDING ANALYSIS, I  
18 SEE THAT IT APPLIES DIFFERENTLY DEPENDING ON WHICH SPECIFIC SUB  
19 PART OF COUNT TWO THAT WE'RE DEALING WITH. SO, FOR EXAMPLE, THE  
20 ARGUMENT THAT THE CITY MADE IS TIED TO THE CITY CODE SECTION  
21 2-820(D). AND BASICALLY IT SAYS THAT TO HAVE STANDING, YOU HAD  
22 TO HAVE GONE THROUGH THIS PROCESS OF THIS MUNICIPAL CODE, WHICH  
23 I UNDERSTAND. BUT WHEN WE GO TO THE FIRST CLAIM, WHICH IS THE  
24 VIEWPOINT DISCRIMINATION CLAIM, THAT ARGUMENT TO ME DOES NOT FIT  
25 WELL WITHIN THAT STANDING ARGUMENT BECAUSE THERE'S A CLAIM THAT

1 THE DEFENDANTS DISCRIMINATED AGAINST THE PLAINTIFF BASED ON HIS  
2 VIEWPOINT DISCRIMINATION. AND I DON'T UNDERSTAND HOW FAILURE TO  
3 COMPLY WITH THAT PARTICULAR CODE SECTION DEALS WITH THE STANDING  
4 ON THAT ONE. SO IF WE CAN KIND OF STEP THROUGH THEM ONE BY ONE,  
5 BECAUSE I HAVE THEM AS VIEWPOINT DISCRIMINATION, OVERBREADTH,  
6 PRIOR RESTRAINT AND UNBRIDLED DISCRETION. AND IT'S MY  
7 UNDERSTANDING THAT THE STANDING ANALYSIS IS VERY DIFFERENT FOR  
8 EACH FOUR OF THOSE DIFFERENT SUB PARTS.

9 MR. GODFREY: WELL, THE ISSUE THAT'S PRESENTED IN THAT  
10 COUNT IS THAT VIEWPOINT, OVERBREADTH AND ALL THE OTHER  
11 ALLEGATIONS HE MAKES ARE TIED TO OUR IMPOSITION OF THAT  
12 PARTICULAR ORDINANCE. WHAT THE COMPLAINT IS SAYING, AS I READ  
13 IT, IS THAT WE CANNOT HAVE AN ORDINANCE THAT SAYS, YOU HAVE TO  
14 COME TO THE ETHICS BOARD BEFORE YOU DO WHAT HE DID BECAUSE  
15 THAT'S PRIOR RESTRAINT ON YOUR RELIGIOUS VIEWPOINT, AND THAT THE  
16 ORDINANCE ITSELF IS OVERBREAD BECAUSE IT GIVES UNBRIDLED  
17 DISCRETION TO THE BOARD OF ETHICS OR TO THE MAYOR IN MAKING  
18 DECISIONS ON WHAT CAN BE PUBLISHED. BUT IF YOU LOOK AT THAT  
19 ORDINANCE, IT'S NEUTRAL ON ITS FACE. IT APPLIES TO EVERYBODY AT  
20 HIS LEVEL AND IT DOES NOT SAY IN ANY FORM OR FASHION THAT,  
21 BEFORE YOU WRITE A BOOK, YOU HAVE TO COME TO THE BOARD OF  
22 ETHICS. BEFORE YOU EXPRESS A VIEW, YOU HAVE TO COME TO THE  
23 BOARD OF ETHICS. WHAT IT SAYS IS THAT YOU, AS A HIGH-RANKING  
24 OFFICIAL, BEFORE YOU CAN GO OUT AND TAKE ON OTHER WORK FOR  
25 REMUNERATION, YOU HAVE TO FIRST COME TO THE BOARD OF ETHICS AND

1 TELL US WHAT YOU'RE DOING AND LET US GIVE YOU AN OPINION AS TO  
2 WHETHER THAT'S AN ACCEPTABLE FORM OF WORK OUTSIDE OF YOUR NORMAL  
3 WORKING DUTIES.

4 THE COURT: WELL, I THINK THE STANDING -- MY  
5 UNDERSTANDING OF THE CITY'S STANDING ARGUMENT IS THAT THERE'S  
6 BASICALLY A SINGLE CASE THAT THE CITY RELIES ON, WHICH IS CAMP.  
7 AND WHAT CAMP TALKS ABOUT IS THAT THERE HAS TO BE ALLEGATIONS IN  
8 THE COMPLAINT, AND IT SAYS IT ONLY HAS TO BE GENERAL FACTUAL  
9 ALLEGATIONS OF INJURY.

10 SO FOR THE FIRST CLAIM WHICH IS VIEWPOINT DISCRIMINATION,  
11 IT'S MY UNDERSTANDING THAT THE PLAINTIFF IS SAYING THAT YOU  
12 DISCRIMINATED AGAINST HIM NOT BECAUSE OF FAILURE TO COMPLY WITH  
13 THE STATUTE, BECAUSE HE HAS A SPECIFIC VIEWPOINT. SO WHY DOES  
14 THAT CLAIM NOT SHOW THIS INJURY IN FACT? THAT'S WHAT I DON'T  
15 UNDERSTAND ABOUT THE CITY'S ARGUMENT, IS, UNDER CAMP, THE  
16 PLAINTIFF HAS TO SHOW IN THE COMPLAINT THAT THE PLAINTIFF  
17 SUFFERED SOME THREATENED OR ACTUAL INJURY. AND PLAINTIFF SAYS  
18 THAT YOU DISCRIMINATED AGAINST HIM BECAUSE OF HIS VIEWPOINT, AND  
19 BECAUSE OF THAT HE WAS FIRED. EXPLAIN TO ME WHY THAT DOESN'T  
20 MEET THAT CAMP STANDING ARGUMENT.

21 MR. GODFREY: BECAUSE, YOUR HONOR, HE TIES THIS ENTIRE  
22 PORTION OF HIS COMPLAINT TO THE ORDINANCE AND TO OUR IMPOSITION  
23 OF RESTRAINTS IN THE ORDINANCE TO WHAT HE CAN DO.

24 THE COURT: SO IF HE DOESN'T, IF HIS COMPLAINT IS A  
25 LITTLE BIT MORE BROADER THAN THAT -- THE WAY I READ IT IS THAT

1 THE STANDING ARGUMENT DOES NOT FIT WELL WITHIN THE VIEWPOINT  
2 DISCRIMINATION IF IT IS OTHER THAN THE ORDINANCE. SO IF IT'S  
3 LIMITED TO THE ORDINANCE, I DO UNDERSTAND YOUR POINT. IF IT'S  
4 BROADER, AS PLAINTIFF SAYS IT IS, AND IT DEALS WITH THIS  
5 ALLEGATION THAT IT HAD NOTHING TO DO WITH THE ORDINANCE AND HAD  
6 EVERYTHING TO DO WITH THE VIEWS, THEN I -- IT SOUNDS LIKE WE'RE  
7 IN AGREEMENT IF IT'S BROADER THAN THAT, THEN THERE ISN'T A  
8 STANDING ISSUE PER SE. NOW, THERE MAY BE ANOTHER ISSUE, BUT  
9 THERE'S NOT A STANDING ISSUE.

10 MR. GODFREY: YEAH, HIS OTHER CLAIMS TIED UP WITHIN  
11 THIS COUNT ARE REALLY SUBSUMED IN THE RETALIATION CLAIM AND THE  
12 OTHER CLAIMS UNRELATED TO THE ORDINANCE ITSELF. AND THAT'S WHY  
13 WE ADDRESS THE ORDINANCE IN THIS PARTICULAR SECTION OF THE  
14 ARGUMENT.

15 THE COURT: NOW, IN TERMS OF THE STANDING ARGUMENT --  
16 AND WHAT I WANT TO MAKE CLEAR IS THAT THE CITY HAS JUST MOVED TO  
17 DISMISS THIS PARTICULAR COUNT ONLY ON STANDING. SO ALL I'M  
18 DOING IN TERMS OF THIS ANALYSIS IS TRYING TO MATCH WHETHER OR  
19 NOT THERE'S AN INJURY IN FACT WITH WHAT'S IN THE COMPLAINT AND  
20 WHAT'S BEING ALLEGED. AND I'M USING THIS CAMP CASE TO DO IT.  
21 WHEN I MOVE TO THE OVERBREADTH CLAIM, MY READING OF IT IS THAT  
22 THE PLAINTIFF IS SAYING THAT IT DOESN'T MATTER WHETHER OR NOT  
23 THEY APPLY UNDER THIS CODE SECTION, BECAUSE THE CODE SECTION  
24 ITSELF IS TOO BROAD TO COVER THE SPEECH THAT IS AT ISSUE. SO  
25 THEY'RE ALLEGING THE INJURY AS IT RELATES TO THIS FACT THAT THE

1 CODE SECTION ITSELF IS TOO OVERBROAD AND IT DOESN'T COVER FIRST  
2 AMENDMENT SPEECH SUCH AS THIS. SO EXPLAIN WHY THAT'S TRUE.

3 MR. GODFREY: YEAH, AND THE STANDING ISSUE WITH REGARD  
4 TO OVERBREADTH IS THAT HE WOULD HAVE STANDING IF IN FACT HE HAD  
5 TRIED TO COMPLY WITH THE ORDINANCE. AND HE WAS DENIED  
6 PERMISSION THEN TO GO FORWARD WITH THE BOOK, BUT HE DID NOT.

7 THE COURT: BUT HIS ARGUMENT IS THE ORDINANCE DIDN'T  
8 APPLY TO HIM.

9 MR. GODFREY: BUT THE ORDINANCE IS SO SPECIFIC AS TO  
10 WHO IT APPLIES TO. ON ITS FACE IT SAYS IT APPLIES TO DIRECTORS,  
11 DEPUTIES AND COMMISSIONERS. HE IS ONE OF THOSE PEOPLE. BY  
12 IDENTIFYING HIMSELF AS THE ATLANTA FIRE CHIEF, HE SAYS, I'M ONE  
13 OF THESE PEOPLE.

14 THE COURT: OKAY.

15 MR. GODFREY: AND IT'S OVERBROAD BECAUSE THEY DON'T  
16 GIVE ME ANY IDEA OF WHAT I NEED TO DO IN ORDER TO DO WHAT I  
17 INTEND TO DO WITH THIS BOOK. ALL OF THAT WOULD BE TRUE IF IN  
18 FACT HE BROUGHT THE MATTER TO THE BOARD OF ETHICS FOR A WRITTEN  
19 OPINION AND WAS DENIED. HE COULD THEN COME IN HERE AND SAY,  
20 LOOK, THEY DENIED MY OPPORTUNITY TO DO THIS AND THEY DID IT  
21 BECAUSE OF VIEWPOINT DISCRIMINATION, THEY DID IT BECAUSE THE  
22 ORDINANCE IS OVERBROAD, THEY DID IT BECAUSE THE ORDINANCE DOES  
23 NOT HAVE ANY TYPES OF CONSTRAINTS ON THOSE MAKING THE DECISIONS.  
24 SO ALL OF THESE ACTUALLY -- THAT GO INTO THE ORDINANCE AND  
25 BECAUSE HE DID NOT TAKE ADVANTAGE OF THE ORDINANCE, HE HAS NO



1 STANDING TO COME TO THIS COURT AND SAY, THEY USED THE ORDINANCE  
2 AGAINST ME AND IT'S OVERBROAD.

3 THE COURT: BUT THEY'RE SAYING THAT IT'S OVERBROAD  
4 UNDER SUPREME COURT CASE LAW AND NOT OVERBROAD IN TERMS OF --  
5 AND THAT IT DOESN'T APPLY TO HIM, NOT BECAUSE IT DOESN'T APPLY  
6 TO HIM -- MY UNDERSTANDING THEIR ARGUMENT SAYS IT APPLIES TO HIM  
7 AS BEING IN AN EMPLOYMENT POSITION, BUT GIVEN CASE LAW SUCH AS  
8 THAT TREASURY CASE, THE NATIONAL TREASURY EMPLOYEES UNION CASE,  
9 THAT IT DOESN'T APPLY TO HIM IN A FIRST AMENDMENT LEGAL SENSE.  
10 AND BECAUSE IT DOESN'T APPLY TO HIM, THE FACT THAT HE DIDN'T  
11 COMPLY WITH IT SHOULD NOT KICK HIM OUT FROM ASSERTING THAT  
12 PARTICULAR CLAIM THAT DOESN'T REQUIRE YOU TO HAVE COMPLIED WITH  
13 IT. IT'S A DIFFERENT ARGUMENT THAN WHAT THE CITY HAS MADE.

14 MR. GODFREY: I SIMPLY DON'T READ THE COMPLAINT THAT  
15 WAY, YOUR HONOR.

16 THE COURT: OKAY.

17 MR. GODFREY: I SEE HIM AS GOING AFTER THE ORDINANCE  
18 IN ALL ITS RAMIFICATIONS AND SAYING, I'M CHALLENGING THIS  
19 ORDINANCE BECAUSE THE ORDINANCE RESULTED IN MY BEING DISCHARGED.  
20 BUT HE DOES NOT SAY -- AND THIS IS WHERE THE STANDING COMES IN.  
21 HE DOES NOT SAY THAT, I ATTEMPTED TO USE THAT ORDINANCE AND  
22 BECAUSE IT WAS OVERBROAD I WAS DENIED THE OPPORTUNITY.

23 THE COURT: NOW, IN TERMS OF THE PRIOR RESTRAINT  
24 ARGUMENT, I UNDERSTAND HOW FAILURE TO COMPLY WITH THE ORDINANCE  
25 WOULD GO TO THE "AS APPLIED" CHALLENGE. BUT IN TERMS OF THE

1 FACIAL CHALLENGE THAT THE PLAINTIFF IS MAKING, THE CAMP CASE  
2 THAT THE CITY CITES DOES NOTE THAT THERE'S THIS OVERBREADTH --  
3 WELL, ACTUALLY IT'S THE OVERBREADTH THAT DEALS WITH THE -- I'M  
4 SORRY. THE OVERBREADTH DOES WITH THE EXCEPTION HERE. BUT THE  
5 FACIAL CHALLENGES ARE DIFFERENT IN TERMS OF PRIOR RESTRAINTS.  
6 SO THERE'S A PRIOR RESTRAINT CLAIM THAT HAS AN "AS APPLIED"  
7 CHALLENGE, WHICH I UNDERSTAND, BUT THE FACIAL CHALLENGE, IF  
8 THEY'RE CHALLENGING THE FACIAL APPLICATION OF THIS PARTICULAR  
9 STATUTE, WHY IS THERE NO STANDING IN TERMS OF THAT APPLICATION?

10 MR. GODFREY: IF IT'S -- IF YOU'RE SIMPLY LOOKING AT  
11 IT AS A FACIAL CHALLENGE, THEN, YES, OF COURSE HE HAS STANDING  
12 TO CHALLENGE IT ON A FACIAL CHALLENGE BASIS. BUT THE ORDINANCE  
13 ITSELF IS PART OF THE RECORD, AND THIS COURT CAN MAKE THE  
14 DETERMINATION IN LOOKING AT THE ORDINANCE FAIRLY QUICKLY TO  
15 DETERMINE THE NEUTRALITY OF THE ORDINANCE AS APPLIES TO HIS  
16 SITUATION OR TO THE SITUATION ANYONE ELSE WHO COMES WITHIN THE  
17 REALM --

18 THE COURT: THAT'S DIFFERENT THAN STANDING. SO  
19 THAT'S -- THE ONLY REASON THAT THE CITY HAS MOVED TO DISMISS  
20 THESE PARTICULAR COUNTS IS STANDING. AND STANDING IS JUST THIS  
21 INJURY IN FACT AS TIED TO THE ALLEGATIONS IN THE COMPLAINT.

22 MR. GODFREY: I UNDERSTAND.

23 THE COURT: AND STICKING WITH THAT IN THE CAMP CASE,  
24 THAT'S KIND OF WHERE I HAVE TO KEEP MY ANALYSIS, BECAUSE THAT'S  
25 WHAT THE CITY HAS ARGUED. SO IN TERMS OF STANDING, I THINK THAT

1 HANDLES MY QUESTIONS BASED ON WHAT'S IN THE CITY'S BRIEF. WAS  
2 THERE ANYTHING YOU WANTED TO MENTION ABOUT STANDING PER SE?

3 MR. GODFREY: NO, YOUR HONOR.

4 THE COURT: OKAY. THANK YOU. THAT WAS VERY HELPFUL.

5 MR. THERIOT: I AGREE, YOUR HONOR, THAT CAMP REALLY  
6 ADDRESSES THIS. AS A MATTER OF FACT, IN CAMP THE COURT SAID  
7 THAT THE DEFENDANTS CONFUSE CONSTITUTIONAL INJURY WITH A  
8 CONSTITUTIONAL VIOLATION AND -- IN THAT PARTICULAR CASE. AND I  
9 THINK THAT'S WHAT'S GOING ON HERE. AND, AS A MATTER OF FACT,  
10 THE COURT SPECIFICALLY SAID THAT THE REQUIREMENT OF GETTING A  
11 PERMIT THAT ATLANTA HAD IN ORDER TO HAVE A FESTIVAL WAS -- IF --  
12 CERTAINLY THEY COULDN'T CHALLENGE THE PROVISIONS THAT DON'T  
13 APPLY TO THEM, BUT THE ONES THAT DO APPLY TO THEM OR THAT THE  
14 CITY SAYS APPLY TO THEM, THEY CAN CHALLENGE, AND THAT'S EXACTLY  
15 WHAT WE HAVE HERE. OUR POSITION IS THAT 2-820(D) DOES NOT APPLY  
16 TO SELF-PUBLISHING A BOOK. HOWEVER, THE -- IF THE CITY SAYS  
17 THAT IT DOES AND THEY'VE -- AND THEY'RE SAYING THAT HE FIRED HIM  
18 BECAUSE OF THAT, THAT THEY FIRED HIM BECAUSE OF THAT, HE  
19 CERTAINLY HAS AN INJURY IN FACT AND CAUSATION THAT COULD BE  
20 REDRESSED BY A FAVORABLE RULING OF THIS COURT UNDER LUJAN TO  
21 HAVE STANDING TO CHALLENGE THAT, SO WE WOULD AGREE WITH THAT.

22 THE COURT: NOW, IN TERMS OF THE AS APPLIED PRIOR  
23 RESTRAINT STANDING, THAT ONE IS GIVING ME A LITTLE BIT MORE  
24 CONCERN IN TERMS OF THE 2-820(D). EXPLAIN WHY YOU HAVE STANDING  
25 UNDER THAT PARTICULAR SUB PART.

1 MR. THERIOT: WELL, WE HAVE STANDING IF THE -- TO  
2 CHALLENGE -- WELL, WE -- IT WAS ALTERNATIVE PLEADING. OUR FIRST  
3 POSITION IS THAT 2-820(D) DOESN'T APPLY TO HIM. AND IF IT'S  
4 MADE IN A DETERMINATION THAT IT DOESN'T, AND WE SUBMIT THAT IT  
5 DOESN'T BECAUSE -- FOR A NUMBER OF REASONS. FIRST OF ALL, I  
6 THINK ON THE FACE OF IT, IT DOESN'T APPLY TO A BOOK. IT TALKS  
7 ABOUT -- IT'S REALLY TALKING ABOUT MOONLIGHTING. AND IF YOU  
8 LOOK AT THE DEFINITIONS, THERE'S NO ATTEMPT TO DEFINE, FOR  
9 INSTANCE, EMPLOYMENT OR AN EMPLOYER. AND IF YOU LOOK AT THE  
10 DEFINITIONS AT 2801, THERE ARE NO DEFINITIONS THERE. AND SO --  
11 AND IF YOU LOOK AT THE BOTTOM OF THE PROVISION THERE OF 28(D),  
12 IT EVEN HAS EXCEPTIONS FOR FIRST AMENDMENT SPEECH, WHICH IS --  
13 IT DOESN'T SPECIFICALLY MENTION BOOKS, BUT IT TALKS ABOUT  
14 SPEAKING AT CONVENTIONS AND THINGS LIKE THAT. SO IT DOESN'T  
15 LOOK LIKE IT APPLIES TO WHAT HE DOES, BUT OUR ALTERNATIVE -- AND  
16 IF THAT'S THE CASE, THEN CERTAINLY WE DON'T NEED TO CHALLENGE IT  
17 AS APPLIED TO HIM. HOWEVER, IF THE CITY CONTINUES TO MAINTAIN  
18 THAT THEY DID FIRE HIM BECAUSE OF THAT, THEN WE SUBMIT THAT IF  
19 IT DOES APPLY TO HIM, THAT IT'S UNCONSTITUTIONAL. WE HAVE THE  
20 STANDING TO CHALLENGE IT AS APPLIED. AND I THINK THAT'S A  
21 DETERMINATION THAT HAS TO BE SAVED FOR ANOTHER DAY AT THIS  
22 POINT, BUT I THINK TAKING THE ALLEGATIONS IN THE COMPLAINT AS  
23 TRUE, I -- YOU KNOW, IF YOU WANT US -- IF IT COMES OUT --  
24 CERTAINLY RIGHT NOW THE ONLY REASON WHY HE WAS FIRED WAS BECAUSE  
25 OF HIS BELIEFS, NOT FAILURE TO COMPLY WITH 2-820. AND

1 INCIDENTALLY, YOU KNOW, THEY COULD HAVE DEFINED IT VERY  
2 SPECIFICALLY TO APPLY TO SELF-EMPLOYMENT OR TO PUBLISHING A  
3 BOOK, AND THEY DID NOT.

4 AND, SECONDLY, CHIEF COCHRAN DID ATTEMPT TO ASSESS WHETHER  
5 HE -- WHETHER HE NEEDED TO COMPLY WITH IT AND NEED TO GET  
6 PERMISSION, BUT -- AND BY TALKING TO THE ETHICS OFFICER WHO WAS  
7 AN ATTORNEY, NINA HICKSON, IN PARAGRAPH 105 OF THE COMPLAINT  
8 SAYS HE CONSULTED WITH HER. SHE'S AN ATTORNEY. HER JOB UNDER  
9 2805 (VERBATIM), EXCUSE ME, UNDER 2805 IS TO ADVISE EMPLOYEES ON  
10 THE APPLICABILITY OF IT. AND THEN, SECONDLY -- AND, I MEAN, AND  
11 PROBABLY MOST IMPORTANTLY, 2806 SAYS THAT IF IN FACT THERE MAY  
12 BE A VIOLATION OF THIS -- OF 28 -- OF 28-20 OF THE ETHICS CODE,  
13 THAT NOTICE HAS TO BE GIVEN AND A HEARING HAS TO BE HELD BEFORE  
14 ANY ACTION CAN BE TAKEN AGAINST THE CLIENT.

15 THE COURT: LET'S BACK UP A LITTLE BIT BECAUSE THAT  
16 GOES INTO SOME OTHER AREAS.

17 MR. THERIOT: OKAY.

18 THE COURT: BUT I THINK MY QUESTION WAS A LITTLE BIT  
19 MORE SIMPLE THAN THAT. IS THERE CASE LAW OR IS THERE SUPPORT  
20 FOR THE IDEA THAT YOU CAN CHALLENGE AN ORDINANCE, 2-820(D), AS  
21 BEING AN UNLAWFUL PRIOR RESTRAINT IF YOU MAKE NO ATTEMPT TO  
22 COMPLY WITH IT? CAN YOU CHALLENGE THAT ON AN "AS APPLIED" BASIS  
23 IF YOU'VE MADE NO ATTEMPT? I CAN SEE WHY YOU CAN MAKE A FACIAL  
24 CHALLENGE, BUT AS A PERSONAL "AS APPLIED," DON'T YOU HAVE TO  
25 MAKE SOME ATTEMPT TO COMPLY WITH THE STATUTE TO ARGUE THAT IT'S

1 AN UNLAWFUL PRIOR RESTRAINT?

2 MR. THERIOT: WELL, IN CAMP THE COURT SAID THAT YOU  
3 DID NOT. AND WHAT YOU'RE SAYING IS -- AS I UNDERSTAND IT,  
4 YOU'RE SAYING IS, WELL, THAT JUST APPLIED TO THE FACIAL  
5 CHALLENGE, NOT TO THE "AS APPLIED" CHALLENGE.

6 THE COURT: RIGHT. THE "AS APPLIED" IS WHAT I AM  
7 HAVING SOME DIFFICULTY WITH.

8 MR. THERIOT: AND I THINK THE REASON WHY IT SEEMS A  
9 LITTLE CONFUSING IS BECAUSE WE REALLY PLED THAT ALTERNATIVELY,  
10 IS THAT, FIRST OF ALL, IT DOESN'T APPLY TO HIM, BUT HE CAN STILL  
11 CHALLENGE IT ON ITS FACE. HOWEVER, IF IT DOES APPLY TO HIM,  
12 THEN WE'RE CHALLENGING IT AS APPLIED TO HIM TOO. NOW, OBVIOUSLY  
13 IF THE COURT CHOOSES TO DISMISS THAT ASPECT OF THE COMPLAINT AND  
14 WE FIND OUT LATER THROUGH THE PROCESS OF DISCOVERY THAT IT WAS  
15 APPLIED TO HIM, THEN WE COULD AMEND THE COMPLAINT AND BRING THAT  
16 BACK IN. I THINK AT THIS POINT WE JUST ARE VIEWING THAT AS AN  
17 ALTERNATIVE PLEADING.

18 THE COURT: OKAY. THANK YOU. WAS THERE ANYTHING ELSE  
19 YOU WANTED TO SAY IN TERMS OF STANDING?

20 MR. THERIOT: IN TERMS OF STANDING?

21 THE COURT: CORRECT.

22 MR. THERIOT: I DON'T THINK SO.

23 THE COURT: OKAY. THANK YOU VERY MUCH.

24 MR. THERIOT: THANK YOU.

25 THE COURT: SO, MR. GODFREY, THAT BRINGS US TO COUNT

1 THREE WHICH IS DEALING WITH THE FREE EXERCISE OF RELIGION. AND  
2 MY READING OF THIS PARTICULAR GROUNDS BY THE DEFENDANT IS THAT  
3 THE DEFENDANT IS RELYING ON THIS WATTS CASE FROM THE ELEVENTH  
4 CIRCUIT. AND IT SEEMS TO BE THAT THE ISSUE, THE MAIN ISSUE IN  
5 THE DEFENDANT'S BRIEF IS THAT YOU CAN HAVE FREE EXERCISE OF  
6 RELIGION, BUT THAT IT DOESN'T EXTENT SO BROAD AS TO ENCOMPASS  
7 SOMEONE BEING COMPELLED TO WRITE A BOOK, SO THAT THERE'S NOTHING  
8 THAT THE CITY HAS DONE TO INTERFERE WITH HIS EXERCISE OF  
9 RELIGION. IT'S JUST THE WRITING OF THE BOOK PART THAT IS THE  
10 ISSUE. AND I DON'T WANT TO INCORRECTLY SUMMARIZE THAT, BUT IS  
11 THAT BASICALLY WHAT THE CITY IS SAYING, THAT THE FREEDOM OF  
12 EXERCISE HAS NOT BEEN INHIBITED, IT'S JUST THE WRITING OF THE  
13 BOOK THAT'S AT ISSUE HERE?

14 MR. GODFREY: THERE'S ACTUALLY ANOTHER STEP TO IT,  
15 YOUR HONOR. THIS BOOK WAS PUBLISHED PROBABLY A YEAR BEFORE IT  
16 EVEN CAME TO THE ATTENTION OF THE CITY. SO FOR OVER A YEAR HE  
17 WAS OUT THERE WITH THE BOOK. HE WAS EXERCISING HIS RELIGIOUS  
18 BRIEFS. NOTHING HAPPENED TO HIM UNTIL HE BROUGHT THE BOOK INTO  
19 THE WORKPLACE. THAT WAS THE LINCHPIN. SO HE WENT BEYOND SIMPLY  
20 HAVING A RELIGIOUS BELIEF THAT WAS SOMEHOW INFRINGED UPON BY THE  
21 CITY. HE HAD THIS ALL ALONG. BUT HE BROUGHT IT INTO THE  
22 WORKPLACE, AND THAT'S WHEN THE ISSUE BECOMES CONVOLUTED. HE  
23 CANNOT SAY THAT WE INFRINGED UPON HIS RELIGIOUS BRIEFS BY  
24 DISCHARGING HIM FOR BRINGING THIS BOOK INTO THE WORKPLACE WHEN  
25 IN FACT HE HAS THESE RELIGIOUS BELIEFS. HE'S BEEN FREE TO

1 EXERCISE THOSE RELIGIOUS BELIEFS. HE'S FREE TODAY TO EXERCISE  
2 THOSE RELIGIOUS BELIEFS. WE JUST SIMPLY TOLD HIM THOSE CONTRARY  
3 THOUGHTS HE HAS ABOUT BRINGING THE BOOK INTO THE WORKPLACE JUST  
4 DID NOT FIT WITHIN WHAT THE CITY'S MISSION WAS.

5 THE COURT: BUT IT SEEMS LIKE WE HAVE KIND OF SHIPS  
6 PASSING IN THE NIGHT ISSUE AT THIS STAGE BECAUSE WHAT I'M  
7 HEARING FROM THE PLAINTIFF IS THAT THEY'RE NOT CLAIMING THE  
8 GROUNDS FOR TERMINATION WERE AS NARROW AS WHAT THE CITY IS  
9 ASSERTING. THEY'RE ASSERTING THAT IT'S NOT LIMITED TO THE FACT  
10 THAT HE BROUGHT THE BOOK IN THE WORKPLACE. IT'S ALSO BROADER  
11 BECAUSE THAT HE HAS THESE BELIEFS AND THAT HE SHOULDN'T HAVE  
12 BEEN ABLE TO PUBLISH A BOOK AT ALL, MUCH LESS -- THEY'RE SAYING  
13 THAT IT'S BROADER. SO IF WE TAKE IT AT THIS STAGE, AS WE HAVE  
14 TO, TO THE BROADER ARGUMENTS THAT THE PLAINTIFF IS MAKING, IF  
15 WHAT THEY'RE SAYING IS IN THEIR COMPLAINT THAT THE CITY IS  
16 BASICALLY PUNISHING HIM FOR WRITING THE BOOK OR FOR HAVING THOSE  
17 VIEWPOINTS, WHY IS THAT PARTICULAR CLAIM NOT -- WHY IS THAT  
18 ENTITLED TO DISMISSAL AS AN INVALID FREE EXERCISE CLAIM?

19 MR. GODFREY: BECAUSE I DON'T THINK THE COMPLAINT  
20 ESTABLISHES THAT HE WAS COMPELLED BY HIS RELIGIOUS BELIEFS TO  
21 SUCH AN EXTENT THAT HE HAD TO WRITE A BOOK ABOUT HOW HE FEELS  
22 ABOUT -- IT'S NOT ABOUT RELIGIOUS BELIEFS, BUT HOW HE FEELS  
23 ABOUT CERTAIN GROUPS OF PEOPLE, AND THAT'S WHAT'S INVOLVED HERE.  
24 HE'S ENTITLED TO HIS RELIGIOUS BELIEFS. NOBODY CARES ABOUT  
25 THOSE AND WE'RE NOT RESTRAINING HIM FROM THOSE RELIGIOUS



1 BELIEFS. WE'RE SIMPLY TELLING HIM, DON'T BRING THAT IN HERE.  
2 KEEP IT TO YOURSELF. KEEP IT AT HOME. KEEP IT IN YOUR BIBLE  
3 STUDY. KEEP IT IN YOUR CHURCH. KEEP IT AMONG LIKE-MINDED  
4 PEOPLE WHO THINK LIKE YOU DO

5 THE COURT: OKAY. THAT MAKES SENSE.

6 MR. THERIOT, IN TERMS OF ADDRESSING WHAT THE DEFENDANTS  
7 HAVE STATED ABOUT THE FREE EXERCISE CLAIM, I AM INTERESTED IN  
8 YOUR THOUGHTS AND YOUR CASE LAW WHERE IT DEFINES HOW BROAD THE  
9 EXERCISE OF RELIGION IS. BECAUSE THERE IS THE FACT THAT HE HAS  
10 THE VIEWPOINTS THAT HE HAS, BUT THEN THERE'S THE OTHER PIECE  
11 THAT HE WAS COMPELLED BY GOD TO WRITE THE BOOK AND KIND OF WHERE  
12 THE LIMITS OF YOUR EXERCISE OF RELIGION ARE. BECAUSE I KNOW,  
13 AND IT'S NOT THIS CASE, THAT PEOPLE ARE COMPELLED BY GOD TO DO  
14 THINGS THAT ARE CLEARLY AGAINST THE LAW IN OTHER AREAS, AND THE  
15 FREEDOM OF RELIGION DOES NOT EXTEND SO BROADLY AS CONDUCT THAT  
16 GOD TELLS YOU TO DO IF THAT CONDUCT IS NOT APPROPRIATE. SO WHY  
17 IS THIS A VALID FREE EXERCISE CLAIM WHEN NOBODY HAS STOPPED HIM  
18 FROM DOING, IT SOUNDS LIKE, ANYTHING EXCEPT FOR THE WRITING OF  
19 THE BOOK PIECE, BUT IT MAY BE THAT YOUR CLAIM IS MORE BROAD THAN  
20 THAT TOO.

21 MR. THERIOT: AND I THINK YOU'RE RIGHT, YOUR HONOR,  
22 THAT OUR CLAIM IS MUCH MORE BROAD, THAT IT IS HIS BELIEFS IN  
23 GENERAL THAT WERE THE ISSUE, AND NOT NECESSARILY THAT HE WROTE  
24 THE BOOK. SO -- AND I THINK THAT WAS CONFIRMED BY MY  
25 COLLEAGUE'S COMMENT TODAY, THAT IF SOMEBODY IN DENVER FOUND OUT

1 ABOUT THIS, IT WOULD BE A PROBLEM. SO IT'S THE FACT THAT  
2 SOMEBODY KNOWS THAT THE CHIEF OF THE ATLANTA FIRE AND RESCUE  
3 DEPARTMENT BELIEVES THIS WAY, THAT IS SOMETHING THAT IS  
4 INCONSISTENT WITH THE BELIEFS OF THE CITY AND, THEREFORE, THEY  
5 HAVE THE ABILITY TO FIRE HIM. THAT'S -- THAT'S MAKING A  
6 DISTINCTION BASED UPON RELIGION CONVICTIONS, NOT JUST WRITING A  
7 BOOK. AND I THINK THE COURT VERY CLEARLY IN THE  
8 TORCASO (VERBATIM) SAYS THAT YOU CAN'T DO THAT. YOU CAN'T --

9 THE COURT: AND WHICH CASE IS THAT?

10 MR. THERIOT: THE TORCASO CASE, TORCASO VS. WATKINS.  
11 THAT'S A SUPREME COURT CASE FROM THE 1940'S. BUT ESSENTIALLY IN  
12 THAT PARTICULAR CASE THEY WERE REQUIRING AN INDIVIDUAL TO AFFIRM  
13 A BELIEF IN GOD IN ORDER TO -- IN ORDER TO BE A NOTARY PUBLIC.  
14 THE COURT SAID YOU CAN'T HAVE A CONDITION THAT -- FOR PUBLIC  
15 OFFICE THAT SAYS YOU HAVE TO BELIEVE A CERTAIN WAY OR YOU HAVE  
16 TO KEEP SILENT ABOUT THOSE PARTICULAR BELIEFS.

17 THE COURT: BUT SOME OF THIS IS LEADING ON FREE  
18 SPEECH, BECAUSE WHEN WE'RE TALKING ABOUT FREE EXERCISE OF  
19 RELIGION, I MEAN, I DON'T KNOW THAT THERE WAS ANYTHING THAT  
20 PREVENTED MR. COCHRAN FROM WRITING A BOOK. AND IF GOD COMPELLED  
21 HIM TO WRITE A BOOK, TO WRITE A BOOK AND TO LEAVE IT IN HIS  
22 HOUSE. WHAT'S THE POINT -- WHY IS IT NECESSARY FOR THE EXERCISE  
23 OF RELIGION FOR THE BOOK TO BE OUT THERE IN THE WORLD AND WHY  
24 DON'T WE CUT IT OFF TO THE POINT OF HE'S EXERCISING HIS  
25 RELIGION, HE'S ALLOWED TO WRITE A BOOK? WHY IS IT THE FREE

1 SPEECH PIECE OF IT THAT IS -- IT'S BASICALLY A COMBINING OF A  
2 FREE SPEECH AND A FREE EXERCISE CLAIM ALMOST AS A HYBRID BECAUSE  
3 IT'S SAYING THAT YOU'RE NOT PERMITTING HIS FREE EXERCISE BECAUSE  
4 YOU'RE NOT ALLOWING HIM TO PUBLISH IT AND HAVE IT OUT THERE IN  
5 THE WORLD?

6 MR. THERIOT: WELL, I DON'T THINK THAT'S NECESSARILY  
7 TRUE. I THINK -- I THINK IT'S THE BELIEFS THEMSELVES, WHEN  
8 THE -- WHEN THE MAYOR WAS MADE AWARE OF IT AND WHEN THE  
9 COUNCILMAN WAN BECAME AWARE OF IT, THAT BECAME THE ISSUE, NOT  
10 THE FACT THAT HE WROTE THE BOOK. AND I THINK THAT'S  
11 DEMONSTRATED BY A COUPLE OF THINGS. NUMBER ONE, THE COMPLAINT  
12 VERY CLEARLY SAYS THAT HE GAVE A COPY OF THE BOOK TO THE MAYOR  
13 IN JANUARY OF 2014, RIGHT AFTER HE PUBLISHED IT. HE ALSO GAVE  
14 IT TO THREE OTHER COUNCIL MEMBERS IN ADDITION TO THE MAYOR. SO  
15 THE CITY WAS AWARE OF THE BOOK. IT WASN'T UNTIL PEOPLE  
16 STARTED -- IN THE COMMUNITY STARTING SAYING, WAIT A SECOND, IS  
17 HE ALLOWED TO HAVE THOSE BELIEFS AND STILL BE THE FIRE CHIEF OF  
18 THE ATLANTA FIRE AND RESCUE DEPARTMENT THAT IT BECAME AN ISSUE.  
19 AND I THINK THAT'S AN INDICATION THAT IT'S HIS BELIEFS THAT WERE  
20 A PROBLEM, NOT THAT HE WROTE THEM DOWN IN A BOOK AND NOT THAT HE  
21 DIDN'T COMPLY.

22 THE COURT: WELL, NO. AND COMPLAINTS CAN BE DISMISSED  
23 IN SUB PARTS. I UNDERSTAND THAT YOU HAVE THE CLAIM THAT SAYS  
24 THAT THEY DID THIS BECAUSE OF HIS VIEWPOINT AND THAT'S EXERCISE  
25 OF RELIGION. THAT MAKES SENSE. THE PART I'M GETTING HUNG UP ON

1 IS THE BOOK PART. SO IF THERE'S A SEPARATE CLAIM THAT SAYS HE  
2 IS -- AND IT MAY BE THAT THERE'S NOT A SEPARATE CLAIM AND THAT  
3 MAY BE WHERE MY CONFUSION IS. IS IT THE CLAIM IS THAT THERE'S  
4 VIEWPOINT DISCRIMINATION AND BECAUSE HE HAS THIS VIEWPOINT, THAT  
5 THAT'S THE EXERCISE OF RELIGION, THAT MAKES SENSE.

6 MR. THERIOT: RIGHT.

7 THE COURT: BUT IS THERE A FREE EXERCISE CLAIM THAT  
8 IS, HE WAS COMPELLED BY GOD TO WRITE A BOOK AND GET IT OUT THERE  
9 IN THE WORLD, AND THIS IS IMPINGING ON THAT FREE EXERCISE PIECE?

10 MR. THERIOT: I DON'T THINK THAT'S ALLEGED  
11 SPECIFICALLY IN THE COMPLAINT LIKE THAT.

12 THE COURT: OKAY.

13 MR. THERIOT: IT'S HIS RELIGIOUS BELIEFS IN GENERAL.  
14 HE CERTAINLY HAS A RELIGIOUS CONVICTION. THE COMPLAINT SAYS HE  
15 HAS A RELIGIOUS CONVICTION TO INFORM OTHERS OF HIS BELIEFS.  
16 THAT HAS TO BE TAKEN AS TRUE. BUT IT'S THE FACT THAT HE HAS  
17 THESE RELIGIOUS BELIEFS IN GENERAL AND THOSE WERE CONSIDERED TO  
18 BE SENTIMENTS THAT -- AS THE MAYOR SAID WHEN HE SUSPENDED CHIEF  
19 COCHRAN, HE SAID SENTIMENTS THAT I DON'T AGREE WITH AND THAT  
20 ARE -- AND THAT THE CITY DOESN'T AGREE WITH. THAT'S AN  
21 INDICATION THAT HIS BELIEFS THAT INDICATE -- THAT SAY THAT  
22 SAME-SEX MARRIAGE, FOR INSTANCE, IS OKAY, THOSE ARE ACCEPTED BY  
23 THE CITY. IF YOU BELIEVE CONTRARY TO THAT, WELL, THAT'S A  
24 PROBLEM. THAT'S PARAGRAPHS 157 AND 158 OF THE COMPLAINT.

25 THE COURT: OKAY. WELL, IT SOUNDS LIKE WHAT THE

1 GROUND IS THAT THE CITY HAS MOVED ON, AT LEAST IN THE BRIEF,  
2 ARE VERY NARROW AND THEY RELATE MORE TO THE COMPULSION TO WRITE  
3 THE BOOK.

4 MR. THERIOT: RIGHT. AND THAT'S A MISREADING OF  
5 OUR -- OF OUR -- THAT'S A MISREADING OF OUR CLAIM. OUR CLAIM IS  
6 MUCH BROADER THAN THAT.

7 THE COURT: OKAY.

8 MR. THERIOT: WE HAVE A RELIGIOUS -- WE -- THAT HIS  
9 RELIGIOUS CONVICTIONS REGARDING SEX BEING WITHIN THE CONFINES OF  
10 A MARRIAGE BETWEEN ONE MAN AND WOMAN ARE RELIGIOUS CONVICTIONS  
11 THAT THE CITY DOESN'T AGREE WITH AND THEREFORE THEY CAN FIRE  
12 HIM. AND THAT'S -- AND THAT'S IN VIOLATION OF THE FREE EXERCISE  
13 CLAUSE.

14 THE COURT: OKAY. AND I THINK THAT TAKES ME THROUGH  
15 MY FREE EXERCISE QUESTIONS. BUT WHILE YOU'RE STILL UP HERE AND  
16 BEFORE I HEAR FROM THE DEFENDANT ON THE FREE ASSOCIATION CLAIM,  
17 I THINK IT WOULD HELP ME AND PROBABLY THE DEFENDANT'S ARGUMENTS  
18 TO HAVE A BETTER UNDERSTANDING OF WHAT THIS ARGUMENT IS.  
19 BECAUSE WHEN I READ THE BRIEF, IT SOUNDS LIKE WHAT THE PLAINTIFF  
20 IS SAYING IS THAT SOMEHOW THE CITY'S ACTIONS HAVE PROHIBITED AND  
21 INTERFERE WITH HIS INVOLVEMENT WITH HIS CHURCH. AND  
22 SPECIFICALLY IT TALKS ABOUT HOW WHAT'S GOING ON HAS MADE IT MORE  
23 DIFFICULT FOR HIM TO BE INVOLVED IN ELIZABETH BAPTIST CHURCH AND  
24 INTERFERE WITH THAT ASSOCIATION. AND I DON'T UNDERSTAND THAT  
25 CLAIM.

1 MR. THERIOT: WELL, I THINK IT'S -- MORE APPROPRIATELY  
2 IT'S HE'S BEEN DISCRIMINATED AGAINST BECAUSE OF THAT  
3 ASSOCIATION, NOT NECESSARILY AN INTERFERING WITH THAT  
4 ASSOCIATION. AND THE IDEA IS -- AND FREEDOM OF ASSOCIATION AND  
5 EXPRESS OF ASSOCIATION IS OBVIOUSLY TIED VERY CLOSELY TO THE  
6 FREEDOM OF EXPRESSION. AND THE SUPREME COURT HAS SAID THAT AS A  
7 PART OF YOUR FREEDOM OF EXPRESSION, YOU HAVE A -- THE ABILITY  
8 AND THE RIGHT TO ASSOCIATE WITH OTHERS TO ENGAGE IN THAT  
9 EXPRESSION. AND HIS BOOK, WHICH WAS WRITTEN AS PART OF WRITING  
10 A BIBLE STUDY FOR THE CHURCH AND ALSO IT WAS WRITTEN IN A WAY  
11 FOR HIM TO COMMUNICATE WITH PEOPLE WHO HAD ASKED FOR A COPY OF  
12 THE BOOK, THAT HE DISCUSSED RELIGION WITH BEFORE THAT WERE  
13 PEOPLE THAT ACTUALLY HE WORKED WITH. SO HIS RIGHT TO ASSOCIATE  
14 WITH THEM AND ASSOCIATE WITH THE FOLKS IN THE CHURCH IS  
15 IMPLICATED WHEN HIS EXPRESSION IS -- HIS EXPRESSION IS LIMITED.  
16 BECAUSE IF YOU CAN'T TALK ABOUT YOUR FAITH OR YOU CAN'T -- THERE  
17 ARE CERTAIN PEOPLE THAT YOU CAN'T COMMUNICATE WITH, THAT THAT  
18 OBVIOUSLY IMPLICATES FREEDOM OF ASSOCIATION. SO IT GOES HAND IN  
19 HAND WITH THE FREEDOM -- FREE SPEECH CLAIM. AND INCIDENTALLY  
20 THE COURT CERTAINLY TREATS THOSE AS RELATED, BUT AS THE ELEVENTH  
21 CIRCUIT HELD IN COOK VS. GWINNETT COUNTY, THEY ARE SEPARATE AND  
22 DISTINCT CLAIMS. THERE'S A FREE SPEECH CLAIM, AND IN THAT  
23 PARTICULAR CASE THE EMPLOYEE WAS FIRED BECAUSE OF HER PRO UNION  
24 SPEECH. AND THE COURT SAID THAT NOT ONLY DID SHE STATE A CLAIM  
25 FOR RETALIATION UNDER THE FIRST AMENDMENT, BUT SHE STATED A

1 CLAIM FOR EXPRESSIVE ASSOCIATION BECAUSE SHE WAS COMMUNICATING  
2 WITH OTHERS ABOUT HER -- ABOUT HER VIEWS IN THE WORKPLACE.

3 THE COURT: WELL, I GUESS WHEN I READ COOK, IT LOOKS  
4 LIKE WHAT THEY'RE RETALIATING AGAINST THE PLAINTIFF ON THAT CASE  
5 IS THAT THEY WERE TRYING TO RECRUIT PEOPLE AND DO THINGS OF THAT  
6 NATURE. I JUST DON'T SEE THAT THERE'S ANYTHING THE CITY HAS  
7 DONE THAT HAS PREVENTED HIM FROM INVITING PEOPLE TO CHURCH TO BE  
8 A PART OF HIS RELIGION. I MEAN, IT DOESN'T SEEM LIKE WHAT'S  
9 GOING ON HERE FITS WITHIN THIS FREE ASSOCIATION RUBRIC. I MEAN,  
10 THE COOK CASE SEEMS TO BE MORE A POINT OF WHAT'S GOING ON, BUT  
11 BASICALLY, I MEAN, I JUST DON'T SEE THAT THE CASE LAW  
12 ESTABLISHING KIND OF FACTORS THAT PUT THIS NEATLY IN THE LACK  
13 OF -- THE FACT THAT HE CAN'T ASSOCIATE WITH PEOPLE ABOUT HIS  
14 RELIGION. IT SEEMS LIKE HE'S BEING ALLOWED TO CONTINUE TO  
15 ASSOCIATE WITH THE PEOPLE HE WANTS TO IN HIS CHURCH, AND I THINK  
16 I'M MISUNDERSTANDING THIS CLAIM.

17 MR. THERIOT: I THINK THE POINT IS IT'S REALLY A  
18 SUBSET OF THE FREE SPEECH CLAIM, AND THE FREE SPEECH CLAIM IS AN  
19 INTEGRAL PART OF THE ABILITY TO SPEAK IS THE ABILITY TO SPEAK  
20 WITH OTHERS. SO TO SAY, FOR INSTANCE, THAT COUNCILMAN WAN SAID,  
21 HE CAN COME INTO THE WORKPLACE IF HE HAS THOSE VIEWS, BUT HE HAS  
22 TO CHECK THEM AT THE DOOR, HE CAN'T TALK TO ANYBODY ABOUT THEM,  
23 WELL, THAT'S A RESTRICTION OF HIS ABILITY TO ASSOCIATE WITH  
24 OTHERS WHO REQUESTED A COPY OF THE BOOK, AND THAT'S WHAT THE  
25 MAJORITY OF THE PEOPLE WERE WHO HE GAVE A BOOK TO IN THE

1 WORKPLACE. THEY REQUESTED A COPY. AND SO IT'S PART AND PARCEL  
2 AND GOES HAND IN HAND WITH THE FREE SPEECH CLAIM, NOT THE FREE  
3 EXERCISE CLAIM.

4 THE COURT: OKAY. THAT MAKES A LITTLE MORE SENSE  
5 BECAUSE I THINK THE BRIEF TALKS ABOUT HOW THIS HAS INTERFERED  
6 WITH HIS INVOLVEMENT WITH HIS CHURCH, AND I DIDN'T GET THAT FROM  
7 THE COMPLAINT AND THE SITUATION. BUT I UNDERSTAND IT MORE AKIN  
8 THAT HE'S NOT ABLE TO TALK ABOUT HIS CHURCH ACTIVITIES AND HIS  
9 BELIEFS IN THE WORKPLACE, AND THAT MAKES MORE SENSE IN TERMS OF  
10 WHAT YOU'RE CLAIMING.

11 MR. THERIOT: IT'S NOT INFRINGING UPON HIS ABILITY TO  
12 ASSOCIATE WITH HIS CHURCH OTHER THAN THE FACT THAT HE LOST HIS  
13 JOB OVER IT. IT'S SAYING BECAUSE OF HIS ASSOCIATION WITH THE  
14 CHURCH WHERE HE TEACHES THESE THINGS AND PEOPLE BELIEVE ABOUT IT  
15 AND SOMEBODY IN DENVER MIGHT FIND OUT ABOUT IT AND THAT WOULD  
16 LOOK BAD FOR THE CITY, THAT HE WAS TERMINATED. AND I THINK THAT  
17 CERTAINLY IMPLICATES FREEDOM OF ASSOCIATION RIGHTS, CERTAINLY AT  
18 THIS EARLY STAGE OF THE LITIGATION.

19 THE COURT: OKAY. THANK YOU VERY MUCH.

20 MR. GODFREY, WHEN I READ THE CITY'S MOTION ON THIS, IT DID  
21 SEEM TO BE THAT THERE WAS A BIT OF CONFUSION MAYBE ABOUT EXACTLY  
22 WHAT WAS BEING PLED HERE, BUT I'LL LET YOU ADDRESS WHAT THEY  
23 SAID ABOUT THAT.

24 MR. GODFREY: CERTAINLY, YOUR HONOR. THE -- IF YOU  
25 LOOK AT THE COMPLAINT ITSELF, AND I KNOW THERE ARE MANY, MANY



1 PARAGRAPHS IN THERE, THE COMPLAINT GOES ON AND ON ABOUT HOW  
2 MR. COCHRAN HAS BEEN A MEMBER OF ELIZABETH BAPTIST CHURCH, HE'S  
3 BEEN A DEACON FOR YEARS AND HE'S DONE ALL THESE THINGS DURING  
4 HIS TENURE AS FIRE CHIEF. HE DID THOSE THINGS. WE NEVER  
5 INTERFERED WITH HIS ABILITY TO DO THAT. SO THE FREEDOM OF  
6 ASSOCIATION CLAIM IS JUST UNFOUNDED. WHAT HAPPENED IS THAT THE  
7 MAN CAME INTO THE WORKPLACE WITH THESE BOOKS AND STARTED  
8 DISTRIBUTING THEM, AND THEY CONTAIN STATEMENTS THAT ARE JUST  
9 CONTRARY TO THE OVERALL POLICY OF NON-DISCRIMINATION WITHIN THE  
10 CITY OF ATLANTA. IT'S NOT RELIGIOUS BELIEFS.

11 THE COURT: RIGHT. BUT THEY ARE GETTING INTO  
12 SOMETHING DIFFERENT, AND WHAT THEY'RE ARGUING IS WHAT'S HAPPENED  
13 HERE HAS PREVENTED HIM FROM TALKING TO PEOPLE IN THE WORKPLACE  
14 ABOUT HIS CHURCH AND HIS RELIGIOUS BELIEFS AND THAT HE WASN'T  
15 ABLE TO SHARE HIS VIEWS OF RELIGION WITH OTHER PEOPLE IN THE  
16 WORKPLACE. AND IT'S NOT THAT IT INTERFERED WITH HIS ABILITY TO  
17 BE A DEACON IN HIS CHURCH, THAT IT INTERFERED WITH HIS ABILITY  
18 TO TALK ABOUT HIS RELIGIOUS BELIEFS AND THAT THEY TOLD HIM  
19 ESSENTIALLY THAT HE CAN'T DO THAT, HE CAN'T TALK TO PEOPLE ABOUT  
20 HIS RELIGIOUS BELIEFS AND VOLUNTARILY SHARE HIS BOOK TO PEOPLE  
21 IN THE WORKPLACE THAT SPECIFICALLY ASKED TO READ IT.

22 MR. GODFREY: BUT HE DOESN'T NECESSARILY SAY IN THE  
23 COMPLAINT THAT THOSE ARE THE ONLY PEOPLE HE SHARED THE BOOK  
24 WITH, NUMBER ONE. NUMBER TWO --

25 THE COURT: BUT WHAT HE'S SAYING IS THOSE ACTIVITIES

1 VIOLATED -- THE FACT THAT HE CAN'T SHARE IT WITH THEM VIOLATES  
2 HIS FREE EXERCISE RIGHTS.

3 MR. GODFREY: IT'S NOT -- AGAIN, YOUR HONOR, IT'S NOT  
4 THE BOOK. THE BOOK HAS BEEN OUT THERE. HE HAS BEEN OUT THERE.  
5 IT'S WHAT THE BOOK CONTAINS AND THE STATEMENTS IN THE BOOK ABOUT  
6 GAYS AND LESBIANS, ABOUT WOMEN. THOSE, AGAIN, ARE HIS PERSONAL  
7 BELIEFS. THEY'RE NOT RELIGIOUS DOCTRINE THAT HE'S A CHAPLAIN  
8 TRYING TO ESPOUSE TO FOLKS IN THE WORKPLACE. HE CAN'T -- HE  
9 SIMPLY CAN'T DO THAT IN THIS CASE. THIS CIRCUIT -- AND CONNICK  
10 VS. MYERS, IN THE SUPREME COURT CASE, ADOPTED THE STATEMENT OF  
11 JUSTICE POWELL IN ARNETT VS. KENNEDY WHERE HE SAYS, THE  
12 GOVERNMENT AS AN EMPLOYER MUST HAVE WIDE DISCRETION AND CONTROL  
13 OVER THE MANAGEMENT OF ITS PERSONNEL AND INTERNAL AFFAIRS. THIS  
14 INCLUDES THE PREROGATIVE TO REMOVE EMPLOYEES WHOSE CONDUCT  
15 HINDERS THE EFFICIENT OPERATION AND TO DO SO WITH DISPATCH.  
16 PROLONGED RETENTION OF A DISRUPTIVE OR UNSATISFACTORY EMPLOYEE  
17 CAN ADVERSELY AFFECT DISCIPLINE AND MORAL IN THE WORKPLACE,  
18 FOSTER DISHARMONY AND ULTIMATELY IMPAIR THE EFFICIENCY OF AN  
19 OFFICE OR AGENCY.

20 SO THERE'S A HIGHER STANDARD THAT A GOVERNMENT EMPLOYER HAS  
21 IN CONTROLLING WHAT EMPLOYEES DO IN THE WORKPLACE.

22 THE COURT: WELL, IN THE BRIEF THAT THE CITY HAS FILED  
23 IN THIS CASE, THERE WAS SOME CONFUSION ABOUT WHICH STANDARD TO  
24 APPLY, BUT CERTAINLY UNDER THE PICKERING STATUTE -- NOT STATUTE,  
25 STANDARD, I WOULD LIKE YOU TO ADDRESS THE ISSUE THAT WE HAD KIND

1 OF AT THE OUTSET. IF WE'RE LOOKING AT PICKERING, PICKERING  
2 BASICALLY HAS THIS WEIGHING TEST THAT HAS TO BE APPLIED. AND IF  
3 WE'RE ALSO GOING TO BE APPLYING THIS FREE ASSOCIATION PICKERING  
4 TEST, AND HOW CAN THIS BE DECIDED ON A MOTION TO DISMISS  
5 BASICALLY SIMILAR TO THE ISSUE WE HAD ABOUT THE RETALIATION  
6 CLAIM? BECAUSE WE'VE GOT THE WEIGHING FACTORS AGAIN THAT WE  
7 HAVE TO LOOK AT. AND EVEN IN THE STATE'S -- NOT THE STATE --  
8 THE CITY'S OWN BRIEF THAT DEALS WITH THIS PICKERING ANALYSIS, IT  
9 GETS BACK TO THIS BALANCING TEST AND IT SEEMS DIFFICULT TO APPLY  
10 THE BALANCING TEST ON A MOTION TO DISMISS. AND THAT'S A PROBLEM  
11 THAT WE HAVE AT THIS STAGE. HOW DOES THE CITY ADDRESS THAT  
12 ISSUE?

13 MR. GODFREY: WELL, IT'S NOT REALLY PICKERING. IN  
14 THIS PARTICULAR INSTANCE IT'S ELROD-BRANTI ANALYSIS. IN THAT  
15 ANALYSIS THE DISPOSITIVE QUESTION UNDER THE ELROD-BRANTI  
16 ANALYSIS IS WHETHER THE EMPLOYER CAN DEMONSTRATE THAT FORGING  
17 ASSOCIATIONAL RIGHTS IS AN APPROPRIATE REQUIREMENT FOR EFFECTIVE  
18 PERFORMANCE OF THE PUBLIC OFFICE INVOLVED.

19 THE COURT: BUT WE HAVE ONLY THE COMPLAINT. UNDER  
20 EITHER TEST HOW CAN THE CITY MAKE THAT STANDARD BASED ON JUST  
21 WHAT'S IN THE COMPLAINT?

22 MR. GODFREY: WELL, THE COMPLAINT DOES NOT STATE THAT  
23 IT'S AN ESSENTIAL FUNCTION OF HIS POSITION TO HAVE ASSOCIATIONAL  
24 RELIGIOUS CONDUCT WITHIN THE WORKPLACE. HE WOULD HAVE TO ASSERT  
25 THAT, AND HE HASN'T ASSERTED THAT. AND I CAN'T IMAGINE UNDER

1 ANY CONCEPT OF EMPLOYMENT IN THE PRIVATE OR PUBLIC SECTOR OTHER  
2 THAN IN A CHURCH WHERE BRINGING YOUR RELIGION INTO THE WORKPLACE  
3 IS AN ESSENTIAL PART OF YOUR JOB. SO HOW CAN HE BE PREVENTED  
4 FROM BRINGING HIS RELIGION IN AN ASSOCIATIONAL FASHION INTO THE  
5 WORKPLACE IF THAT'S NOT A PART OF HIS JOB? NOW, I KNOW HIS BOOK  
6 SAYS THAT IT'S PART OF HIS JOB, BUT THAT IS NOT.

7 THE COURT: WELL, TO BACK UP, THE CITY'S BRIEF DOESN'T  
8 SAY WHICH STANDARD SHOULD APPLY. IT SAYS EITHER THE  
9 ELROD-BRANTI OR THE PICKERING ANALYSIS SHOULD APPLY, BUT IT  
10 DOESN'T PICK ONE AND IT DOESN'T EXPLAIN WHY ONE OR THE OTHER ONE  
11 SHOULD APPLY. SO YOU SAY THAT THE ELROD-BRANTI IS THE ONE THAT  
12 SHOULD CONTROL. WHY? WHY IS THAT THE STANDARD?

13 MR. GODFREY: IT IS AT THIS STAGE BECAUSE, AGAIN, IN  
14 ORDER FOR YOU TO DO A PICKERING ANALYSIS AT THIS STAGE, YOU  
15 WOULD HAVE TO HAVE MORE IN THE COMPLAINT, AND YOU DON'T HAVE IT.  
16 BUT YOU HAVE ENOUGH IN THE COMPLAINT TO APPLY ELROD-BRANTI.

17 THE COURT: THE STANDARDS ARE DIFFERENT. SO WHAT  
18 GIVES ME THE POWER TO CHOOSE THE ELROD-BRANTI RATHER THAN THE  
19 PICKERING? I CAN'T JUST PICK AND CHOOSE WHICH ONE IS BETTER FOR  
20 YOU AT THIS STAGE. I HAVE TO LOOK TO ELEVENTH CIRCUIT AND  
21 SUPREME COURT PRECEDENT AND FIND WHICH STANDARD IS THE ONE THAT  
22 I HAVE TO APPLY AND THEN APPLY THAT STANDARD. AND IT'S NOT  
23 CLEAR WHY THE CITY SAYS THAT THE ELROD-BRANTI IS THE STANDARD.  
24 AND THAT'S WHAT I'M MISSING. WHY DOES THE ELEVENTH CIRCUIT OR  
25 THE SUPREME COURT TELL ME THAT IN THIS PARTICULAR CASE WE

1 ABANDON PICKERING AND GO TO ELROD-BRANTI?

2 MR. GODFREY: BECAUSE THE ELROD-BRANTI STANDARD SAYS  
3 ESSENTIALLY THAT IF YOU'RE GOING TO MAKE AN ASSOCIATIONAL CLAIM,  
4 YOU HAVE TO HAVE AS PART OF THAT CLAIM SOME ALLEGATION OR  
5 EVIDENCE THAT THAT ASSOCIATIONAL PRIVILEGE WAS PART OF YOUR WORK  
6 BEFORE ANYTHING HAPPENED TO YOU. THAT HAS NOT BEEN CHANGED.  
7 THE ONLY THING THAT'S BEEN ALLEGED ABOUT HIS ASSOCIATIONAL WORK  
8 IS WHAT HE DOES AT ELIZABETH BAPTIST CHURCH AND WHAT HE DOES --

9 THE COURT: AND WHERE DOES THAT COME FROM, WHAT YOU  
10 JUST TOLD ME, THAT BASICALLY I HAVE TO APPLY ELROD-BRANTI BEFORE  
11 PICKERING AND I HAVE TO LOOK AT THAT AS LIKE A THRESHOLD MATTER?  
12 WHERE DOES THAT COME FROM? WHAT CASE TELLS ME THAT THAT'S WHAT  
13 NEEDS TO HAPPEN?

14 MR. GODFREY: WELL, IF YOU LOOK AT MCCABE VS. SHARRETT  
15 WHICH IS CITED IN THE BRIEF, IT TALKS ABOUT THE DIFFERENCE IN  
16 THE ELROD-BRANTI AND PICKERING STANDARD. AND IT TELLS YOU WHEN  
17 ONE SHOULD BE APPLIED AND WHEN THE OTHER SHOULD BE APPLIED OR  
18 WHEN BOTH OF THEM TOGETHER SHOULD BE APPLIED. I THINK IN THIS  
19 CASE YOU ARE CORRECT THAT YOU ARE NOT IN A POSITION TO APPLY THE  
20 PICKERING STANDARD, BUT IN A POSITION TO APPLY THE ELROD-BRANTI  
21 BECAUSE THAT IS WITHIN YOUR DISCRETION.

22 THE COURT: BUT WHEN I READ MCCABE, IT SOUNDS LIKE  
23 THEY NEVER CHOSE. THEY BASICALLY SAID UNDER EITHER STANDARD IT  
24 WAS THE RIGHT APPROACH. AND THEY KIND OF PUNTED ON THE ISSUE OF  
25 WHICH ONE. IF I WANT TO GET MORE DIRECTION ON WHICH ONE, WHERE

1 CAN I FIND THAT? OTHER THAN THIS MCCABE CASE THAT SEEMED TO  
2 KIND OF PUNT ON THE ISSUE, I'M LOOKING FOR MORE GUIDANCE ON WHEN  
3 WHICH TEST IS APPROPRIATE. AND MCCABE, I DON'T THINK, PROVIDES  
4 IT. IS THERE ANYTHING ELSE THAT YOU CAN POINT ME TO THAT GIVES  
5 ME MORE ASSISTANCE ON WHICH ONE IS THE RIGHT TEST? BECAUSE  
6 YOU'VE ONLY CITED TO BASICALLY MCCABE, AND THAT DOESN'T ANSWER  
7 THE QUESTION.

8 MR. GODFREY: WELL, THE ONLY THING I CAN OFFER AT THIS  
9 POINT, YOUR HONOR, IS IF YOU DESIRE, WE CAN REBRIEF THAT ISSUE  
10 FOR YOU IN A VERY SHORT PERIOD OF TIME BEFORE YOU HAVE TO MAKE A  
11 DECISION --

12 THE COURT: OKAY.

13 MR. GODFREY: -- AND POINT YOU TO THAT.

14 THE COURT: OKAY. WELL, LET ME HEAR FROM THE  
15 DEFENDANT ON THAT ISSUE -- I MEAN, THE PLAINTIFF ON THAT ISSUE  
16 BECAUSE THEY MIGHT HAVE SOME MORE CASE LAW ON WHAT THE RIGHT  
17 STANDARD IS. THANK YOU.

18 MR. THERIOT: WELL, I THINK YOU'RE RIGHT, YOUR HONOR,  
19 THAT MCCABE -- THE COURT DIDN'T PICK. OF COURSE IN THAT  
20 PARTICULAR CASE IT WAS THE ASSOCIATIONAL -- THE ASSOCIATIONAL  
21 RIGHT AT ISSUE WAS NOT AN EXPRESSIVE ASSOCIATIONAL RIGHT AT  
22 ISSUE. SO IT'S VERY DIFFICULT TO USE THAT CASE TO CONTROL THIS  
23 ONE IF THE COURT HAD PICKED BECAUSE THAT WAS THE ABILITY OF A --  
24 THE CHIEF'S SECRETARY TO MARRY A POLICE OFFICER. AND IT WASN'T  
25 ASSOCIATIONAL EXPRESSION, BUT IT WAS PERSONAL -- PERSONAL

1 ASSOCIATION. AND WHEN YOU'VE GOT EXPRESSIVE ASSOCIATION, AND  
2 PICKERING OBVIOUSLY APPLIES AND I THINK -- OF COURSE THAT WAS  
3 1994. THE ELEVENTH CIRCUIT SAID IN COOK VS. GWINNETT COUNTY  
4 WHICH WAS 2005, IN THAT EXPRESSIVE ASSOCIATION CLAIM THEY  
5 APPLIED PICKERING. AND I THINK THAT IS WHAT NEEDS TO INFORM THE  
6 COURT AT THIS STAGE OF THE ANALYSIS. AND THOSE ARE THE -- THOSE  
7 ARE TWO CASES THAT I'M AWARE OF THAT HAVE BEEN CITED -- AND HAVE  
8 BEEN CITED THAT ADDRESS THE ISSUE. AND I THINK IT'S CLEAR THAT  
9 PICKERING SHOULD APPLY TO EXPRESSIVE ASSOCIATION.

10 THE COURT: NOW, IF ELROD-BRANTI DOES IN FACT APPLY  
11 AND THE QUESTION IS ABOUT THE APPROPRIATE REQUIREMENT FOR THE  
12 EFFECTIVE PERFORMANCE OF THE PUBLIC OFFICE INVOLVED, DO YOU  
13 AGREE THAT IT'S DIFFICULT FOR THE PLAINTIFF TO COMPLY WITH THE  
14 ELROD-BRANTI STANDARD IF THAT'S IN FACT THE STANDARD THAT WE'RE  
15 DEALING WITH HERE?

16 MR. THERIOT: I DON'T THINK SO BECAUSE I THINK, YOU  
17 KNOW, EVEN IF THE ELROD-BRANTI STANDARD IS APPLIED, IF YOU HAVE  
18 A CONSTITUTIONAL RIGHT -- AND I THINK THAT -- FIRST OF ALL, I  
19 THINK THE CONTEXT OF THE ELROD CASE IS YOU'RE LETTING SOMEBODY  
20 GO BECAUSE OF THEIR POLITICAL -- POLITICAL CONVICTIONS OR  
21 POLITICAL APPOINTEE, ET CETERA. AND THE FACTS IN THE CASE  
22 INDICATE THAT BOTH THE MAYOR AND CHIEF COCHRAN ARE BOTH  
23 DEMOCRATS. SO IT'S A STRETCH TO APPLY ELROD IN THIS CASE. BUT  
24 EVEN IF IT DOES APPLY, I THINK THERE HAS TO BE SOME INDICATION,  
25 AS THE COURT INDICATED IN MCCABE, THAT THERE WAS SOME ACTUAL

1 DISRUPTIONS. AND THE COURT SAID IN MCCABE THAT NO  
2 SUBJECTIVE FEAR -- SUBJECTIVE FEAR OF DISRUPTION IS NOT ENOUGH.

3 THE COURT: OKAY. BECAUSE IT DOESN'T SAY, AT LEAST  
4 WHAT I'M DEALING WITH HERE, IT DOESN'T SAY THAT IT'S DISRUPTION.  
5 INSTEAD, IT'S WHETHER OR NOT THAT ASSOCIATE IS AN APPROPRIATE --  
6 OH, OKAY. I UNDERSTAND WHAT YOU'RE ARGUING. OKAY.

7 MR. THERIOT: AND THE COURT -- TO BE FAIR, THE COURT  
8 KIND OF BLENDED EVERYTHING TOGETHER. AND MCCABE IS A VERY  
9 DIFFICULT CASE TO USE TO GET DIRECTION ON ANYTHING EXCEPT FOR  
10 THE FACT THAT IF SOMEBODY IS IN A POSITION OF CONFIDENTIALITY  
11 AND THEY MARRY SOMEBODY THAT YOU SUPERVISE, THEN YOU CAN DEMOTE  
12 THEM BECAUSE THAT -- BECAUSE CONFIDENTIALITY IS AN IMPORTANT  
13 PART OF THEIR JOB. AND SHE COULDN'T DO HER JOB. AND JUST THE  
14 OPPOSITE IS THE CASE IN THIS PARTICULAR INSTANCE. AS A MATTER  
15 OF FACT, NOT ONLY DOES CHIEF COCHRAN NOT DISCRIMINATE, PARAGRAPH  
16 168 SAYS THAT, BUT HIS RELIGIOUS CONVICTIONS AND HIS PRIOR  
17 HISTORY IN THE FIRE DEPARTMENT PROHIBIT HIM FROM DISCRIMINATING.  
18 AND SO THERE'S NO INDICATION THAT HE'S EVER DISCRIMINATED  
19 AGAINST ANYBODY AND HE HAS NOT, AND THOSE FACTS HAVE TO BE TAKEN  
20 AS TRUE.

21 THE COURT: OKAY. THANK YOU.

22 MR. THERIOT: OKAY. THANK YOU.

23 THE COURT: NOW, THAT BRINGS US TO COUNT FIVE WHICH IS  
24 TO SUMMARIZE BASICALLY A FIRST AMENDMENT RIGHT TO AVOID  
25 RELIGIOUS HOSTILITY. AND THIS PARTICULAR COUNT THERE SEEMS TO



1 BE A BIT OF A DISPUTE AS TO WHICH TEST IS THE APPROPRIATE ONE TO  
2 USE. AND I THINK IN TERMS OF WHAT I'VE READ SO FAR, I THINK  
3 THAT I'M AT LEAST INITIALLY IN AGREEMENT WITH THE CITY ON THE  
4 FACT THAT WE HAVE THE LEMON TEST. IT DOESN'T FIT VERY WELL TO  
5 THE FACTS OF THIS PARTICULAR CASE, BUT I DON'T THINK THAT THE  
6 PLAINTIFF HAS ALLEGED ANY OTHER TEST TO USE. AND IT REALLY AT  
7 KIND OF A GUT LEVEL DOESN'T SEEM LIKE THIS IS NECESSARILY A REAL  
8 CLAIM, THAT THESE ARE FACTS THAT DON'T FIT WELL INSIDE THE  
9 FRAMEWORK THAT HAS BEEN DEVELOPED TO DEAL WITH FIRST AMENDMENT  
10 ISSUES. AND MAYBE IF I CAN HEAR MAYBE FIRST FROM THE PLAINTIFF,  
11 BECAUSE LEMON DOESN'T FIT WELL. IT'S NOT CLEAR WHAT TEST TO  
12 APPLY. THE LANGUAGE THAT'S QUOTED IN THE PLAINTIFF'S BRIEF  
13 SEEMS TO BE A LITTLE BIT MORE DICTA RELATED TO DIFFERENT TYPES  
14 OF ISSUES. AND IT ALMOST FEELS LIKE THE FACTS OF THIS CASE ARE  
15 BEING CRAMMED INTO KIND OF A CONSTITUTIONAL ISSUE THAT THEY  
16 DON'T FIT VERY WELL. AND THAT'S WHAT I DON'T REALLY UNDERSTAND  
17 WHY THIS CLAIM, THIS RIGHT TO AVOID RELIGIOUS HOSTILITY ACTUALLY  
18 IS A CLAIM AND WE'RE NOT DEALING MORE PROPERLY WITH THESE OTHER  
19 CLAIMS THAT ARE IN THE CASE.

20 MR. THERIOT: WELL, IT CERTAINLY GOES HAND IN HAND  
21 WITH THE FREE EXERCISE CLAIM AND YOU HAVE TO GO BACK TO THE  
22 TORCASO VS. WATSON CASE. AND IN THAT CASE THE SUPREME COURT  
23 SAID THAT THE ESTABLISHMENT CLAUSE MEANS AT LEAST THIS. NO  
24 PERSON CAN BE PUNISHED FOR ENTERTAINING OR PROFESSING RELIGIOUS  
25 BELIEFS.

1 SO THE ESTABLISHMENT CLAUSE IS -- CERTAINLY IS -- GOES HAND  
2 IN HAND WITH THE FREE EXERCISE CLAUSE. AS A MATTER OF FACT, THE  
3 COURT RECENTLY CONFIRMED THAT IN HOSANA TABOR (PHONETIC) CASE.  
4 THAT'S NOT -- THAT'S NOT CITED IN OUR BRIEFS.

5 THE COURT: BUT WHY DO YOU NEED BOTH? IT SEEMS LIKE  
6 THE FREE EXERCISE CLAIM IS WHAT YOU'RE REALLY CLAIMING HERE AND  
7 THAT THIS IS A KIND OF CLAIM WHEN YOU REALLY DON'T HAVE THE  
8 OTHER KIND OF CLAIM. LIKE, WHY ARE BOTH OF THESE IN THE CASE  
9 AND WHY AREN'T THE FREE EXERCISE CLAIMS THE ONES THAT ARE REALLY  
10 AT ISSUE?

11 MR. THERIOT: WELL, IT'S ALTERNATIVE PLEADING, YOUR  
12 HONOR. I MEAN, CERTAINLY YOU CAN BRING MORE THAN -- YOU CAN  
13 HAVE A VIOLATION OF YOUR RIGHTS AND AN ACTION THAT VIOLATES MORE  
14 THAN JUST YOUR FREE EXERCISE AND FREE SPEECH RIGHTS. AND IN  
15 THIS PARTICULAR CASE, EVEN UNDER THE LEMON TEST, IT PROHIBITS  
16 NOT ONLY ENDORSEMENT OF RELIGION, BUT HOSTILITY TO RELIGION.  
17 AND SO THE LEMON TEST ITSELF -- AND JUSTICE O'CONNOR'S GLOSS ON  
18 THAT THAT'S IN THE ALLEGHENY CASE INDICATES THAT IT'S NOT JUST  
19 ENDORSEMENT OF RELIGION THAT'S THE PROBLEM ANYMORE THAN THE --  
20 THAN THE CITY CAN'T ENDORSE, FOR INSTANCE, A PARTICULAR VIEW ON  
21 SAME-SEX MARRIAGE. AND AS A MATTER OF FACT, I THINK THAT'S  
22 ACTUALLY PART OF OUR COMPLAINT, IS THAT THEY HAVE ENDORSED ONE  
23 VIEW OVER ANOTHER, AND THAT VIOLATES THE ESTABLISHMENT CLAUSE.  
24 THE GOVERNMENT CANNOT TAKE A RELIGIOUS VIEW AND TAKE A RELIGIOUS  
25 POSITION. THAT'S ONE THING THE ESTABLISHMENT CLAUSE PROHIBITS.

1 AND MAYOR REED'S STATEMENTS AT 157 AND 158 OF THE COMPLAINT SAYS  
2 THOSE ARE NOT MY BELIEFS AND THOSE ARE NOT THE BELIEFS OF THE  
3 CITY.

4 THE COURT: LET'S BACK UP. WHAT TEST DO YOU THINK  
5 APPLIES, THE LEMON TEST OR SOME OTHER TEST?

6 MR. THERIOT: WELL, CERTAINLY THE LEMON TEST APPLIES,  
7 BUT ALSO TORCASO APPLIES.

8 THE COURT: OKAY. SO --

9 MR. THERIOT: AND THAT'S THE HOSTILITY --

10 THE COURT: -- LET'S BACK UP AND APPLY THE LEMON TEST  
11 TO ME. THE DEFENDANTS KIND OF GO THROUGH THE LEMON TEST AND  
12 EXPLAIN WHY COUNT FIVE DOESN'T FIT. AND PLAINTIFF'S BRIEF  
13 BASICALLY DOESN'T DO THAT. THEY JUST KIND OF TALK ABOUT HOW IT  
14 MISCONSTRUES THE COMPLAINT, THE CLAIM. BUT I WANT TO HEAR HOW  
15 IT FITS THE LEMON TEST BECAUSE IT DOESN'T NEATLY FIT THOSE  
16 STANDARDS TO ME.

17 MR. THERIOT: RIGHT. IT'S THE SECOND PRONG OF LEMON  
18 THAT'S AT ISSUE HERE. IT HAS THE -- AND THE THIRD PRONG TOO.  
19 SO THE FIRST PRONG IS, DOES THE CITY HAVE A SECULAR PURPOSE? I  
20 DON'T THINK THAT'S REALLY APPLICABLE. BUT THE SECOND PRONG IS,  
21 DOES IT HAVE THE PRIMARY EFFECT OF -- OR OF ADVANCING OR  
22 INHIBITING RELIGION? AND AT THIS PARTICULAR INSTANCE I THINK  
23 THERE'S AN ARGUMENT TO BE MADE THAT IT DOES BOTH. NUMBER ONE,  
24 IT INHIBITS THE TRADITIONAL RELIGIOUS VIEWS OF CHIEF COCHRAN  
25 THAT ARE HELD BY MANY CHRISTIANS AND HAVE BEEN FOR THOUSANDS OF

1 YEARS ABOUT MARRIAGE. AND IT ADVANCES THE RELIGIOUS CONVICTIONS  
2 OF MAYOR REED WHO SAYS, NO, I THINK, FOR INSTANCE, THAT SAME-SEX  
3 MARRIAGE IS OKAY. AND THAT ACTUALLY IMPLICATES THE THIRD  
4 ENTANGLEMENT PRONG THAT GETS THE -- THE STATE AND GOVERNMENT  
5 INVOLVED IN A RELIGIOUS ISSUE. IT'S ONE THING FOR MAYOR REED TO  
6 SAY THAT THE CITY TAKES A POSITION THAT PROHIBITS A  
7 DISCRIMINATION BASED ON SEXUAL ORIENTATION, WHICH INCIDENTALLY  
8 CHIEF COCHRAN NOT ONLY AGREES WITH, BUT COMPLIES WITH. IT'S  
9 ANOTHER THING FOR THEM TO SAY, I DON'T AGREE WITH THE RELIGIOUS  
10 BELIEFS OF CHIEF COCHRAN. THAT'S TAKING A POSITION ON A  
11 RELIGIOUS ISSUE. AND I THINK THAT VIOLATES THE ESTABLISHMENT  
12 CLAUSE UNDER THE -- UNDER THE LEMON TEST. AND IT WOULD  
13 CERTAINLY -- IT CERTAINLY STATES A CLAIM FOR ONE, FOR A  
14 VIOLATION. AND INCIDENTALLY, YOU KNOW, TORCASO VIEWS THE FREE  
15 EXERCISE AND THE -- THE LEMON TEST -- AND THE ESTABLISHMENT  
16 CLAUSE SORT OF TOGETHER. BUT IF -- IF -- AT LARSON VS. VALENTE,  
17 EVERSON VS. BOARD OF EDUCATION BOTH SAY THAT THE GOVERNMENT IS  
18 PROHIBITED FROM PREFERRING ONE SET OF RELIGIOUS BELIEFS OVER  
19 ANOTHER. AND THAT'S WHAT THIS CHALLENGE IS ABOUT, THAT THEY  
20 FAVOR MAYOR REED'S RELIGIOUS BELIEFS OVER CHIEF COCHRAN'S, AND  
21 THAT'S A VIOLATION OF THE ESTABLISHMENT CLAUSE.

22 THE COURT: OKAY. I'LL HEAR FROM MR. GODFREY ON THAT  
23 POINT. THANK YOU.

24 MR. GODFREY: YOUR HONOR, I DON'T THINK ANYWHERE IN  
25 ANYTHING IN THE COMPLAINT OR ANYTHING THAT MAYOR REED HAS SAID

1 ABOUT THIS ISSUE INDICATES THAT HIS BELIEFS ABOUT SAME-SEX  
2 MARRIAGE HAVE ANYTHING TO DO WITH RELIGION. SO I THINK IT'S  
3 COMPLETELY UNTOWARD TO TRY TO TIE HIS BELIEFS TO RELIGION AND  
4 SAY THAT HE PREFERS SAME-SEX MARRIAGE BECAUSE OF RELIGIOUS  
5 BELIEFS. THAT IS NOT THE REASON THAT THE SUPREME COURT HAS SAID  
6 THAT SAME-SEX MARRIAGE IS THE LAW OF THE LAND.

7 WHAT WE HAVE HERE IS NOT ANY HOSTILITY TOWARD RELIGION OR  
8 RELIGIOUS BELIEFS AS ALLEGED, BUT, INSTEAD, IF YOU READ THE  
9 COMPLAINT IN ITS ENTIRETY, A SITUATION IN WHICH THE CITY HAS A  
10 NON-DISCRIMINATION POLICY WHICH IS NOT BASED ON RELIGION, NO  
11 WHERE IN THAT POLICY AND NO WHERE IN THE COMPLAINT IS THERE AN  
12 ALLEGATION THAT THAT POLICY IS BASED ON RELIGION. IT'S BASED ON  
13 THE CITY'S BELIEF OF THE LAW OF THE LAND AS TO HOW PEOPLE SHOULD  
14 BE TREATED. AND IN DISAGREEING WITH THAT FROM A RELIGIOUS  
15 PERSPECTIVE, THAT DOESN'T MEAN THAT WE ARE SOMEHOW INFRINGING  
16 UPON CHIEF COCHRAN'S RELIGIOUS BELIEFS. WE HAVE A POLICY THAT'S  
17 BASED ON LAWS THAT HAVE BEEN ON THE BOOKS FOR MANY YEARS,  
18 DECISIONS OF THE SUPREME COURT THAT SAYS YOU CAN SIMPLY TREAT  
19 PEOPLE WITH RESPECT, WE SHOULD TREAT PEOPLE EQUALLY. I DON'T  
20 THINK THAT ANYBODY BELIEVES THAT THOSE LAWS DEVELOPED OUT OF  
21 CHURCHES. THOSE LAWS DEVELOPED OUT OF THE UNITED STATES  
22 CONGRESS, OUT OF STATE HOUSES IN ALL THE STATES AROUND THE UNION  
23 AND OUR CITY GOVERNMENT. THEY'RE NOT RELIGIOUS BASED. SO TO  
24 SAY THAT SOMEHOW WE ARE PROMOTING ONE RELIGION OVER ANOTHER IS  
25 SIMPLY A NON SEQUITUR IN THIS CASE. NO WHERE IS THERE ANY

1 INDICATION THAT ANYTHING THAT MAYOR REED BELIEVES, ESPOUSES OR  
2 PROMOTES IS BASED ON HIS RELIGIOUS BELIEFS RATHER THAN MAYBE HIS  
3 POLITICAL BELIEFS

4 THE COURT: OKAY. THANK YOU. AND WHAT I'M GOING TO  
5 DO RIGHT NOW, WE'VE BEEN GOING FOR AN HOUR AND A HALF, AND I  
6 THINK EVERYONE COULD PROBABLY USE AND PROBABLY EVERYONE OUT  
7 THERE CAN PROBABLY USE A SHORT BREAK. SO WHAT WE'LL DO IS WE'LL  
8 TAKE A TEN-MINUTE BREAK BECAUSE WE'RE GETTING READY TO GO INTO  
9 KIND OF A DIFFERENT AREA WITH THE EQUAL PROTECTION AND DUE  
10 PROCESS RELATED CLAIMS, WHICH I THINK MAY GO A LITTLE BIT MORE  
11 QUICKLY. WE'LL SEE. AND SO AFTER WE GET DONE WITH THE  
12 TEN-MINUTE BREAK, WE'LL PROCEED THROUGH THESE CLAIMS AS WE HAVE.  
13 AND ONE THING THAT I WANTED TO GIVE YOU BOTH AN OPPORTUNITY TO  
14 DO IS THAT I'VE BEEN INTERRUPTING BOTH OF YOUR PRESENTATIONS  
15 WITH A LOT OF QUESTIONS AND THERE'S PROBABLY POINTS THAT YOU  
16 WANTED TO MAKE THAT I HAVEN'T GIVEN YOU AN OPPORTUNITY TO MAKE.  
17 SO AFTER WE GET THROUGH KIND OF THE QUESTIONS I HAVE AND THESE  
18 ARGUMENTS, I'M GOING TO GIVE BOTH SIDES BASICALLY A MAXIMUM OF  
19 TEN MINUTES TO, FOR LACK OF A BETTER WORD, GIVE A CLOSING  
20 ARGUMENT AND JUST MAKE SURE -- IT DOESN'T HAVE TO BE IN ANY  
21 CERTAIN ORDER, BUT IF THERE ARE POINTS THAT YOU WANTED TO MAKE,  
22 AND I'LL ALLOW YOU DURING THIS BREAK TO CONFER WITH YOUR  
23 CO-COUNSEL. I WILL TRY TO PROMISE THAT I WILL GIVE YOU BOTH TEN  
24 UNINTERRUPTED MOMENTS WHEN I WON'T ASK QUESTIONS SO YOU CAN MAKE  
25 SURE YOU GET THROUGH YOUR ARGUMENT THAT YOU WANTED TO GET

1 THROUGH. I THINK THAT IT'S BEEN VERY HELPFUL FOR ME TO ASK  
2 QUESTIONS BECAUSE THOSE ARE POINTS WHERE I'M HAVING  
3 DIFFICULTIES, BUT I DO WANT TO MAKE SURE YOU GET TO INFORM ME  
4 ABOUT SOME ISSUES THAT ARE IMPORTANT THAT I MIGHT NOT HAVE ASKED  
5 ABOUT. SO WE'LL BE BACK IN TEN MINUTES, WE'LL GO THROUGH THE  
6 LIST, AND THEN I'LL GIVE YOU BOTH TEN MINUTES TO CONCLUDE. SO  
7 WITH THAT, WE ARE IN RECESS. THANK YOU.

8 (RECESS TAKEN.)

9 THE COURT: SO I HAVE IN MY NOTES THAT WE ARE AT COUNT  
10 SIX WHICH IS THE EQUAL PROTECTION CLAIM. AND LET ME HEAR FROM  
11 MR. GODFREY ON COUNT SIX.

12 MR. GODFREY: YOUR HONOR, I THINK THE KEY TO THE EQUAL  
13 PROTECTION CLAIM IS THAT CHIEF COCHRAN IN HIS COMPLAINT MAKES NO  
14 MENTION OF ANYONE ELSE WITHIN THE WORKPLACE THAT WAS TREATED IN  
15 A MANNER MORE FAVORABLY THAN HE WAS. THERE'S NOTHING IN THE  
16 COMPLAINT ABOUT THAT. HE'S REQUIRED TO NOT SIMPLY ALLEGE THAT  
17 HE WAS TREATED UNEQUALLY, BUT TO ALLEGE SOME SPECIFIC PERSON OR  
18 GROUPS OF PERSON WHO WERE NOT TREATED THE SAME -- WHO WERE  
19 TREATED MORE FAVORABLY. HE'S FAILED TO DO THAT.

20 THE COURT: OKAY. GREAT. THANK YOU.

21 MR. THERIOT: YOUR HONOR, I THINK THERE ARE TWO  
22 ASPECTS OF THE EQUAL PROTECTION CLAIM. FIRST OF ALL, IN COOK  
23 VS. GWINNETT COUNTY, THE ELEVENTH CIRCUIT SAID THAT DISTINCTIONS  
24 BASED UPON CONTENT OF SPEECH ACTUALLY VIOLATE EQUAL PROTECTION.  
25 SO THIS IS A CLAIM IN ADDITION TO OUR FREE SPEECH CLAIM, AND

1 WE'VE CLEARLY ALLEGED THAT CHIEF COCHRAN WAS LET GO BECAUSE OF  
2 THE CONTENT OF HIS SPEECH. AND I THINK -- AND MY COLLEAGUE HAS  
3 EFFECTIVELY CONCEDED THAT TODAY, THAT IT WAS WHAT HE SAID THAT  
4 WAS THE PROBLEM. AND HE'S ALLOWED TO HAVE THOSE BELIEFS, HE'S  
5 JUST NOT ALLOWED TO SAY THEM.

6 ALSO, THE FACT THAT HE WAS DISCRIMINATED AGAINST BASED UPON  
7 A FUNDAMENTAL RIGHT INDICATES THAT -- YOU GET STRICT SCRUTINY  
8 EVEN THOUGH YOU DON'T HAVE SOMEBODY THAT'S COMPARATORY OR  
9 EXACTLY LIKE HIM. THAT'S NOT WHAT'S REQUIRED THAT -- WHAT'S  
10 REQUIRED IS THAT HE WAS TREATED DIFFERENTLY BECAUSE OF HIS  
11 RELIGIOUS CONVICTIONS AND BECAUSE OF THE CONTENT OF HIS SPEECH.  
12 OTHERS WERE ALLOWED TO ENGAGE IN THAT AND WERE NOT TREATED  
13 DIFFERENTLY AND WERE NOT FIRED BECAUSE OF THE CONTENT OF THEIR  
14 SPEECH OR BECAUSE OF WHAT THEY BELIEVED, AND THAT IN ESSENCE IS  
15 A CONTENT -- AN ESTABLISHMENT CLAUSE -- EXCUSE ME -- AN EQUAL  
16 PROTECTION VIOLATION BECAUSE IT'S BASED UPON THE FUNDAMENTAL  
17 RIGHTS OF FREE SPEECH AND FREEDOM OF RELIGION. SO THAT'S  
18 ESSENTIALLY OUR EQUAL PROTECTION CLAIM. AND SO THIS IDEA THAT  
19 HE HAS TO HAVE SOMEBODY THAT'S EXACTLY THE SAME AS HIM IN ORDER  
20 TO STATE A CLAIM OF EQUAL PROTECTION DOESN'T APPLY IN THIS CASE.

21 THE COURT: NOW, IN TERMS OF -- IF I WAS LOOKING TO  
22 SEE A CASE THAT IS CLOSE IN LINE TO THE FACTS OF THIS CASE UNDER  
23 THE EQUAL PROTECTION CLAUSE THAT ALLOWED A CLAIM BASED ON KIND  
24 OF THIS RELIGIOUS TYPE CLASSIFICATION WHERE THERE'S NOT A DIRECT  
25 COMPARATOR, ARE YOU SAYING THE COOK CASE IS THE CLOSEST



1 ANALOGOUS CASE?

2 MR. THERIOT: I THINK SO, YES, YOUR HONOR, BECAUSE IT  
3 HAS TO DO WITH THE SPEECH AND THE CONTENT OF HIS SPEECH,  
4 AND THAT'S THE ONE THAT WE'VE CITED AND HAVE INDICATED THAT IT  
5 DEFINITELY APPLIES HERE.

6 THE COURT: OKAY. THANK YOU.

7 MR. GODFREY, IS THERE ANYTHING YOU WANTED TO SAY TO  
8 DISTINGUISH COOK?

9 MR. GODFREY: NO, YOUR HONOR.

10 THE COURT: OKAY. THANK YOU.

11 SO I THINK THAT TAKES US TO NUMBER SEVEN, THE DUE PROCESS  
12 VAGUENESS CLAIM. AND ON THAT ONE, REALLY KIND OF HAVE, I GUESS,  
13 A LITTLE BIT OF DUELING CASE LAW IN REGARD TO THAT PARTICULAR  
14 CLAIM. WE HAVE THAETER FROM THE DEFENDANT, AND PLAINTIFF IS  
15 RELYING ON THIS NATIONAL TREASURY CASE. SO TO THE EXTENT THAT  
16 YOU KIND OF ADDRESS EACH OTHER'S CASES, THAT WILL BE HELPFUL IN  
17 YOUR PRESENTATION IF YOU WANT TO DO SO. BUT WITH THAT I'LL TURN  
18 IT OVER TO MR. GODFREY ON THAT ONE.

19 MR. GODFREY: YOUR HONOR, I THINK WE HAVE DISCUSSED  
20 THIS ORDINANCE AT GREAT LENGTH IN TERMS OF VAGUENESS. BECAUSE  
21 IF YOU READ THE ORDINANCE ON ITS FACE, AND IT'S PART OF THE  
22 COMPLAINT, IT'S NOT SOMETHING EXTRANEIOUS TO THE COMPLAINT. AND  
23 IF IT WERE, YOU COULD TAKE JUDICIAL NOTICE OF IT. IT'S NEUTRAL  
24 ON ITS FACE. IT DOESN'T DO ANYTHING THAT WOULD PROHIBIT THIS  
25 INDIVIDUAL FROM PUBLISHING A BOOK. IT SIMPLY SAYS, IF YOU'RE

1 GOING TO MAKE MONEY OUTSIDE OF YOUR REGULAR EMPLOYMENT, YOU HAVE  
2 TO COME BEFORE THE BOARD OF ETHICS. THAT'S PRETTY  
3 STRAIGHTFORWARD. IT'S NOT VAGUE.

4 THE COURT: OKAY. THANK YOU.

5 AND, MR. THERIOT, I DO WANT YOU TO PAY PARTICULAR ATTENTION  
6 TO THIS THAETER CASE BECAUSE I DO THINK IT'S VERY ANALOGOUS TO  
7 THE SITUATION WE'RE DEALING WITH HERE. AND I KNOW IN YOUR BRIEF  
8 YOU REFER TO THIS NATIONAL TREASURY CASE THAT WAS BEFORE THIS  
9 THAETER CASE. AND IT SEEMS TO ME TO BE A BIT DIFFERENT IN THAT  
10 WE'RE NOT DEALING WITH A PRIOR APPROVAL RELATED STATUTE. I READ  
11 IT AS THAT IT HAS A COMPLETE BAN ON ALL THESE DIFFERENT KINDS OF  
12 SPEECH. SO WITH THAT, I'LL LET YOU ADDRESS THOSE POINTS.

13 MR. THERIOT: THANK YOU, YOUR HONOR. I THINK  
14 CERTAINLY U.S. VS. NATIONAL TREASURY, THOUGH, ANALYZES IT AS A  
15 PRIOR RESTRAINT. AND I DON'T THINK THERE'S ANY DISPUTE THAT  
16 THIS -- THAT 2-820(D), IF IT APPLIES TO THE PUBLISHING OF A  
17 BOOK, IS A PRIOR RESTRAINT ON SPEECH. NOW, OF COURSE, WE WOULD  
18 SUBMIT THAT IT SHOULDN'T BE READ THAT WAY AND THAT IT SHOULD BE  
19 READ IN A WAY TO COMPLY WITH FIRST AMENDMENT AND IT SHOULDN'T  
20 APPLY TO THE PUBLISHING -- SELF-PUBLISHING A BOOK. BUT ASSUMING  
21 THAT IT DOES, THEN IT'S VAGUE AND DOES NOT GIVE ADEQUATE NOTICE  
22 TO EMPLOYEES THAT IT APPLIES. FOR INSTANCE, IT DOESN'T SAY  
23 THAT -- IT SAYS THAT THEY SHOULDN'T ENGAGE IN PRIVATE EMPLOYMENT  
24 OR RENDER ANY SERVICES FOR PRIVATE INTEREST. NO WHERE DOES THE  
25 CITY DEFINE EITHER OF THOSE TERMS. THERE'S NO INDICATION AT ALL

1 THAT IT WOULD APPLY TO SELF-PUBLISHING A BOOK, AND, AS A MATTER  
2 OF FACT, IN THE -- THE DEFINITION SECTION OF THAT -- OF THE  
3 ETHICS CODE, IT DEFINES BUSINESS AS INCLUDING SELF-EMPLOYMENT.  
4 AND THE CITY CERTAINLY COULD HAVE INCLUDED THAT IF IT WANTED TO.  
5 SECONDLY, UNLIKE THAETER -- THAETER, THERE WAS NO QUESTION  
6 THAT THAT PARTICULAR ORDINANCE WAS BROAD ENOUGH TO INCLUDE  
7 MAKING MONEY IN ANY WAY. IT SAYS ANY COMMERCIAL ENTERPRISE.  
8 AND IN THAT PARTICULAR INSTANCE THE EMPLOYEE CERTAINLY KNEW THAT  
9 IT APPLIED TO THEM BECAUSE THEY HAD -- THEY ATTEMPTED TO OBSCURE  
10 THEIR FACES IN THE PORN VIDEO THAT THEY WERE PARTICIPATING IN.  
11 THAT'S -- IT'S REALLY JUST THE OPPOSITE OF HERE IN THIS  
12 PARTICULAR INSTANCE WHERE CHIEF COCHRAN ACTUALLY WENT TO THE  
13 ETHICS ADVISOR -- THE ETHICS OFFICER, MS. NINA HICKSON, ASKED IF  
14 IT APPLIED, AND SHE SAID, NO, YOU CAN WRITE A BOOK AND THERE'S  
15 NOTHING ELSE THAT YOU NEED TO DO. THAT'S AT PARAGRAPH 105,  
16 AROUND 105 OF THE COMPLAINT. AND THAT CERTAINLY HAS TO BE TAKEN  
17 AS TRUE. AND THIS WAS NOT JUST SOMEBODY. THIS WAS AN ATTORNEY  
18 WITH THE DUTY TO ADVISE ON THE ETHICS CODE. THAT'S AT 2805 OF  
19 THE ETHICS CODE. SO I THINK THERE'S -- IN THAETER, THE COURT  
20 FOUND THAT THE -- THE EMPLOYEES THERE DELIBERATELY DISREGARDED  
21 THE CODE AND DID NOT GET PERMISSION BECAUSE THEY KNEW IT APPLIED  
22 TO THEM AND THEY WOULDN'T GET PERMISSION. HERE CHIEF COCHRAN  
23 MADE EVERY ATTEMPT TO COMPLY WITH IT, STILL DIDN'T KNOW IF HE  
24 COMPLIED WITH IT, AND EVEN THE ETHICS OFFICER DIDN'T THINK HE  
25 NEEDED TO DO ANYTHING OTHER THAN -- I THINK THAT INDICATES THAT

1 IT'S VAGUE.

2 THE COURT: OKAY. THANK YOU.

3 MR. THERIOT: OKAY.

4 THE COURT: NOW, TAKES US NEXT TO COUNT EIGHT, DUE  
5 PROCESS, LIBERTY, INTEREST. AND PART OF THIS, I THINK THE  
6 DEFENDANT ARGUES THAT THIS HINGES AT LEAST A GOOD PART ON THE  
7 AT-WILL EMPLOYEE STATUS, AND PLAINTIFF DISAGREES AND RELIES ON  
8 THIS THOMAS CASE. AND CERTAINLY IN TERMS OF THE PLAINTIFF'S  
9 ARGUMENT, A BETTER UNDERSTANDING WHY THE FACT THAT HE WAS AN  
10 AT-WILL EMPLOYEE, WHY DOES THAT GIVE HIM A LIBERTY INTEREST? SO  
11 I THINK BASICALLY I'LL LET YOU TALK, MR. GODFREY, BUT I THINK I  
12 BASICALLY UNDERSTAND YOUR ARGUMENT IN THAT, BECAUSE HE WAS AN  
13 AT-WILL EMPLOYEE, THAT HE DIDN'T HAVE A LIBERTY INTEREST  
14 SUFFICIENT TO ENTITLE HIM TO THE DUE PROCESS PROTECTIONS THAT  
15 HE'S ALLEGING. AND I DON'T WANT TO CUT YOU OFF, BUT IT SEEMS  
16 PRETTY CLEAR WHAT YOU'RE ARGUING. I GUESS WHAT I WANT TO DO NOW  
17 IS TURN TO MR. THERIOT UNLESS YOU HAD SOMETHING ELSE YOU WANTED  
18 TO ADD ON THAT MATTER.

19 MR. GODFREY: NO. I JUST WANT TO TELL YOU THAT I  
20 AGREE WITH YOU.

21 THE COURT: OKAY. ALWAYS LIKE TO HEAR THAT. SO JUST  
22 TELL ME WHY YOU THOUGHT THAT HE WAS AN AT-WILL EMPLOYEE, WHY  
23 THAT CONVEYS HIM A LIBERTY INTEREST AND WHY THOMAS BASICALLY  
24 GIVES HIM THAT LIBERTY INTEREST, I GUESS.

25 MR. THERIOT: WELL, I THINK THERE ARE TWO ASPECTS TO

1 OUR DUE PROCESS ARGUMENT, AND ONE OF THEM IS BASED UPON THE  
2 LIBERTY INTEREST AND ONE OF THEM IS BASED UPON THE PROCEDURE  
3 THAT IS ENTITLED TO EMPLOYEES THAT -- THAT ARE NOT -- CAN ONLY  
4 BE FIRED FOR CAUSE.

5 THE COURT: AND LET'S TALK ABOUT THE LIBERTY INTEREST,  
6 AND THEN WE'LL DO THE PROCEDURAL DUE PROCESS AS A SEPARATE ITEM.

7 MR. THERIOT: RIGHT, RIGHT. OKAY. THE EXCEPTION TO  
8 THE AT-WILL EMPLOYEE OBVIOUSLY IS THE SITUATION WHERE THEY'RE  
9 FIRED AND A STIGMATIZING STATEMENT IS MADE ABOUT THE EMPLOYEE.  
10 AND IN THIS PARTICULAR INSTANCE WE'VE ALLEGED THAT MAYOR REED  
11 HAS MADE SOME STIGMATIZING -- THEY'VE -- THEY'VE IN -- NOT ONLY  
12 INFERRED, BUT ESSENTIALLY SAID THAT HE DISCRIMINATES AGAINST  
13 PEOPLE BASED UPON THEIR SEXUAL ORIENTATION, HE'S NOT INCLUSIVE  
14 AND DOESN'T INCLUDE THEM. IN THE -- IF YOU LOOK AT PARAGRAPH 74  
15 OF THE COMPLAINT, IT HAS TO BE TAKEN AS TRUE THAT IT'S NOT ONLY  
16 DOES HE NOT DISCRIMINATE BASED UPON SEXUAL ORIENTATION, BUT HE  
17 ATTEMPTS TO BE INCLUSIVE. HIS PROGRAMS OVER THE YEARS HAVE  
18 INCLUDED ATTEMPTS TO MAKE ALL -- ALL INDIVIDUALS OF WHATEVER  
19 RACE, RELIGION OR SEXUAL ORIENTATION INCLUSIVE. AND THEN -- AND  
20 YOU LOOK AT PARAGRAPH 77, CHIEF COCHRAN INCLUDED MEMBERS OF THE  
21 L.G.B.T. COMMUNITY IN HIS GROUP THAT HELP GOVERN THE -- THE FIRE  
22 DEPARTMENT. SO NOT ONLY IS -- THAT'S A STIGMATIZING STATEMENT  
23 BECAUSE HE BELIEVES THAT IT'S WRONG TO DISCRIMINATE AGAINST  
24 PEOPLE BASED UPON THEIR SEXUAL ORIENTATION. AND SO IN THOSE  
25 PARTICULAR INSTANCE, THAT'S THE EXCEPTION. NOW, IF I MAY JUMP

1 AHEAD A LITTLE BIT --

2 THE COURT: ACTUALLY STOP JUST A SECOND BECAUSE I  
3 WANTED TO LOOK AT THAT. 74 IS NOT WHERE THAT IS. 74 IS  
4 BASICALLY WHERE THE COMPLAINT TALKS ABOUT THE FACT THAT  
5 MR. COCHRAN DID NOT DISCRIMINATE AND DO THINGS. HELP ME FIND  
6 WHERE THE ACTUAL STATEMENTS WERE, BECAUSE MY MEMORY WASN'T --

7 MR. THERIOT: OH, OKAY. I'M SORRY.

8 THE COURT: -- WASN'T THAT THEY WERE DISCRIMINATORY.  
9 MY MEMORY WAS THAT THEY JUST DISAGREED WITH HIM AND SAID THAT'S  
10 NOT HOW THE CITY BELIEVES AND THINGS LIKE THAT. I DIDN'T  
11 REMEMBER --

12 MR. THERIOT: IF YOU LOOK AT PAGE -- PARAGRAPH 157 AND  
13 158.

14 THE COURT: ALL RIGHT.

15 MR. THERIOT: IT SAYS, I PROFOUNDLY DISAGREE WITH AND  
16 AM DEEPLY DISTURBED BY THE SENTIMENTS EXPRESSED IN THE PAPERBACK  
17 REGARDING THE L.G.B.T. COMMUNITY. AND THEN AT 158 HE SAYS  
18 THAT -- AT THE LATTER PART, AND IT IS INCONSISTENT WITH THE  
19 ADMINISTRATION'S WORK TO MAKE ATLANTA A MORE WELCOMING CITY FOR  
20 ALL HER CITIZENS REGARDLESS OF THEIR SEXUAL ORIENTATION,  
21 RENDER -- GENDER, RACE AND RELIGIOUS BELIEFS.

22 THE COURT: SEE, I DON'T SEE THAT THIS SAYS THAT MAYOR  
23 REED ACCUSED MR. COCHRAN HIMSELF OF DISCRIMINATION. I JUST READ  
24 THIS AS SAYING THE MATERIAL IS INCONSISTENT WITH THE WORK. SO I  
25 READ THIS MORE AS THE MAYOR DISAGREEING WITH WHAT IS IN THE

1 BOOK, BUT NOT NECESSARILY SAYING THAT THERE'S ANYTHING WRONG  
2 WITH HIM HAVING THESE VIEWS, IT'S JUST THAT HE STRONGLY  
3 DISAGREES WITH THEM. AND IT DOESN'T TO ME RISE TO THE --  
4 BECAUSE I THINK IT'S ALMOST A LITTLE INCONSISTENT IN TERMS OF  
5 SAYING THAT THIS IS HIS DEEPLY-HELD RELIGIOUS BELIEF AND HERE IS  
6 SOMEONE JUST REITERATING WHAT IT IS AND WHY THAT IS A STIGMA  
7 BECAUSE IT'S REALLY MORE OF A RECITATION OF WHAT THOSE BELIEFS  
8 WERE AND MAYOR REED SAYING THAT THEY WERE INCONSISTENT WITH HIS  
9 OWN.

10 MR. THERIOT: AND HE'S SAYING WITH HIS OWN THAT'S --  
11 THAT HE -- HE'S SAYING AND INFERRING THAT HE'S NOT BEING  
12 INCLUSIVE. AND AT THIS STAGE OF THE LITIGATION YOU HAVE TO TAKE  
13 ALL INFERENCES IN FAVOR OF THE PLAINTIFF. AND I THINK IT'S  
14 CLEAR THAT CHIEF COCHRAN, NOT ONLY HIS RECORD INDICATES THAT HE  
15 HAS BEEN INCLUSIVE, BUT HIS RELIGIOUS BELIEFS ACTUALLY REQUIRE  
16 HIM TO BE INCLUSIVE. SO THIS HAS HAD A NEGATIVE EFFECT ON NOT  
17 ONLY HIS STANDING IN THE COMMUNITY, BUT HIS ABILITY TO GET  
18 ANOTHER JOB. AND I THINK THAT'S AN IMPORTANT PART OF THE  
19 LIBERTY INTEREST THAT THE COURT IN THOMAS RECOGNIZED. AND I  
20 THINK AN ATTEMPT TO LIMIT THOMAS TO JUST ACCUSATIONS OF CRIMINAL  
21 BEHAVIOR -- AND WHILE THIS COULDN'T BE CHARACTERIZED AS CRIMINAL  
22 BEHAVIOR, IT CERTAINLY WOULD BE AN ACCUSATION THAT HE'S  
23 VIOLATING POLICY OF THE CITY NOT TO DISCRIMINATE BASED ON SEXUAL  
24 ORIENTATION. I THINK THAT'S A STIGMATIZING STATEMENT. AND  
25 CERTAINLY THOMAS ISN'T LIMITED TO CRIMINAL BEHAVIOR. IF YOU

1 LOOK AT DENNIS VS. S&S CONSOLIDATED SCHOOLS WHICH IS CITED IN  
2 THOMAS, A PERSON STATED A LIBERTY INTEREST DUE PROCESS CLAIM  
3 BECAUSE THEY SAID THEY HAD -- HE HAD A DRINKING PROBLEM. SO  
4 IT'S NOT LIMITED TO CRIMINAL BEHAVIOR. AND I THINK IN THIS  
5 PARTICULAR INSTANCE, ESPECIALLY AT THIS EARLY STAGE OF THE  
6 LITIGATION WHERE THE FACTS HAVE TO BE VIEWED IN THE LIGHT MOST  
7 FAVORABLE TO CHIEF COCHRAN, THAT IS A STIGMATIZING STATEMENT.

8 THE COURT: OKAY. MR. GODFREY, DID YOU WANT TO SAY  
9 ANYTHING ELSE ON THAT POINT?

10 MR. GODFREY: YOUR HONOR, I SIMPLY DON'T SEE HOW IT  
11 COULD BE ALLEGED THAT THE STIGMA ATTACHED TO CHIEF COCHRAN COMES  
12 FROM ANY STATEMENTS MADE BY THE MAYOR WHEN HE PUBLISHED THIS  
13 BOOK AND DISSEMINATED HIMSELF AND ESSENTIALLY TOLD THE WHOLE  
14 WORLD, THIS IS WHO I AM, THESE ARE MY BELIEFS. AND THE MAYOR  
15 SIMPLY SAID, I DISAGREE.

16 THE COURT: OKAY. THANK YOU. NOW WE'RE TO THE  
17 PROCEDURAL DUE PROCESS RELATED ARGUMENT. AND THE CITY'S  
18 ARGUMENT ON THAT ONE SEEMS TO BE VERY CLEAR, IS THAT THESE  
19 PARTICULAR PROTECTIONS, THIS 114-528 AND THE LOUDERMILK DECISION  
20 DO NOT APPLY TO THE PLAINTIFF BECAUSE HE WAS NOT A DEPARTMENT  
21 HEAD AND THEY ONLY DEAL WITH CITY EMPLOYEES THAT ARE IN THE  
22 CLASSIFIED SERVICE. AND AS A MATTER OF LAW, THEREFORE, THERE  
23 AREN'T THE SAME PROCEDURAL DUE PROCESS PROTECTIONS THAT ARE  
24 PROVIDED TO MR. COCHRAN BECAUSE OF HIS STATUS AS A DEPARTMENT  
25 HEAD. AND WAS THERE ANYTHING IN ADDITION TO THAT THAT YOU



1 WANTED TO STAY, MR. GODFREY?

2 MR. GODFREY: NOTHING OTHER THAN, YOUR HONOR, A CITE  
3 TO AN ORDINANCE, AND THE COURT CAN TAKE JUDICIAL NOTICE OF THAT  
4 ORDINANCE. IF YOU LOOK AT THE ORDINANCE, IT SIMPLY SAYS THIS  
5 APPLIES TO THE CIVIL SERVICE OF WHICH HE'S NOT A PART.

6 THE COURT: OKAY. THANK YOU.

7 AND, MR. THERIOT, CERTAINLY ADDRESS THAT PARTICULAR POINT  
8 AND EXPLAIN EITHER WHY THAT'S NOT APPLICABLE OR WHY HE IS IN A  
9 CIVIL SERVICE.

10 MR. THERIOT: CERTAINLY. THE PROVISION THAT WE ARE  
11 RELYING UPON TO SAY THAT HE CAN ONLY BE DISMISSED FOR CAUSE AND,  
12 THEREFORE, THE DUE PROCESS RIGHTS AND PROCEDURE HAS TO ATTACH IS  
13 114-528. AND 115-528 IS IN ARTICLE SIX, AND IT'S LABOR  
14 RELATIONS, DISCIPLINARY ACTION. AND IT SPECIFICALLY SAYS, NO  
15 EMPLOYEE SHALL BE DISMISSED FROM EMPLOYMENT OR OTHERWISE  
16 ADVERSELY AFFECTED AS TO COMPENSATION OR EMPLOYMENT STATUS  
17 EXCEPT FOR CAUSE.

18 AND UNDER THE CITY OF CLEVELAND VS. LOUDERMILK -- OR  
19 CLEVELAND BOARD OF EDUCATION VS. LOUDERMILK, I APOLOGIZE,  
20 THAT -- THE RIGHTS ATTACH. NOW, WHAT THE CITY IS SAYING IS  
21 THAT, NO, NO, NO, 114-78 SAYS THAT THIS ARTICLE SHALL APPLY TO  
22 ALL POSITIONS IN THE CLASSIFIED CIVIL SERVICE. THE PROBLEM IS  
23 THAT 114-78 IS LIMITED TO ARTICLE FOUR. BY THIS ARTICLE THEY  
24 MEAN ARTICLE FOUR. 114-528 IS IN ARTICLE SIX. SO 114-78  
25 DOESN'T APPLY TO THE REQUIREMENT THAT THEY HAVE CAUSE BEFORE

1 DISCRIMINATING -- BEFORE DISMISSING SOMEONE. AND IF YOU LOOK AT  
2 THE DEFINITIONS IN JUST A FEW PAGES AHEAD IN THE CODE, 114-76,  
3 IT SAYS THAT THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO  
4 THIS CHAPTER, MEANING 114. AND BY THIS CHAPTER -- AND THEN IT  
5 SAYS -- THEN IT DEFINES EMPLOYEE AS ANY PERSON HOLDING A  
6 POSITION OR EMPLOYMENT WITH THE CITY.

7 SO BOTTOM LINE IS THE CITY'S REFERRING TO ARTICLE FOUR.  
8 WE'RE REFERRING TO ARTICLE SIX. AND ARTICLE SIX ISN'T LIMITED  
9 TO CLASSIFIED EMPLOYEES.

10 THE COURT: OKAY. THANK YOU.

11 MR. GODFREY, DID YOU WANT TO ADDRESS THAT PARTICULAR  
12 ARGUMENT?

13 MR. GODFREY: YOUR HONOR, EVEN IF YOU LOOK BEYOND THE  
14 ORDINANCES, THE STATE LAW OF GEORGIA SAYS THAT EMPLOYMENT WITHIN  
15 THE STATE OF GEORGIA SHALL BE AT-WILL UNLESS THERE IS A CONTRACT  
16 OF EMPLOYMENT OR ESSENTIALLY THERE'S SOME CIVIL SERVICE  
17 PROTECTION. HE HAS NOT ALLEGED THAT HE'S A CIVIL SERVANT. HE'S  
18 ALLEGED THAT HE'S THE FIRE CHIEF. HE'S ALLEGED THAT HE'S IN  
19 CHARGE OF A DEPARTMENT. WE COULD WAIT UNTIL THE SUMMARY  
20 JUDGMENT STAGE AND GET RID OF THAT VERY EASILY, BUT THAT MEANS  
21 WE HAVE TO GO THROUGH THIS PROCESS OF DISCOVERY AND GET THAT --  
22 THIS IS THE STAGE WHERE SOMETHING LIKE THIS SHOULD BE DISMISSED,  
23 AND WE'RE JUST SURPRISED THAT THEY'RE ACTUALLY BRINGING IT.

24 THE COURT: OKAY. THANK YOU. I THINK THAT THAT TAKES  
25 US THROUGH THE COUNTS THAT WERE IN THE COMPLAINT THAT WERE --

1 OH, NO, IT DOESN'T. WE'VE GOT QUALIFIED IMMUNITY. YES. SO THE  
2 NEXT ISSUE IS THE QUALIFIED IMMUNITY ISSUE. AND LET ME HEAR  
3 FROM MR. GODFREY ON THAT POINT.

4 MR. GODFREY: YOUR HONOR, THE LAW IN THIS CIRCUIT HAS  
5 RECOGNIZED THAT EMPLOYEES IN POSITIONS OF TRUST OR IN  
6 POLICY-MAKING POSITIONS IN GOVERNMENT HAVE A REDUCED EXPECTATION  
7 OF FIRST AMENDMENT PROTECTION BECAUSE THE GOVERNING BODY OR  
8 CHIEF EXECUTIVE HAS THE RIGHT TO EXPECT THAT SUCH PERSONS WILL  
9 SUPPORT THE GOVERNING POLICY AND NOT MAKE STATEMENTS THAT ARE IN  
10 CONFLICT WITH THAT POLICY. THAT'S ELEVENTH CIRCUIT CASE OF  
11 SHAHAR VS. BOWERS, 114 F.3D 1097.

12 MAYOR REED APPOINTS DEPARTMENT HEADS WHO SIT AS MEMBERS OF  
13 HIS CABINET. HE HAS THE RIGHT TO EXPECT THAT THE CITY'S POLICY  
14 OF NON-DISCRIMINATION WILL BE CONSISTENTLY ENFORCED BY THOSE  
15 EMPLOYEES. WHEN ONE OF HIS CLOSEST ADVISORS LIKE CHIEF COCHRAN  
16 MAKES PUBLIC STATEMENTS THAT CAUSE THE PUBLIC TO DOUBT THE  
17 COMMITMENT OF THE MAYOR AND THE CITY THROUGH THIS LONG-STANDING  
18 POLICY, IT DOES NOT MATTER THAT THE CONTRARY STATEMENTS OF CHIEF  
19 COCHRAN ARE BASED ON SOME RELIGIOUS DOCTRINE. AS I NOTED  
20 EARLIER, THE SUPREME COURT IN CONNICK VS. MYERS INDICATED THAT A  
21 GOVERNMENT EMPLOYER HAS TO HAVE WIDE DISCRETION AND CONTROL OVER  
22 THE MANAGEMENT OF ITS PERSONNEL. AND IT'S THAT DISCRETION THAT  
23 FORMS THE FIRST PART OF THE ANALYSIS OF QUALIFIED IMMUNITY, WAS  
24 THE MAYOR ACTING IN DISCRETION -- IN HIS DISCRETION. HE  
25 CLEARLY WAS ACTING WITHIN HIS DISCRETION WHEN HE MADE THE

1 DECISION THAT A MEMBER OF HIS CABINET HAD VIOLATED HIS TRUST AND  
2 COULD NO LONGER CONTINUE IN THAT POSITION. THAT IS WHAT  
3 DISCRETION IS ALL ABOUT. SO IN THIS SITUATION MAYOR REED IS  
4 ENTITLED TO QUALIFIED IMMUNITY WHERE HE ACTED TO RID THE CITY OF  
5 THE SOURCE OF THE CONTROVERSY ABOUT GAYS AND ABOUT WOMEN. IN  
6 METROPOLITAN DADE COUNTY, DARTLAND VS. METROPOLITAN DADE COUNTY,  
7 ANOTHER FIFTH CIRCUIT CASE, 866 F.2D 1323, THE COURT NOTED THAT  
8 THE SUPREME COURT HAS NEVER ESTABLISHED A BRIGHT LINE STANDARD  
9 FOR DETERMINING WHEN THE STATE AS EMPLOYER MAY TAKE ACTION  
10 ADVERSE TO AN EMPLOYEE IN RESPONSE TO THE EMPLOYEE'S SPEECH.  
11 BECAUSE OF THIS CASE-BY-CASE APPROACH, THERE WILL RARELY BE A  
12 BASIS FOR A PRIORI JUDGMENT THAT THE TERMINATION OF A PUBLIC  
13 EMPLOYEE VIOLATED CLEARLY ESTABLISHED LAW.

14 THAT IS THE SECOND PRONG OF THE ANALYSIS.

15 BECAUSE NO BRIGHT LINE STANDARD PUTS THE REASONABLE PUBLIC  
16 EMPLOYER ON NOTICE OF A CONSTITUTIONAL VIOLATION, THE EMPLOYER  
17 IS ENTITLED TO IMMUNITY EXCEPT IN THE EXTRAORDINARY CASE.

18 ULTIMATELY MAYOR REED HAD THE DISCRETION. ACCORDING TO THE  
19 ELEVENTH CIRCUIT, BECAUSE THERE IS NO BRIGHT LINE STANDARD TO  
20 PUT HIM ON NOTICE THAT HIS TERMINATION OF THE CHIEF IN THIS  
21 INSTANCE WOULD BE A VIOLATION OF HIS CONSTITUTIONAL RIGHTS  
22 BECAUSE THERE IS NO BRIGHT LINE STANDARD, ON THOSE TWO ISSUES  
23 ALONE HE IS ENTITLED TO QUALIFIED IMMUNITY.

24 THE COURT: OKAY. THANK YOU.

25 MR. THERIOT: YOUR HONOR, WE CERTAINLY -- I CERTAINLY

1 DON'T DISAGREE WITH MY COLLEAGUE THAT MAYOR REED HAS DISCRETION.  
2 HOWEVER, THAT DISCRETION IS LIMITED BY THE CONSTITUTION. AND I  
3 THINK WHEN WE DO THE QUALIFIED IMMUNITY ANALYSIS AND DETERMINE,  
4 FIRST OF ALL, WHETHER SOMETHING IS CLEARLY ESTABLISHED, IT HAS  
5 BEEN CLEARLY ESTABLISHED IN THE ELEVENTH CIRCUIT IN THE -- ONCE  
6 AGAIN IN THE COOK CASE, WHICH THEY'VE MADE NO ATTEMPT TO  
7 DISTINGUISH, THAT YOU CANNOT FIRE SOMEBODY IN RETALIATION FOR  
8 THEIR SPEECH ON A MATTER OF PUBLIC CONCERN. THAT WAS IN 2005.  
9 SO THIS LAW HAS BEEN -- WAS ESTABLISHED WELL BEFORE 2014 WHEN  
10 MAYOR REED FIRED CHIEF COCHRAN. AND GOING TO THE STANDARD WHEN  
11 YOU'RE TALKING ABOUT A BALANCING TEST AND THE PICKERING  
12 ANALYSIS, I'M NOT FAMILIAR WITH THOSE TWO CASES THAT MY  
13 COLLEAGUE CITED. I DON'T THINK THEY'RE IN THE BRIEF, BUT I DO  
14 KNOW THAT IN THE BRIEFING THAT AKINS VS. FULTON COUNTY, WHICH IS  
15 ONE OF THE CASES CITED BY THE DEFENDANT, THAT TO BE CLEARLY  
16 ESTABLISHED, THE FACTS OF CASES DON'T HAVE TO BE MATERIALLY  
17 SIMILAR, DOESN'T HAVE TO BE EXACTLY ON ALL FOURS. AND, FOR  
18 INSTANCE, IN THE HOLLOMAN CASE WHICH IS ALSO CITED IN THE  
19 BRIEFING, THE COURT FOUND THAT AN INDIVIDUAL -- A STUDENT WHO  
20 REFUSED TO SAY THE PLEDGE OF ALLEGIANCE, INSTEAD LIFTED UP HIS  
21 HAND IN A FIST IN DEFIANCE OF THE SCHOOL BOARD, THAT THE TINKER  
22 CASE FROM WAY BACK IN THE 60'S, THE ARM BAND CASE, SET THE  
23 PRINCIPLE THAT CLEARLY ESTABLISHED THE LAW IN -- WHERE A STUDENT  
24 WAS ENGAGING IN SPEECH WITH AN ARM BAND, NOT REFUSING TO SAY THE  
25 PLEDGE OF ALLEGIANCE, BUT IT SET THE GENERAL PRINCIPLE THAT

1 CLEARLY ESTABLISHED THE LAW. AND HERE WE HAVE NOT ONLY SUPREME  
2 COURT AUTHORITY, BUT ALSO ELEVENTH CIRCUIT AUTHORITY CLEARLY  
3 ESTABLISHING THAT IT IS UNCONSTITUTIONAL TO DISCHARGE SOMEBODY  
4 IN RETALIATION FOR EXERCISING THEIR FREE SPEECH RIGHTS. AND I  
5 THINK THAT'S CLEARLY ESTABLISHED AND, THEREFORE, QUALIFIED  
6 IMMUNITY ISN'T APPROPRIATE ESPECIALLY AT THIS EARLY STAGE IN THE  
7 LITIGATION WHERE THE FACTS HAVE TO BE ASSUMED AS TRUE.

8 THE COURT: OKAY. THANK YOU VERY MUCH.

9 MR. THERIOT: THANK YOU.

10 THE COURT: I THINK THAT DEALS WITH KIND OF THE NUTS  
11 AND BOLTS OF THE ARGUMENTS THAT THE DEFENDANTS HAVE MADE IN  
12 THEIR MOTION TO DISMISS AND TO WHICH THE PLAINTIFF HAS RESPONDED  
13 TO. WHAT I'M GOING TO DO AT THIS POINT IS, AS I PROMISED, GIVE  
14 BOTH SIDES, STARTING WITH THE DEFENDANTS WHOSE MOTION IT IS, TO  
15 GO AHEAD AND KIND OF SUM UP OR ADD ANYTHING YOU WANT TO. YOU  
16 DON'T HAVE TO USE ALL TEN MINUTES, BUT YOU'RE CERTAINLY WELCOME  
17 TO HAVE AS MUCH OF THAT AS YOU WANT BECAUSE I KNOW I'VE ASKED  
18 LOTS OF QUESTIONS AND TAKEN YOU OFF YOUR SCRIPT TODAY, AND I DO  
19 APPRECIATE THAT.

20 SO WITH THAT, I'LL HEAR FROM YOU, MR. GODFREY.

21 MR. GODFREY: THANK YOU, YOUR HONOR. AS YOU REVIEW  
22 THE BRIEFS AND DO YOUR ANALYSIS AND RECALL WHAT WE'VE SAID HERE  
23 TODAY, I THINK IT'S IMPORTANT THAT YOU NOT IGNORE THE CONTEXT IN  
24 WHICH THIS COMPLAINT IS FILED. BECAUSE, AS YOU'VE HEARD HERE  
25 TODAY ON NUMEROUS OCCASIONS, WHILE THE PLAINTIFFS HAVE SAID 'X'

1 IN THE BRIEF, WHAT THEY REALLY MEANT WAS -- I MEAN, IN THE  
2 COMPLAINT, WHAT THEY REALLY MEANT WAS NOT 'X' BUT 'Y' OR MAYBE  
3 'Z'. SO TO ALLOW THEM AT THIS POINT TO MAYBE CHANGE WHAT THEY  
4 HAVE ALLEGED, I THINK, WOULD BE IMPROPER AND UNFAIR. BUT THE  
5 KEY TO THIS IS THAT FIRST DETERMINATION THAT THE COURT HAS TO  
6 MAKE AND THAT IT CAN MAKE AT THIS STAGE -- AND I SUBMIT TO YOUR  
7 HONOR THAT IT IS CRITICAL THAT YOU SPEND WHATEVER TIME NECESSARY  
8 TO DEAL WITH THAT THRESHOLD ISSUE OF, BEFORE I HAVE TO CONSIDER  
9 PICKERING, BEFORE I HAVE TO CONSIDER ANY OTHER BALANCING TEST,  
10 IS WHAT I'M LOOKING AT IN THIS COMPLAINT TRULY A MATTER OF  
11 PUBLIC CONCERN. BECAUSE IF YOU GET INTO THAT PART OF IT AND YOU  
12 DETERMINE THAT, YOU KNOW REALLY THIS IS NOT, THEN YOU DON'T NEED  
13 TO GET TO THE REST OF IT.

14 SO IF I WERE TO ASK YOU TO SLICE THE PIE IN ANY CERTAIN WAY  
15 AS YOU DO THIS, I'D SAY TAKE HALF OF THE TIME ON THE PIE AND  
16 SPEND IT ON WHETHER THIS IS A MATTER OF PUBLIC CONCERN. BECAUSE  
17 CLEARLY, CLEARLY, CLEARLY, CLEARLY IT IS NOT. IF IT IS NOT,  
18 THEN WHAT IS IT? IT'S ONE PERSON'S PERSONAL BELIEFS ABOUT WHAT  
19 THE BIBLE SAYS TO HIM. IN THIS CASE WE'RE NOT TALKING ABOUT A  
20 BIBLICAL SCHOLAR WHOSE WRITINGS AND TEACHINGS ARE RELIED ON BY  
21 OTHER BIBLICAL SCHOLARS AND RELIGIOUS LEADERS. WE'RE TALKING  
22 ABOUT ONE MAN WHO IDENTIFIES HIMSELF IN THIS BOOK AS THE ATLANTA  
23 FIRE CHIEF AND WHO ALSO SAYS IN THIS BOOK -- AND THIS IS  
24 CRITICAL -- I AM THE ATLANTA FIRE CHIEF, THESE ARE MY BELIEFS,  
25 AND I GOVERN THIS AGENCY BY THESE BELIEFS. AND THEN HE GOES ON

1 TO SAY, I BELIEVE THAT A CERTAIN CLASS OF PEOPLE WHO ARE ON MY  
2 WORK FORCE WHOM I HAVE NOT DISCRIMINATED AGAINST BECAUSE I KNOW  
3 WHAT THE LAW IS, BUT WHO ARE ON MY WORK FORCE ARE ENGAGING IN  
4 BESTIALITY; THAT I HAVE ON MY WORK FORCE FEMALE EMPLOYEES WHO I  
5 BELIEVE SHOULD BE CONSIDERED SECOND CLASS CITIZENS IN 2014,  
6 WOMEN WHO BEFORE THEY GET US INTO ORIGINAL SIN SHOULD GO ASK  
7 YOUR HUSBAND TO TAKE CARE OF THE SERPENT BECAUSE HE'S SMART.

8 I'VE BEEN AROUND CHURCHES A LONG, LONG, LONG, LONG TIME.  
9 AND I HAVE NEVER EVER HEARD SOMEBODY MAKE SUCH A CONDESCENDING  
10 REMARK ABOUT WOMEN IN TERMS OF EVE SHOULD HAVE ASKED ADAM TO  
11 TAKE CARE OF IT. AND THAT TELLS YOU ONE THING. YOU HAVEN'T  
12 HEARD IT, I HAVEN'T HEARD IT, THEN IT'S GOT TO BE HIS PERSONAL  
13 BELIEF, HIS PERSONAL MISREADING OF THE BIBLE. TO THEN TAKE THAT  
14 AND CLOAK IT SOMEHOW IN THE PROTECTIONS OF THE FIRST AMENDMENT  
15 DOES A DISSERVICE TO EVERYBODY, TO EVERY COURT, TO EVERY  
16 EMPLOYER WHO BELIEVES THAT PEOPLE SHOULD BE TREATED THE SAME.

17 WE HAVE LAWS ABOUT THAT. BUT WHAT MAKES THIS WORSE IS THAT  
18 THE CHIEF DIDN'T JUST PUT HIS BOOK ON AMAZON WHERE PEOPLE COULD  
19 BUY IT. HE BROUGHT IT INTO THE WORKPLACE. HE TOOK HIS DEPUTY  
20 CHIEFS, HIS ASSISTANT CHIEFS AND SAY, HERE, GUYS AND LADIES,  
21 HERE'S SOMETHING I WROTE ABOUT MY BELIEFS, HERE IS MY BELIEFS OF  
22 HOW THIS DEPARTMENT SHOULD BE RUN. IS HE ESPOUSING A MATTER OF  
23 PUBLIC CONCERN AT THIS POINT? IF YOU TELL YOUR STAFF, THIS IS  
24 HOW I WANT THINGS RUN, IS THAT A MATTER OF PUBLIC CONCERN? IT  
25 IS NOT. IF THE CITY ATTORNEY CALLS US ALL TOGETHER IN THE



1 DEPARTMENT AND SAYS, THIS IS HOW I WANT THINGS RUN, IS THAT A  
2 MATTER OF PUBLIC CONCERN? IT IS NOT. IT IS AN INTERNAL MATTER.  
3 HE BROUGHT THESE JAUNDICE BELIEFS, HIS PERSONAL JAUNDICE BELIEFS  
4 INTO THE WORKPLACE, HANDED OUT THE BOOK. AND YOU DON'T HAVE TO  
5 SAY THE REST OF IT.

6 SOME OF YOU ARE TOO YOUNG TO KNOW WHO PAUL HARVEY IS, BUT  
7 PAUL HARVEY HAS A RADIO SHOW CALLED REST OF THE STORY. AND IT  
8 WAS A FEATURE WHERE HE WOULD TAKE A NEWS ITEM THAT EVERYBODY  
9 KNEW ABOUT AND HE SAID, AND HERE IS THE REST OF THE STORY. AND  
10 THAT WAS VERY COLORFUL. YOU DON'T NEED TO KNOW THE REST OF THE  
11 STORY WHEN THE CHIEF OF YOUR DEPARTMENT HANDS TO YOU A BOOK THAT  
12 HE HAS WRITTEN AND SAYS, THESE ARE MY BELIEFS, THIS IS HOW I  
13 BELIEVE THIS DEPARTMENT SHOULD BE RUN, THE REST OF THE STORY IS  
14 THAT THOSE PEOPLE WHO RECEIVE THAT BOOK BELIEVE THAT THEY HAVE  
15 TO COMPLY WITH THAT, THEY HAVE TO TREAT PEOPLE THE SAME WAY THE  
16 CHIEF WOULD, THEY HAVE TO BELIEVE THAT THE PEOPLE THAT THEY KNOW  
17 THAT THEY WORK SIDE BY SIDE WITH WHO ARE MEMBERS OF THE L.G.B.T.  
18 COMMUNITY ARE ENGAGING IN BESTIALITY, BESTIALITY. IF YOU CAN  
19 GET BEYOND ALL OF THAT AND CONSIDER WHAT HE HAS SAID AND WHAT HE  
20 HAS DONE AS A MATTER OF PUBLIC CONCERN, THEN I GUESS WE'LL NEVER  
21 WIN THIS CASE BECAUSE IF THAT IS ALLOWED, WE'RE HAMSTRUNG.  
22 BECAUSE THAT MEANS SOMEBODY WHO EXTRACTS A PASSAGE FROM THE  
23 TORAH OR SOMEBODY WHO EXTRACTS A PASSAGE FROM THE KORAN AND THEN  
24 INTERPRETS THAT IN THEIR OWN LITTLE MINDS AND SAYS, THAT TELLS  
25 ME THAT THIS PERSON IS AN INFIDEL, THAT THEY SHOULD BE ALLOWED

1 TO COME INTO A WORKPLACE AS THE HEAD OF A DEPARTMENT, NOT JUST  
2 AS AN EVERYDAY EMPLOYEE, AS THE HEAD OF A DEPARTMENT AND SPOUT  
3 THOSE BELIEFS WHICH ARE CONTRARY TO THE GOVERNING POLICY AND  
4 THEN WALK AWAY BECAUSE THEIR EXPLANATION IS, WELL, THAT'S MY  
5 RELIGIOUS BELIEF, THAT'S HOW I READ THE BIBLE.

6 AS I SAID WHEN I WAS TALKING TO YOU EARLIER, HOW YOU  
7 INTERPRET THE BIBLE, HOW YOU INTERPRET THE KORAN, HOW YOU  
8 INTERPRET THE TORAH IS A PERSONAL BELIEF. IT'S VERY, VERY  
9 LIMITED. IT'S EVEN PERSONAL TO THOSE PEOPLE WHO RIDE AROUND  
10 WITH BUMPER STICKERS ON THEIR CAR THAT SAY, GOD SAID IT, I  
11 BELIEVE IT, AND THAT'S THE END OF IT. IS THAT PERSON MAKING A  
12 PUBLIC STATEMENT? ON A BUMPER STICKER IN THE PUBLIC DOMAIN.  
13 BUT IT'S NOT A PUBLIC STATEMENT. IT'S A PERSONAL STATEMENT.  
14 AND JUST BECAUSE HE BRINGS IT OUT OF HIS HOUSE OR OUT OF HIS  
15 CHURCH OR OUT OF HIS BIBLE STUDY AND PUTS IT FORTH IN THE  
16 WORKPLACE DOES NOT CLOAK IT IN RELIGIOUS SPEECH, DOES NOT CLOAK  
17 IT IN MATTERS OF PUBLIC CONCERN. AND I THINK THAT'S THE KEY TO  
18 WHAT YOU NEED TO DO TODAY. THANK YOU.

19 THE COURT: THANK YOU VERY MUCH, MR. GODFREY.

20 MR. THERIOT: THANK YOU, YOUR HONOR. I AM OLD ENOUGH  
21 TO REMEMBER PAUL HARVEY AND THE REST OF THE STORY, AND I THINK  
22 THE REST OF THE STORY IS THAT THE FIRST AMENDMENT APPLIES TO NOT  
23 ONLY PEOPLE IN THE PUBLIC DOMAIN, BUT IT ALSO APPLIES TO PEOPLE  
24 IN PUBLIC EMPLOYMENT. AND THE SUPREME COURT HAS BEEN VERY CLEAR  
25 ABOUT THAT. AND, INCIDENTALLY, THE VIEWS EXPRESSED IN CHIEF

1 COCHRAN'S BOOK ARE GENERAL PRINCIPLES. THEY'RE NOT A MANAGEMENT  
2 PLAN. AND IF YOU LOOK AT PARAGRAPH 74 THROUGH 78 OF THE  
3 COMPLAINT, IT SHOWS THAT HE HAS BEEN INCLUSIVE. AND WHAT'S  
4 REALLY GOING ON HERE IS THE CITY'S, DESPITE THEIR PROTESTATIONS  
5 TO THE CONTRARY, IS NOT BEING INCLUSIVE. THEY'RE SAYING THAT IF  
6 YOU BELIEVE LIKE CHIEF COCHRAN BELIEVES AND MILLIONS OF OTHER  
7 CHRISTIANS, MANY DEVOUT MUSLIMS AND MANY ORTHODOX JEWS BELIEVE  
8 ABOUT MARRIAGE AND SEX WITHIN THE CONFINES OF THOSE, THEN YOU  
9 CAN'T WORK IN THE CITY. AND SO WHO'S NOT BEING INCLUSIVE IS THE  
10 CITY. THAT'S THE BOTTOM LINE.

11 AND SO I THINK IT'S IMPORTANT THAT WE KEEP IN MIND THAT  
12 THIS IS -- I DON'T HAVE ANY PROBLEM AT ALL WITH YOU FOCUSING ON  
13 THE FACT THAT WHETHER THIS IS A MATTER OF PUBLIC CONCERN BECAUSE  
14 I THINK AT THIS STAGE OF THE LITIGATION WHERE THE FACTS HAVE TO  
15 BE TAKEN AS TRUE AND VIEWED IN A LIGHT MOST FAVORABLE TO THE  
16 PARTY, I THINK IT'S VERY CLEAR THAT IT IS A MATTER OF PUBLIC  
17 CONCERN. THE ONLY CASES THAT HAVE BEEN CITED THAT ADDRESS  
18 RELIGIOUS SPEECH AND EVEN RELIGIOUS SPEECH ON HOMOSEXUALITY HAVE  
19 ALL HELD THAT THEY'RE MATTERS OF PUBLIC CONCERN AND INDICATES  
20 THAT -- I THINK THE FINAL POINT I'D LIKE TO MAKE IS THAT IT  
21 REALLY IS THE SPEECH AND THE BELIEFS OF CHIEF COCHRAN THAT ARE  
22 AT ISSUE HERE. AND ANY OTHER ATTEMPT TO SAY THAT HE WAS FIRED  
23 FOR A DIFFERENT REASON IS A RED HERRING. AND IN THIS PARTICULAR  
24 INSTANCE BASED UPON WHAT MY COLLEAGUE HAS SAID, HE CAN HAVE HIS  
25 BELIEFS AS LONG AS HE KEEPS THEM AT HOME, KEEPS THEM AT HIS

1 CHURCH, KEEPS IN HIS BIBLE STUDY. AND, OF COURSE, THOSE ARE  
2 EXACTLY THE TYPES OF THINGS THAT THE FIRST AMENDMENT AND THE  
3 FREE SPEECH CLAUSE WERE DESIGNED TO PROTECT. SO CERTAINLY HE  
4 DOESN'T HAVE THE SAME -- DOESN'T HAVE THE SAME RIGHTS THAT  
5 SOMEBODY OUT IN THE PUBLIC SPHERE HAS, BUT THE SUPREME COURT HAS  
6 SAID OVER AND OVER AGAIN, THE ELEVENTH CIRCUIT HAS SAID OVER AND  
7 OVER AGAIN THAT HE DOESN'T CHECK HIS CONSTITUTIONAL RIGHTS AT  
8 THE DOOR WHEN HE COMES TO WORK AS A PUBLIC EMPLOYEE. AND THAT'S  
9 EXACTLY WHAT COUNSEL FOR THE CITY AND MAYOR REED HAS SAID THAT  
10 HE HAS TO DO AND THAT'S EXACTLY ACTUALLY WHAT THE CITY HAS SAID  
11 AND WHAT COUNCILMAN WAN HAS SAID.

12 SO IF WE TAKE THOSE FACTS AS TRUE, VIEW THEM IN THE LIGHT  
13 MOST FAVORABLE TO THE CLIENT, WE SEE THAT IT REALLY IS NOT CHIEF  
14 COCHRAN THAT IS NOT BEING INCLUSIVE. HE DOESN'T HAVE -- HE HAS  
15 BELIEFS THAT ARE IN CONFORMANCE WITH MANY OTHERS, DOESN'T  
16 DISCRIMINATE AGAINST PEOPLE WHO ARE ENGAGED IN HOMOSEXUALITY OR  
17 BASED UPON THEIR SEXUAL ORIENTATION OR WOMEN ANYMORE THAN HE  
18 DISCRIMINATES AGAINST PEOPLE WHO GET DIVORCED. IT JUST HASN'T  
19 OCCURRED. AND NOT ONLY DOES THE RECORD AT THIS POINT INDICATE  
20 THAT IT HASN'T OCCURRED, BUT THAT THE -- THE RECORD ALSO  
21 INDICATES THAT THE FIRE DEPARTMENT UNDER CHIEF COCHRAN'S  
22 LEADERSHIP HAS BEEN RUNNING LIKE A WELL-OILED MACHINE.

23 NOVEMBER 1ST, 23 DAYS BEFORE HE WAS FIRED, THE CITY OF  
24 ATLANTA GOT A CLASS ONE PUBLIC PROTECTION CLASSIFICATION, THE  
25 HIGHEST LEVEL THAT THE INSURANCE INDUSTRY GIVES THAT INDICATES

1 THAT IT'S LEVEL OF PREPAREDNESS AND ABILITY TO PROTECT THE  
2 PUBLIC IS ABOUT AS HIGH -- IS AS HIGH AS IT CAN GET. CHIEF  
3 COCHRAN'S BELIEFS AND HIS CONVICTIONS WHICH HAVE BEEN CONCEDED  
4 ARE THE ISSUE HERE. THEY ARE THE THINGS THAT ARE THE REASON WHY  
5 HE WAS FIRED AND THERE'S NO INDICATION AT ALL THAT THEY EVER HAD  
6 ANY AFFECT IN A DISRUPTIVE MANNER ON THE WORKPLACE OR THAT THEY  
7 WILL. AND SO I THINK IT'S VERY CLEAR THAT YOUR HONOR SHOULD  
8 DENY THE MOTION TO DISMISS AS TO ALL THE CLAIMS AND THAT THIS  
9 CASE SHOULD PROCEED ACCORDING TO OTHER TYPES OF CASES IN THIS  
10 AREA AND DISCOVERY SHOULD PROCEED. SO THANK YOU.

11 THE COURT: THANK YOU VERY MUCH.

12 IN TERMS OF MY KIND OF CLOSING REMARKS, I GUESS I'LL JUST  
13 KIND OF END WITH WHAT I STARTED WITH. THERE ARE SOME VERY  
14 SPECIFIC ARGUMENTS IN FRONT OF THE COURT THAT THE DEFENDANT HAS  
15 PRESENTED IN TERMS OF THE MOTION TO DISMISS AND A VERY NARROW  
16 RECORD AT THIS POINT IN TIME WHICH IS THE COMPLAINT AND REALLY  
17 THE BRIEFS THAT THE COURT HAS IN FRONT AT THIS POINT IN TIME.  
18 SO WHAT I'M GOING TO DO IS, AS YOU HOPEFULLY COULD TELL, I'VE  
19 ALREADY SPENT A GREAT DEAL OF TIME READING THE BRIEFS AND  
20 LOOKING INTO SOME OF THESE CASES. I'M NOT DONE WITH THE WORK I  
21 WANT TO DO IN TERMS OF -- I'VE HEARD YOUR ARGUMENTS TODAY. I  
22 WANT TO GO BACK AND RE-READ THE BRIEFS AND DO SOME MORE LEGAL  
23 RESEARCH. AND THEN I WILL DO MY ORDER. I'M NOT GOING TO HAVE A  
24 LONG PERIOD OF TIME BETWEEN THE TWO. I'M WORKING ON IT AS WE  
25 SPEAK AND HOPE TO GET YOU SOMETHING FAIRLY SOON. IT IS COMPLEX

1 IN TERMS OF SOME OF THE CASE LAW AND SOME OF THE ISSUES, SO I  
2 WANT TO TAKE TIME TO MAKE SURE THAT I GET IT RIGHT AND THAT I  
3 HAVE A GOOD ORDER FOR THE PARTIES THAT PROVIDES SOME DIRECTION  
4 IN TERMS OF WHAT THE REASONING IS AND THE CASE LAW AND THINGS OF  
5 THAT NATURE. BUT I DO WANT TO THANK ALL OF YOU TODAY FOR  
6 HUMORING ALL MY QUESTIONS. IT'S EASY TO READ THE BRIEFS, BUT  
7 YOU ARE THE EXPERTS ON THIS CASE, SO IT HELPS ME A GREAT DEAL TO  
8 BE ABLE TO ASK YOU SOME FINER POINTS THAT MAYBE AREN'T CLEAR.  
9 IN THE END I AM GOING TO RELY ON THE BRIEFS AND THE COMPLAINTS,  
10 BUT SOMETIMES THINGS CAN BE READ IN DIFFERENT WAYS, AND IT'S  
11 VERY HELPFUL TO ME TO BE ABLE TO ASK THE EXPERTS ABOUT THEIR  
12 CASES RATHER THAN JUST RELY ON AN INTERPRETATION THAT I MAKE  
13 THAT MAY NOT BE ACCURATE. SO IT'S VERY HELPFUL TO HAVE YOU  
14 ANSWER THE QUESTIONS HERE, AND I WILL GET TO WORK. SO WITH  
15 THAT, WE ARE IN RECESS. THANK YOU VERY MUCH.

16 MR. GODFREY: YOUR HONOR, BEFORE YOU --

17 THE COURT: CERTAINLY.

18 MR. GODFREY: WOULD THE COURT ENTERTAIN, IF WE CAN DO  
19 IT VERY QUICKLY, JUST A SHORT BRIEFING ON SOME OF THE ISSUES  
20 THAT YOU RAISED TODAY THAT WE DIDN'T HAVE COMPLETE ANSWERS FOR  
21 YOU?

22 THE COURT: YES. WHY DON'T WE DO THIS. IF YOU WANT  
23 TO, WITHIN FIVE DAYS GET ME SOMETHING LIMITED TO TEN PAGES, AND  
24 YOU'LL HAVE THE SAME NUMBER OF DAYS AND PAGES TO RESPOND, AND  
25 THAT WOULD BE FINE.

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MR. GODFREY: WILL DO. THANK YOU.

THE COURT: OKAY. THANK YOU VERY MUCH.

MR. THERIOT: THANK YOU, YOUR HONOR.

(PROCEEDINGS ADJOURNED.)

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, RPR, RMR, CRR, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA, DO HEREBY CERTIFY THAT THE FOREGOING 79 PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 15TH DAY OF OCTOBER 2015.

/S/ MONTRELL VANN  
MONTRELL VANN, RPR, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

_____	)	
	)	
Plaintiff(s)	)	
	)	Case No. _____
V.	)	
	)	
_____	)	
Defendant(s)	)	

**NOTICE OF FILING OF OFFICIAL TRANSCRIPT**

Notice is hereby given that an official transcript of a proceeding has been filed by the court reporter/transcriber in the above-captioned matter. Counsel/Parties have twenty-one (21) days from the date of delivery of the transcript to the Clerk to file with the Court a Request for Redaction of this transcript. If no Request for Redaction is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.

Any counsel or party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter/transcriber or view the document at the Clerk's Office public terminal.

_____	_____
Date	Court Reporter

**VERIFICATION OF FINANCIAL ARRANGEMENTS**

Proceeding Type: \_\_\_\_\_

Proceeding Date: \_\_\_\_\_

Volume Number: \_\_\_\_\_

Notice is hereby given that financial arrangements for a copy of the transcript have been made with the following individual(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

as counsel/party in this case. He/She is to be provided with remote access to the transcript via CM/ECF and PACER.

_____	_____
Date	Court Reporter