

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CURTIS LARRICK,

Civil Division

Plaintiff,

No.16-282

v.

Magistrate Judge Eddy

THE SHERIFF OF BEAVER COUNTY,
PENNSYLVANIA; BEAVER COUNTY,
PENNSYLVANIA and ANTHONY GUY,
Sheriff of Beaver County in his individual capacity,

Defendants.

JURY TRIAL DEMANDED

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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I. Introduction

During the 2015 Beaver County Sheriff election, Plaintiff, Curtis Larrick, supported Democratic candidate Wayne Kress for Sheriff. Kress' Republican opponent Defendant, Anthony Guy, was elected to the office. Immediately upon assuming office, Guy fired Larrick from his Deputy position. He also fired Deputy Paul Clark, who Guy had marked in his notes was a "Kress supporter."

Larrick was not provided a reason and Defendants Beaver County and Beaver County Sheriff Office's internal documentation only note a "Department Restructure" was the reason.

But since that time Defendants reasons for firing Larrick have evolved. Defendants now claim they fired Larrick because of a reputation of lying, although they cannot point to one specific job related issue they claim Larrick lied about. Moreover, Guy was specifically told by the State Police that Larrick told the truth in a high profile criminal case involving the former Sheriff while numerous other Sheriff personnel (mostly retained Guy supporters) had lied in those same proceedings.

Defendants also belatedly raise a number of other alleged character issues and purported misconduct with Larrick as a basis for its termination. This includes relying on an unfounded sexual harassment allegation. Defendant asserts these reasons although the record shows Guy retained his own political supports who had engaged in significant misconduct.

For all the reasons below, Defendants are not entitled to summary judgment.

II. Argument

Summary judgment in a political affiliation is proper only if Defendants persuades the court that no reasonable jury could find in Larrick's favor, even drawing all inferences from the record

evidence and in viewing it in a light most favorable to him. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150-151 (2000); *Fasold v. Justice*, 409 F.3d 178, 183 (3d Cir. 2005).¹

A. Applicable Legal Principles.

Firing a public employee because of his political affiliation violates his First Amendment speech and associational rights. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 72-78 (1990); *Branti v. Finkel*, 445 U.S. 507, 511-520, (1980); *Elrod v. Burns*, 427 U.S. 347, 355-73 (1976); *Montone v. City of Jersey City*, 709 F.3d 181, 189 (3d Cir. 2013).

A government employer may not discharge based on party affiliation or political support unless the government employer can show party affiliation is an appropriate requirement for the position involved. *Rutan*, 497 U.S. at 75. Moreover, a citizen's right **not** to support a candidate is every bit as protected as his right to support one. *Galli v. New Jersey Meadowlands Comm.*, 490 F.3d 265, 274-275 (3d Cir. 2007).

Thus, *Rutan* encompasses claims of political discrimination when an employer takes adverse action **either** because it wishes to punish the employee for his support of a political opponent, **or** because the employer wants to fill the position with its own political supporters, even if it does not particularly know the political affiliation of the affected employee. *Rutan*, 497 U.S. at 67-68; *Galli*, 490 F.3d at 272-273.

B. Issues of Material Fact on Larrick's Political Affiliation *Prima Facie* Case Preclude Summary Judgment

To make a *prima facie* case of political affiliation discharge, a public employee need only show: (1) he worked for a public agency in a position that does not require a political affiliation;

¹On a summary judgment record, evidence of the non-movant is to be believed, while evidence supporting the moving party is given credence only when uncontradicted, unimpeached and from disinterested witnesses. *Id.*; *Hill v. City of Scranton*, 411 F.3d 118, 129 n. 16 (3d Cir. 2005); *Armour v. County of Beaver*, 271 F.3d 417, 420 (3d Cir. 2001). Courts must be cautious when granting summary judgment to an employer where intent and credibility are issues, because credibility determinations are jury functions. *Reeves*, 530 U.S. at 151; *Goosby v. Johnson & Johnson Medical Inc.*, 228 F.3d 313, 321 (3d Cir. 2000).

(2) he maintained an affiliation with a political party or candidate; and (3) his political affiliation was a substantial or motivating factor in the adverse employment decision. *Stephens v. Kerrigan*, 122 F.3d 171, 176 (3d Cir. 1997); *Goodman v. Pennsylvania Turnpike Commission*, 293 F.3d 655, 663-64 (3d Cir 2002); *Robertson v. Fiore*, 62 F.3d 596, 598 (3d Cir. 1995).

The first two prongs of this test are not in dispute here. *See* (Def.'s Brf. at 4) Larrick was employed as Deputy Sheriff, a position Defendants admit is one where political affiliation is not an appropriate requirement for the effective performance of the position. (Plaintiff's Statement of Material Facts "PSMF" 1-4, 118-120) . *See Boyle v. Allegheny County*, 139 F.3d 386, 401 (3d Cir. 1998)(political decisionmaker's testimony that political affiliation should not be an important consideration precludes summary judgment). Moreover, it is undisputed Larrick supported Kress, Defendant Guy's Democratic opponent for Sheriff. (PSMF 1-4). *Galli*, 490 F.3d at 272 (Plaintiff can meet the second prong if he suffers because of support for losing candidate). Thus, the dispute here concerns the third prong of the test: Whether Larrick's political support of Kress was a substantial or motivating factor in Defendants' decision to fire him.

1. A First Amendment plaintiff may use the *McDonnell Douglas* pretext analysis to meet his causation burden

To survive summary judgment on this prong Larrick need only offer evidence that his political affiliation was a motivating factor in Defendants' decision. *Goodman*, 293 F.3d at 664.

Larrick need not offer direct evidence to meet that burden. In a First Amendment political affiliation case, where the issue is whether an improper motive existed the courts have allowed the plaintiff to apply the shifting burdens analysis adopted for cases under Title VII of the Civil Rights Act of 1964 in *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802, (1973), and *Texas Dept. Of Community Affairs v. Burdine*, 450 U.S. 248, 253-54 (1981). *See Goodman*, 293 F.3d at 673-74, quoting *Reeves*, 530 U.S. at 147; *Montone*, 790 F.3d at 191(plaintiff in political affiliation case may avoid summary judgment by discrediting defense's articulated reasons); *Galli*, 490 F.3d at 276.

In meeting the causation (motivating factor) element, Larrick is not limited in the kind of evidence he can offer. Exploration of the entire record is proper in a retaliation case. *Goodman*, 293 F.3d at 673-74; *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 281 (3d Cir. 2000).

Evidence of inconsistent reasons or other evidence showing pretext is sufficient to create an inference of causation and preclude summary judgment. *Id.*, 206 F.3d at 286; *Abramson v. William Patterson College of New Jersey*, 260 F.3d 265, 284, 289 (3d Cir. 2001).

Thus Larrick survives summary judgment if he (1) points to record evidence, either direct or circumstantial, that his political affiliation was a motivating cause of his termination, or (2) discredits Defendants' proffered reasons, either directly or circumstantially. *Sheridan v. E.I DuPont de Nemours & Co.*, 100 F.3d 1061, 1066 (3d Cir. 1997); *Torre v. Casio, Inc.*, 42 F.3d 825, 830 (3d Cir. 1994). Here, factual disputes and inconsistencies abound on Defendants' reasons for firing Larrick.

2. Defendants' reasons for terminating Larrick have constantly changed from the time Defendant fired him.

When fired, Larrick was copied on a Jan. 4, 2016 letter to the Chief County Solicitor which simply states he was terminated because Guy was exercising his rights under Section 1620 of the County Code which allows him to fire employees. (PSMF 194). The letter does not say why Guy exercised that discretion to terminate Larrick much less mention any misconduct or character issues by Larrick. *Id.*

Larrick's official termination notice states his termination was a result of "department restructuring," and again references County Code §1620. (PSMF 195). The document does not mention any character issues or misconduct as a basis for Larrick's termination. *Id.*

After litigation commenced Defendants were asked to identify every reason Defendants terminated Larrick. In response, Defendants stated:

“Sheriff Guy made the decision to terminate Plaintiff for reasons that were learned about Plaintiff while interviewing employees and other persons and gathering information about the operation of the Sheriff’s Department. Through the interviews, it was determined that Plaintiff had a reputation for lying and other qualities Sheriff Guy found to be inappropriate. Sheriff Guy terminated Plaintiff through the authority vested in him by 16 P.S. § 1620.” (PSMF 196-197).

The reason then expanded when Guy was deposed. Guy first claimed he valued strong character, honesty, trustworthiness, and reliability, and he found Larrick failed on those counts. (PSMF 207). He then claimed Larrick lacked “honesty, integrity, trustworthiness, [the] ability to work well as a member of a team.” (PSMF 198-199). Expanding his reasons even more Guy also testified “the several instances of inappropriate conduct with females” was a factor in deciding to terminate Larrick. (PSMF 200-201). Asked why he did not mention sexual harassment in his answer to Interrogatory No. 2, Guy said he thought “other qualities Sheriff Guy found to be inappropriate” in his Interrogatory answers encompassed everything. (PSMF 201).

Guy further added during his deposition that he factored in his personal interaction with Larrick on election day. (PSMF 202). Finally, Guy says the amount of time spent dealing with Larrick’s issues as a high maintenance employee was another quality he found inappropriate. (PSMF 206).

Such inconsistencies in the employer's statements support an inference of pretext precluding summary judgment. *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994). Pretext can be shown if a plaintiff demonstrates the reasons given for his termination did not remain consistent, when proffered and continuing throughout the proceedings. *Abramson*, 260 F.3d at 284; *Fuentes*, 32 F.3d at 765 (“inconsistencies” and “contradictions” in employer's reasons can show pretext); *see also Waddell v. Small Tube Prods., Inc.*, 799 F.2d 69, 73 (3d Cir.1986)(Employer’s inconsistent explanations “appropriately” considered in finding retaliation *prima facie* case).

Here, Larrick’s termination has morphed from a simple “Department Restructuring” to termination because of a reputation for lying and other inappropriate qualities to termination because

of lying **and** sexual harassment, and, for good measure, the election day interaction between Larrick and Guy. Like the employees in *Reeves*; *Smith v. Borough of Wilkensburg*, 147 F.3d 272, 281 (3d Cir. 1998); and *Chipollini v. Spencer Gifts*, 814 F.2d 893, 896 (3d Cir. 1987)(en banc), Larrick challenges Defendants articulation of the reasons for his discharge decision, and the fact Defendants offered different reasons at different times supports the challenge.² Because Defendant’s reasons changed from when they fired Larrick, a reasonable jury could disbelieve their current explanation, and find them to be pretextual, and Defendant’s motion should be denied.

3. Larrick can contest the factual basis of Defendant’s reasons.

Moreover, Larrick specifically contradicts the factual basis of Defendant’s belated reasons. Evidence specifically disputing the factual basis of the employer’s articulated reason creates a material issue of fact on the credibility of the employer’s reason precluding summary judgment. *Burton v. Teleflex Inc.*, 707 F.3d 417, 430-431 (3d Cir. 2013); *Tomasso*, 445 F.3d at 708. Although he does so here, Larrick “need not discredit each proffered reason individually. Rather if Larrick casts substantial doubt on a fair number of Defendants’ reasons, he survives summary judgement. *Stephens*, 122 F.3d at 171.

a. Larrick casts doubt on lack of truthfulness explanation

Guy points to Larrick’s alleged untruthfulness as a factor in his termination. (PSMF 273). Indeed, it was the only specific reason Defendants gave for terminating Larrick in their Interrogatory Answer. (PSMF 196-197). Larrick casts doubt on this asserted reason in multiple ways. Fundamentally, however, such unsupported and overly broad contentions—that Guy thought Larrick was a liar-without factual support for that belief are inherently pretextual. *See i.e. Bertani v. Westmoreland County*, 212 F.Supp. 2d 564, 570 (W.D. Pa. 2014)(Decision maker’s unsupported and

²*See also Tyler v. Re/Max Mountain States, Inc.*, 232 F.3d 808, 813 (10th Cir. 2000)(“We are disquieted...by an employer who ‘fully’ articulates its reasons for the first time months after the decision was made”).

overly broad contention that he had “lost confidence” in plaintiff supported finding of pretext absent specific instances of why).

i. The State Police told Guy that Larrick had told the truth.

After his election, Guy met with two Pennsylvania State Troopers who had been involved in the criminal investigation and proceedings against former Sheriff David. (PSMF 125). Guy claims talking with the Troopers was a good place to start in addressing personnel issues because the troopers had been involved investigating misconduct in the Sheriff’s office. (PSMF 127-129). During the interview, the Troopers were asked about personnel, including Larrick. *The Troopers recommended Guy retain Larrick. (PSMF 13).*

More importantly, they told Guy Larrick had told the truth during the investigation, and Guy recorded as much in his notes. (PSMF 134-135). Specifically, the Troopers told Guy that Larrick told the truth about an incident related to the Department’s CLEAN system as well as the gun locker incident, and had provided them with that information regarding Sheriff David. (PSMF 135). Guy admitted in his deposition that the State Troopers had no problem with Larrick’s honesty. (PSMF 136). The State Troopers also told Guy about numerous Sheriff’s Department Employees who lied to them in their investigation. (PSMF 137, 335, 342, 351, 403, 416). Nevertheless, Guy retained some of these lying individuals. (PSMF 407, 419).

A reasonable jury could conclude that Larrick did not have a reputation for lying when the State Troopers told him Larrick had told the truth in their investigation.

ii. Alstadt did not believe that Larrick was a liar.

Guy claims Alstadt told him Larrick had issues with his truthfulness. (PSMF 144). According to Guy, Alstadt told him that he did not believe Larrick, the other deputies did not believe Larrick, and that Larrick was commonly referred to as “Lying Larrick.” (PSMF 145). However, Alstadt testified he had no issues with Larrick’s truthfulness pertaining to the job. (PSMF

284). Moreover, Alstadt specifically denied thinking Larrick was a liar. (PSMF 285). Rather, he said Larrick only had **minor issues** outside of work related to over-exaggerating or overstating something and not being able to follow through. (PSMF 285). In contrast to Larrick, Alstadt testified to numerous employees who had lied to him including Randy Tallon who lied when he was caught with a woman in a county vehicle.(PSMF 292-294). Likewise, Alstadt admits Mike Hurst lied to him when Alstadt questioned Hurst on whether he had contact with Larrick’s wife. (PSMF 462). Alstadt further said Paul Clark, Don Frantangeli, and Tom Ochs all had also lied to him. (PSMF 244).

Alstadt denied recommending Larrick be terminated because of a lack of truthfulness. (PSMF 282-286). Given Alstadt: (1) denies he thought Larrick was a liar; (2) denies Larrick lied to him while admitting other employees did; and (3) denies recommending Larrick be fired because he was untruthful, a jury could find pretextual Defendant’s claim that Larrick had a reputation for lying.

iii. Defendants could not even specifically state what Larrick had actually lied about.

When asked if there was anything specific Alstadt told him that Larrick lied to him about, Guy first could not think of **any** examples. (PSMF 274).³ Guy then conjured up a few.

(a). Larrick’s funeral attendance was true.

Guy said Alstadt advised him there was a point where Larrick had missed work for “alleged funerals of numerous relatives, and that a deputy was sent to a funeral home to see if Larrick was actually there. (PSMF 276). However, Guy also admitted he was told Larrick was indeed at the funeral home. (PSMF 276). In essence, to justify his claim that Larrick was a liar, Guy pointed to

³Defendant seems to simply think that the fact Larrick’s co-workers called him “Lying Larrick” is evidence Larrick lied. (Def’s Brf. at 13). This is simply not the case. Notably, when first confronted by Alstadt as to whether he was contacting Larrick’s wife Hurst claimed he was not and falsely claimed Larrick was lying. (PSMF 458). However, Alstadt admits it was Hurst who was lying. (PSMF 462).

the fact Larrick was attending a relative's funeral **as he truthfully claimed**. A jury certainly could find this explanation to be incoherent and contradictory.

(b). Larrick truthfully said he was not wearing a seatbelt to his own detriment.

The funeral incident is not the only time Guy inexplicably attempted to use evidence of Larrick telling the truth as evidence that Larrick had a reputation for lying. Indeed, Defendant claims evidence that Larrick admitted he did not wear a seatbelt is evidence he lied. *See* (Def.'s Brf. at 14).

Larrick had been on duty in a patrol car that had no seatbelt on his side of the vehicle. (PSMF 302). The vehicle was involved in an accident while Larrick was in it. (PSMF 303). Because he was not wearing a seatbelt, Larrick was suspended for five days. (PSMF 305). Guy admits Larrick told the truth about not wearing his seatbelt during the accident. (PSMF 305). However, Guy with no specific details claims he thinks he was told Larrick had said with respect to the incident that the one time he told the truth he got in trouble for it. (PSMF 306).

If anything, evidence Larrick would volunteer not wearing a seatbelt to his own detriment would suggest Larrick had a reputation for truthfulness. Defendant's attempt to use it as evidence of lying is pretextual.

(c). The news reporter story.

In stretching to give examples of Larrick's reputation for lying, Guy says he recalled being told by deputies that Larrick had claimed to be in a relationship with a Pittsburgh news reporter, and that when they had called her she denied knowing Larrick. (PSMF 278). Guy could not even recall who the reporter was and agreed that was not something Larrick lied about in the context of his job. (PSMF 279-281). Notably, Larrick never lied to his co-workers about being in a relationship with or knowing a news reporter. (PSMF 280).

iv. Larrick denied being untruthful.

According to Guy, Larrick was given a chance to respond to accusations that he was a liar during his interview. (PSMF 296). Guy says Chief Deputy Dean Michael told Larrick that others had called Larrick untrustworthy, and asked for a response. (PSMF 297). Guy claims Larrick denied he was a liar, but that he was unable to address specific issues or give a clear defense of himself. (PSMF 298). However, Guy then admitted he does not recall telling Larrick about any of the specific incidents where Larrick allegedly lied so Larrick could rebut them. (PSMF 299). Guy later added he “thinks” he asked Larrick if he had lied about the funerals he claimed to have attended, and that Larrick said they were all legitimate. (PSMF 296). The fact that Guy would claim Larrick was unable to address specific issues when Guy admits he did not raise specific issues for Larrick to rebut is contradictory and incoherent. Moreover, the only specific situation Larrick was given to address was whether the funerals were legitimate. Larrick clearly responded they were. (PSMF 300). As previously discussed, external evidence supported Larrick’s claim he was validly attending a funeral and Guy was aware he did. (PSMF 276-277).

v. Guy retained numerous liars who politically supported him.

(a). Guy kept political supporters with a reputation for lying on his Command Staff

Guy retained two members of his Command Staff although he had information they lied in the criminal proceeding against Sheriff David. Guy admits both Deputy Chief Alstadt and Captain James McGeehan told him they supported his candidacy. (PSMF 399, 414); (Def.’s Brf. at 1)(noting McGeehan and Alstadt were Guy supporters).

When Guy interviewed the State Troopers he was given information that both Alstadt and McGeehan had been untruthful and recorded as much in his notes. (PSMF 403, 416).

Trooper Olayer recommended that Alstadt be terminated, in part, because he believed Alstadt lied to the Grand Jury during the David criminal proceedings. (PSMF 415-416).

Similarly, Trooper Olayer recommended terminating McGeehan. (PSMF 440). Guy's notes reflect the Troopers said McGeehan falsified information at the Grand Jury. (PSMF 403).

A reasonable jury could find it curious that Guy claims to have fired Kress supporter Larrick because of a reputation for lying, when the only specific example of untruthfulness he points to is an ambiguous claim Larrick lied about a reporter relationship, yet retained two Command Staff members who provided false information to State Police in a criminal investigation involving the former Sheriff.⁴

(b). Guy retained other political supporters who lied about serious matters.

Guy's truthfulness double standard was not limited to his command staff. He also retained political supporters Randy Tallon and Mike Hurst although they had lied to Alstadt. (PSMF 293, 445, 462, 465).

(i). Guy supporter Randy Tallon lied about work misconduct.

Tallon campaigned for Guy. (PSMF 422, Cf. PSMF 442). Tallon was a vocal supporter of Guy's campaign for Sheriff in 2015. (PSMF 423-425).

Tallon was caught engaged in sexual conduct with a female in his county vehicle during a prostitution sting by County detectives. Alstadt testified that Tallon lied to him with respect to being caught with the woman in a county vehicle. (PSMF 293).

⁴Defendants seem to make much ado about Guy demoting his political supporters McGeehan and Alstadt. (Def.'s Brf. at 7). However, both were moved down only one spot in the chain of command and remained on command staff and that made room for Guy to hire another of his political supporters, Dean Michael as his second in command. Similarly, Defendant emphasizes that Guy retained Bredemeir and Mangerie who were Kress supporters. (Def.'s Brf. at 8). However, Guy admits that he did not know Bredemeir was a Kress supporter at the time he retained and promoted her. (PSMF 451-452). Further, it was not until sometime after the election that he learned Mangerie supported Kress. (PSMF 500-501).

(ii). Guy supporter Mike Hurst lied about an inappropriate relationship with Larrick's wife and was retained.

Hurst was also a Guy political supporter (PSMF 453). Hurst was involved in an incident in 2009 or 2010 where he began calling and texting Larrick's then-wife while on duty. (PSMF 455). Larrick learned of this when he saw a text message from Hurst containing suggestive language sent to his wife at 2 a.m. (PSMF 457). Hurst initially denied any relationship with Larrick's wife, and told Alstadt that Larrick was lying and could not be trusted. (PSMF 458). Hurst only admitted he had been talking to Larrick's wife after being shown Larrick's phone records detailing 117 phone calls between him and Larrick's wife. (PSMF 459). Alstadt testified Hurst lied to him about whether he had been in contact with Larrick's wife. (PSMF 462). Yet, Guy retained Hurst. (PSMF 462-463).

Material disputes of fact exist over whether Defendants fired Larrick for untruthfulness when they retained two of Guy's political supporters who lied to their Commanding Officer about engaging in sexual acts in a County Vehicle and whether they were engaged in an illicit relationship with a fellow Deputy's wife. Indeed, this application of different standards by Defendant is strong circumstantial evidence of discrimination. *See Waldron v. SL Industries, Inc.*, 56 F.3d 491, 495-96 (3d Cir. 1995)(Employer claimed calling on key accounts was critical to the position, and the plaintiff was fired for failing to call on such accounts, but plaintiff's younger replacement not expected to call on key accounts). The Third Circuit found this to be "powerful" evidence of pretext. *Id.* at 497.

b. Guy relies on belated and unfounded sexual harassment allegations as a basis for his decision.

Defendants also claimed it fired Larrick in part for sexual harassment. (PSMF 209). Guy admits his knowledge of whether any sexual harassment actually occurred was based only on the interviews he conducted with deputies and Command Staff and information he had collected. (PSMF

266). Guy claims Dave Hunter, Mike Hurst, Jim McGeehan, Kristin Chapes, Jim Brown, and John Frantangeli also told him about sexual harassment claims against Larrick. (PSMF 263-264). However, Guy's notes say nothing about those sexual harassment allegations. (PSMF 263-264). *See Bulifant v. Delaware River & Bay Authority*, 2017 WL 2894388 at *3-4 (3d Cir. July 7, 2017)(absence of documentation where it would be expected is evidence of pretext).

Guy claims his knowledge of whether the harassment actually occurred was based only on the interviews he conducted with deputies and command staff and information he had collected. (PSMF 265). Guy did not speak with any of the individuals Larrick allegedly sexually harassed. (PSMF 271-272). Guy does not know if Larrick was ever disciplined for any sexual harassment allegations and admitted he conducted no investigation into whether Larrick actually committed such harassment. (PSMF 267). Guy did not even review Larrick's personnel file after taking office (PSMF 122-124).

Guy testified he would have wanted to know Larrick's position on whether he sexually harassed anyone. (PSMF 268). However, Guy "does not recall" whether he even asked Larrick about the sexual harassment allegations during his interview. (PSMF 270).

Given that before firing Larrick: (1) Guy never raised the sexual harassment allegations until his deposition although asked in an Interrogatory; (2) never even discussed Larrick's involvement in sexual harassment with anyone; (3) made no attempt to determine if any records existed of Larrick sexually harassing anyone; and (4) or whether the sexual harassment even occurred, a reasonable jury could conclude this was another belated pretextual justification for Larrick's termination.

i. The only sexual harassment claim against Larrick was investigated by Defendant and determined to be unfounded.

Deputy Kayla Stevenson accused Larrick of sexual harassment related to events she says took place in July 2014.⁵ (PSMF 210). Stevenson claimed Larrick was calling and texting her at home when it was not work related. (PSMF 211).

Larrick discovered the complaint because Stevenson called and told him about it. (PSMF 212). Stevenson admitted to Larrick she was coerced into making this complaint and apologized to him. (PSMF 213). Stevenson further told Larrick she was coached by Tallon to try to “jam him up.” (PSMF 214).⁶ Defendant’s Human Resources Director Rick Darbut investigated Deputy Stevenson’s harassment claim. (PSMF 217). Darbut testified he felt some of the statements Stevenson alleged Larrick made were farfetched. (PSMF 218). At the end of the investigation Darbut told the union representatives, and Alstadt, the matter was over and there was nothing to the allegation. (PSMF 233). Darbut testified he told Alstadt and the Chief Union Steward that he had investigated the claims and found no sexual harassment. (PSMF 235).

Defendants’ belated reliance on an unfounded sexual harassment charge is evidence of pretext.

⁵The other two alleged incidents regarding female employees did not involve sexual harassment. One was an incident where Larrick and Dave Hunter’s girlfriend discussed medical issues she was having. (PSMF 249). The other was Judge Kwidis asked that Larrick not contact his law clerk while on duty because Larrick was not the right type of guy for he clerk. (PSMF 256-258). Larrick explained to Alstadt that was not the nature of his relationship with the clerk. (PSMF 259).

⁶There is evidence the sexual harassment complaint was a set up by then Sheriff David to retaliate against Larrick. Larrick claims Darbut told him that he was being set up. (PSMF 234). Darbut testified no one told him Sheriff David put Stevenson up to making these allegations. (PSMF 238). However, Darbut admitted that an office employee named Stephani overheard Sheriff David talking to Paul Clark about Stevenson’s allegation and whether it was something they could use against Larrick. (PSMF 239).

ii. Guy took no action against his second in command who was accused of sexual harassment.

Dean Michael is the current Chief Deputy Sheriff for Defendant. (PSMF 473). Guy hired Dean Michael as his Chief Deputy Sheriff in December 2015, after his election. (PSMF 474-477). Michael supported Guy in the election. (PSMF 478).

After becoming Chief Deputy, allegations of sexual harassment were made against Michael. (PSMF 480). Guy at first denied Michael has been accused on inappropriate contact with female employees after Defendants hired him. (PSMF 481). However, Guy then admitted an article in the Beaver Countian noted Michael had allegations of sexual harassment against him. (PSMF 482).

Guy and the County's legal department investigated the allegations against Michael. (PSMF 485). Guy claims the result of the investigation was that there was no sexual harassment and he closed the case. (PSMF 485). According to Guy, his investigation revealed the issue to be unfounded, other than the use of inappropriate language with a clerk in his office named Jackie Springston. (PSMF 487-488). Guy claimed to not recall the comment that was made to Springston, but said it was "maybe" a reference to some sexual innuendo the employee told him she was not offended by. (PSMF 487-488). Guy admitted he then spoke to Michael and reminded him of the County's Sexual Harassment policy and the appropriate way to interact with employees. (PSMF 488-489).

Guy conceded he would not consider it appropriate to discipline Michael for an unfounded sexual harassment allegation. (PSMF 490).

This evidence precludes summary judgment. First, a jury could yet again find an impermissible double standard where Guy kept a political supporter, who was accused of sexual harassment and **admittedly engaged in sexual innuendo** in the work place, at the very top of his Command Staff while dismissing a Kress supporter based on unfounded allegations of sexual harassment and two non-sexual related incidents with other women. Likewise, based on Guy's

testimony that it would not be appropriate to discipline Michael for an unfounded sexual harassment allegation a jury could certainly question Guy's motivation in firing Larrick for an unfounded sexual harassment allegation.

C. Guy Supporters Were Treated More Favorably.

Guy fired Ochs, Tibolet, Frantangeli, Clark, Kuhlber, Stevenson, and Larrick. (PSMF 340, 345, 361, 375, 392-393, 348, 192). Notably, of those seven Guy only identified Frantangeli as a political supporter. (PSMF 49-50, 33, 341, 346, 365, 376, 394).

1. Three individuals were fired for alleged criminal conduct.

Guy testified he did not know who Ochs, Tibolet or Stevenson supported in the general election.. (PSMF 333, 341, 394). Each of these individuals had engaged in or been accused of some form of criminal conduct. Ochs had lied to the State Troopers in the David Investigation. Dean Michael testified that Ochs was not retained because he was arrested related to the David Criminal Investigation. (PSMF 340). Similarly, Tibolet had provided false information to the state police in the David investigation. (PSMF 345). Finally, Stevenson was not retained because she had been criminally charged with harboring a fugitive, her brother. (PSMF 397-398). Stevenson was suspended for this criminal conduct when Guy took office. (PSMF 292).

2. Kress supporters were fired for less significant matters.

Like Larrick, Clark actively supported Kress. (PSMF 365-366). Neither engaged in any criminal conduct like Ochs, Tibolet, or Stevenson and were fired for relatively insignificant matters. Notably, Alstadt made no indication whether Clark should be retained and Guy could not recall the State Troopers recommendation regarding retention for Clark. (PSMF 368). Guy claims Clark was not retained because he thought of him as a bully, and considered him to not be a team player. (PSMF 373). However, Guy's notes suggest that Clark was fired for his support of Kress. Indeed, in his notes from Frantangeli's interview, Guy wrote, "No fucking good, initially hit it off,

supported Kress wannabe,” next to Clark’s name. (PSMF 368). This evidence alone supports a conclusion Guy was targeting Kress supporters .

Guy claims he does not know who Kuhlber supported in the election. However, Kuhlber supported Kress. (PSMF 376-377). Kuhlber did not engage in any criminal conduct like Ochs, Stevenson or Tibolet. Rather, Guy claims he fired Kuhlber because she engaged in a prank where she put glitter in another deputy’s uniform and had domestic issues with her husband. (PSMF 387-390). Notably, Michael did not think the glitter incident was a basis for termination. (PSMF 391)

3. Guy retained his political supporters who engaged in misconduct.

As discussed previously, Guy retained political supporters in Hurst, Alstadt, Tallon and McGeehan who had been untruthful. *See* (PSMF 453, 462, 465, 414, 416, 422-425, 293, 445, 399, 403, 407). He also retained supporters who had demonstrated significant character issues. Indeed, while Guy did not hesitate to fire people whose support he was unsure of, or who had supported Kress, he protected his supporters.

Guy learned from the State Police that in addition to lying to them in the David investigation, McGeehan had retaliated against Larrick and other employees because they had participated in the David investigation. (PSMF 401). Not only was McGeehan not fired for such illegal retaliation, Guy is unsure he even asked McGeehan about it. (PSMF 402, 406). A reasonable jury could find it interesting that Guy would fire and label Clark (noted by Guy as a Kress Supporter) a bully yet retain his own political supporter, who he was aware was actively retaliating against employees.

Likewise, while Kuhlber was allegedly terminated for a prank involving putting glitter in a co-workers uniform and domestic issues, Guy supporter Hurst was retained despite engaging in an affair with Larrick’s wife. (PSMF 455-459, 465). Similarly, Tallon, a vocal supporter, was retained despite engaging in sexual relations in a County Vehicle. (PSMF 443-444). Likewise, Justin Rapko who supported Guy in the general election was retained despite being involved in an incident in

Aliquippa with an Aliquippa policeman. (PSMF 495-496). This double standard where Guy supporters were given a break despite misconduct would allow a jury to question Guy's motivation.

4. The only supporter fired supported Guy for only a brief period of time and had a significant history of serious misconduct.

Defendants make much of the fact they fired Frantangeli, a Guy supporter. (Def.'s Brf. at 7). Frantangeli is the only Guy supporter that was fired. *See* (PSMF 333, 341, 346, 365, 376, 394). But, Frantangeli only supported Guy in the final month of the election after waffling on who to support. (PSMF 347-349). And Frantangeli had a multitude of issues including alleged criminal misconduct. *See* (PSMF 351, 353, 355, 359). Further, unlike Larrick, the State Troopers recommended Frantangeli be fired. They did so because Frantangeli falsified an affidavit related to an individual he arrested. (PSMF 350-351). Frantangeli also had lost his privilege to use the criminal background computer system because he was running criminal background checks on people for impermissible purposes. (PSMF 353-354). That Defendants would fire a short term Guy supporter with a history of significant misconduct says nothing about why Guy fired non-supporter Larrick.

D. Defendants Argue That Larrick Was Disruptive and High Maintenance.

Defendant also argues that Larrick was Disruptive and High Maintenance. (Def.'s Brf. at 11). Factual disputes on this reason preclude summary judgment.

1. Guy's supporters caused much of the Disruption.

a. Hurst engaged in an illicit relationship with Larrick's wife.

Remarkably, Defendants claim Larrick's domestic issues were disruptive (Def.'s Brf. at 11-12), but conveniently ignore that the major sources of this disruption was that Hurst was engaged in an illicit relationship with Larrick's wife. *See* (PSMF 455-462). In essence, Defendants seeks to penalize Larrick for his conflicts with his wife yet took no action against Hurst, who caused this

discord by hitting on Larrick's wife. A jury could question why Larrick was fired for his domestic issues while one of Guy's political supporters who created those domestic issues was retained.

b. Much of the Disruption is because Larrick told the Truth about the Sheriff David.

Larrick was also disliked because he testified against former Sheriff David in the criminal proceedings. (PSMF 27-29, 63, 166-167). For example, Hurst, Tallon and Frantangeli (all Guy supporters) had a problem that Larrick testified against Sheriff David. (PSMF 27-28). Tallon referred to Larrick as a "Rat" because of his testimony. (PSMF 63). Hurst and Tallon also stated Larrick he would be gone if Guy became Sheriff. Larrick reported this retaliation to Alstadt and Darbut.⁷ (PSMF 67, 69). Tallon also screamed at Larrick "hey asshole your time is coming." (PSMF 72). Larrick explained to Guy how Hurst and Tallon were retaliating against him both on election day and in his interview. (PSMF 95, 98, 160).

Further, the State Police told Guy that McGeehan (another Guy supporter) had retaliated against Larrick because of his testimony in the David case. (PSMF 481). Guy admits he did not even bother to look into whether McGeehan had in fact retaliated against Larrick, even though the State Police specifically told Guy Larrick had told the truth in the David criminal proceedings. (PSMF 402, 133-136).

A reasonable jury could doubt Larrick was fired for causing disruption with his co-workers when the evidence shows the co-workers attacked Larrick because he truthfully testified against a corrupt Sheriff.

E. The Election Day Interaction Supports a Finding of Pretext.

Guy also claims he considered his Election Day interaction with Larrick as a factor in his decision. But that interaction itself creates a material issue of fact precluding summary judgment.

⁷Alstadt does not dispute Larrick brought this to his attention.

That day, Larrick approached Guy and told him about an earlier incident where he had been mistaken for Guy. (PSMF 90, 91). Larrick also made reference to the Wayne Kress shirt he was wearing. (PSMF 91). Guy told Larrick he saw him wearing the Kress shirt, and was not happy (PSMF 92). A reasonable jury could determine that Guy had been planning all along to terminate Larrick, and did so because of his support of Kress.

F. Defendant’s Same Decision Argument Fails Because Evidence of Pretext Raises Disputes of Fact On Whether Defendants Would Have Made the Same Decision Absent Larrick’s Political Affiliation.

Defendants finally claim even if Larrick can show causation it would have made the same decision absent Larrick’s political affiliation. (Def’s Brf. at 8-15). However, Defendants **bears the burden of proof** in showing they would have made the same employment decision even absent Larrick’s political affiliation. *Suppan v. Dadonna*, 203 F.3d 228, 235 (3d Cir. 2000). Defendant’s same decision defense fails because the same pretext evidence Larrick offers also raises a factual issue precluding summary judgment on Defendants’ “same decision claim.” *See, Bertani* 212 F. Supp.2d at 570(evidence of pretext precludes summary judgment on employer’s “same decision” argument); *Perez v. Cucci*, 725 F.Supp. 209, 240 (D.N.J. 1989); *Lint v. Cnty of Fayette*, 2011 WL 2650014, at *8-9 (W.D. Pa. July 5, 2011)(Evidence of causation also precludes summary judgment on same decision claim).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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