

# Environmental Reporting: Federal Court Addresses Employee First Amendment/Public Employer Retaliation Claim



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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A United States District Court (M.D. Fla.) (“Court”) addressed a Motion to Dismiss related to a First Amendment employment retaliation case. See *Chustz v. City of Marco Island*, 2019 WL 277705.

The Court’s January 22nd opinion discusses litigation involving an employee who alleged his termination was due to reporting environmental violations by a public employer.

Chadd Chustz (“Plaintiff” or “Chustz”) was stated to be an environmental specialist employed by Defendant City of Marco Island (“City”). He is stated to have received high performance reviews in performance duties.

In May 2017 Plaintiff is stated to have encountered environmental protection violations which involved alleged false mangrove and wetland environmental reports. He is stated to have reported the violations to his immediate supervisor who failed to take action. As a result, the Plaintiff was stated to have reported the violations to the Florida Department of Environmental Protection and United States Army Corps of Engineers. Such outside disclosures were not part of Plaintiff’s ordinary job duties.

Plaintiff alleged that his supervisor both threatened to fire him and issued a written reprimand because of the outside disclosures. Further, he was given a negative performance review which explicitly mentioned the disclosures to state and federal authorities.

The City was stated to have had a firing freeze in place throughout Plaintiff’s reported violations. However, it is stated to have been lifted and once this occurred Chustz was the only employee fired based on a City reorganization.

Plaintiff filed an Amended Complaint alleging that the City violated his First Amendment rights under 42 U.S.C. § 1983 because of his reporting the environmental protection violations. He alleged that the retaliation and harm is ongoing as the City continues to make false statements in the public domain about the facts and circumstances regarding his termination. The City is alleged to have stated that Chustz was a poor employee and exhibited poor workplace performance. Plaintiff deemed such allegations false.

The City filed a Motion to Dismiss arguing that the Amended Complaint should be dismissed for:

- Failure to state a claim upon which relief could be granted
- Lack of subject matter jurisdiction (i.e., lacking standing to obtain injunctive relief by failing to allege any threat of future injury)

The Court denies the City's Motion to Dismiss, initially noting:

Time and time again, the Supreme Court has reiterated that “[s]peech by citizens on public concerns lies at the heart of the First Amendment, which ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’”

Also noted is the principle that public employment does not require employees to relinquish their constitutional rights (especially those afforded under the First Amendment). It is recognized, however, that there can be situations in which a public employee's right to share information is not absolute. As a result, the Court states there is a balance that must be addressed.

The Court identifies a four-step analysis that governs this type of First Amendment claim which includes:

- Whether Plaintiff's speech was made as a citizen and whether it implicated a matter of public concern
- Weighing the Plaintiff's First Amendment interest against the City's interest in regulating his speech to promote the efficiency of the public services it performs through its employees

The first two steps are noted to be questions of law that are decided by the Court.

The second two steps include:

- If the public employee prevails on the balancing test, the fact-finder determines whether the employee's speech played a substantial part in the government's decision to demote or discharge the employee
- If the employee prevails, the state must prove by preponderance of the evidence that it would have reached the same decision even in the absence of protected conduct

The remainder of the opinion focuses on the City's argument that Plaintiff did not speak “as a citizen” when he made the reports and disclosures. It bases this argument on its claim that the Amended Complaint did not set forth exactly what Plaintiff's ordinary job responsibilities included.

In considering this claim, the Court notes that:

The critical question. . . is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties. . .

The Court concludes that the City's argument that the Amended Complaint must contain a full recitation of the job description is deficient. Dismissing the Amended Complaint at this early state is held to be inappropriate in terms of interpreting an employee's job description. It further notes that:

Even if Chustz had alleged a full explanation of his job description and duties within the Amended Complaint, “[f]ormal job descriptions often bear little resemblance to the duties an employee actually is expected to perform.”

This conclusion leads the Court to determine that it cannot conclude whether the speech was made in accordance with or in furtherance of the ordinary responsibilities of the Plaintiff's employment.

The Court also rejects the argument that the Plaintiff lacks standing to obtain injunctive relief.

The Defendant's Motion to Dismiss is denied.

A copy of the opinion can be found [here](#).