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May 30, 2018

VIA EMAIL AND REGULAR MAIL

Paula Muething Boggs, Esq.
City Solicitor
City of Cincinnati
801 Plum Street - Room 214
Cincinnati, OH 45202

Re: Harry Black

Dear Paula:

We represent Harry Black. We are writing to apprise you of substantial legal claims that Mr. Black intends to file against the City of Cincinnati and the Mayor in connection with the termination of his employment.

You, of course, are well-aware of the series of events leading to the demise of Mr. Black's tenure as City Manager. On March 9 of this year, the City's Mayor, John Cranley, abruptly demanded that Mr. Black resign. With the aid of legal counsel, Mr. Black then attempted to negotiate with the City a fair and reasonable separation agreement. Those efforts proved to be futile, as a majority of City Council refused to approve the funding of such an agreement. Subsequently, a majority of City Council signaled unambiguously that they intended to involuntarily terminate Mr. Black. On April 21, faced with his impending termination, Mr. Black tendered his resignation.

While the parties naturally disagree about many of the details surrounding Mr. Black's constructive discharge, there is no dispute that the Mayor's demand on March 9 for Mr. Black's resignation was specifically triggered by a contentious telephone call the two men had the night before on March 8. In fact, shortly after this call the Mayor sent a lengthy email to you and certain members of City Council purportedly describing this conversation with Mr. Black. (The City made this email publicly available after Mr. Black's separation.) While the Mayor's email contains many inaccuracies, it does confirm the simple fact that the Mayor immediately began taking steps to terminate Mr. Black in the aftermath of this call. As we explain below, the Mayor's motivation in doing so was violative of federal and state law.

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During the May 8 Telephone Call, Mr. Black Expressly Told the Mayor That He was “Corrupt” and His Improper Interference in Economic Development Matters Would No Longer Be Tolerated.

The May 8 call, which was initiated by Mr. Black, began as a discussion about the anticipated termination of Assistant Chief David Bailey. Mr. Black indicated to the Mayor that he supported Police Chief Eliot Isaac’s recommendation for termination, as Chief Isaac believed that Mr. Bailey was actively undermining his leadership; the Mayor told Mr. Black that he did not want Mr. Bailey to be fired. Mr. Black was frustrated, justifiably so, that both before this call and during it the Mayor was trying to interfere in this personnel matter.

This was particularly concerning to Mr. Black because it was not the only area where the Mayor overstepped his role. The Mayor had demonstrated a history of interfering with the City staff’s negotiation of economic development deals. This was contrary to the duties of the City Manager and Mayor, respectively, as set forth in the City’s charter. Nevertheless, the Mayor repeatedly interjected himself in the middle of such negotiations, *uniformly on the side of the developers*. On numerous occasions, where a developer resisted the City’s position on, for example, the percentage of tax abatement or amount of loan proceeds the City would provide, the Mayor would insert himself into the negotiation for the purpose of giving the developer what it wanted, including using money in the City’s capital budget to fund the project. Mr. Black believed these “sweetheart” deals were fiscally terrible for the City and had contributed to the City’s budget shortfall of \$25M for 2018.

Worse yet, it became clear to Mr. Black that the Mayor had a personal financial motivation for his actions. In a one-on-one lunch meeting with the Mayor in early March, the Mayor described to Mr. Black his career plans for when his second mayoral term ended. He told Mr. Black that if a chance for seeking statewide office did not materialize, he would return to the business of facilitating development deals for private developers, which had been the core of his work as an attorney in the years preceding his seeking election as Mayor. It was indeed very troubling to Mr. Black that many of the developers for whom the Mayor had secured favorable development deals with the City were the Mayor’s former clients. Mr. Black naturally suspected that the Mayor would renew his relationships with these same developers when he returned to the private sector.

There is no dispute that this subject — *i.e.*, the Mayor’s personally benefiting from generous deals to private developers — was directly addressed in the March 8 call. Curiously, in his email to you and City Council members, the Mayor completely *omits* this subject in his putative summary. This critical part of the conversation is only revealed when the Mayor, apparently prompted by Councilman Christopher

Smitherman, sent a follow-up email the morning of March 9 with alleged quotes he attributed to Mr. Black, materially as follows:

“You are [a] f---ing bad person, you are f---ing corrupt and I will tell the world that you are f---ing corrupt.”

“Things are going to be very different, I’m going to f---ing cut you out.”

“Going forward, I will oppose every f---ing economic development deal.”

Mr. Black disputes these verbatim quotes — although he would admit that *both* men used profanity during this contentious phone call — but, regardless, it is undeniably true that he called the Mayor “corrupt” multiple times and advised that he would take immediate steps to stop the Mayor from improperly interfering in this area. (These steps included canceling a weekly meeting between his staff and the Mayor to discuss economic development matters.) In short, it is clear with respect to Mr. Black’s termination that the driving force of the Mayor’s actions, and ultimately the City’s, was Mr. Black’s unequivocally stating that he would oppose the Mayor’s “corrupt” practices.

The City’s Actions Constitute First Amendment Retaliation under 42 U.S.C. § 1983 and Wrongful Discharge under Ohio Law.

Such a motivation for termination is plainly unlawful, as Mr. Black’s comments during the March 8 call were protected by the First Amendment of the U.S. Constitution. To establish a claim for First Amendment retaliation, a plaintiff must demonstrate that (1) he engaged in constitutionally protected speech or conduct — *i.e.*, the speech related to a “matter of public concern”; (2) an adverse action was taken against him that would “deter a person of ordinary firmness from continuing to engage in that conduct”; and (3) there was a causal connection between his speech and the adverse action. *See, e.g., Scarbrough v. Morgan Cty. Bd. of Educ.*, 470 F.3d 250, 255 (6th Cir. 2006) (citing *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc)). Courts have observed that speech communicated privately is likewise protected. *Perry v. McGinnis*, 209 F.3d 597, 608 (6th Cir. 2000) (“Neither the [First] Amendment itself nor our decisions indicate that [freedom of speech] is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public”) (quoting *Givhan v. Western Line Consolidated School District*, 439 U.S. 410, 415-16, 99 S.Ct. 693 (1979)). Here, Mr. Black’s statements to the Mayor during the May 8 call were clearly related to a “matter of public concern,” and the *next day* the Mayor demanded his resignation. The causal connection is obvious.

Accordingly, given these facts, Mr. Black has a meritorious claim of First Amendment retaliation under 42 U.S.C. § 1983 against the Mayor and the City. *See Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018 (1978); *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005) (municipality can be held liable where action was taken by “official with final decision making authority”). Also, the City’s actions have exposed it to a wrongful discharge claim in violation of Ohio public policy. Municipal employees in Ohio, including city managers, should be able to voice their objections to corruption in city government without fear of reprisal. *See, e.g., Himmel v. Ford Motor Co.*, 442 F.3d 593, 599-601 (6th Cir. 2003) (reversing summary judgment for employer on wrongful discharge claim where plaintiff’s termination violated policy of “preventing corruption in union-employer relationships”).

We also observe that Mr. Black further voiced his concerns about these same issues in a memorandum sent to the Mayor and City Council on April 18. In that memo Mr. Black alerted Council to a troubling conversation that was relayed to him by the then-Department of Community and Economic Development Director about a pay-to-play arrangement between the Mayor and the owner of a company seeking the City’s assistance on a specific development project. To our knowledge, the memo resulted in absolutely no investigation by City Council. Rather, the *next day*, Councilman Greg Landsman, who proved to be the fifth deciding vote on Council, announced his support for terminating Mr. Black.

We recognize that the Mayor and the majority of Council have proffered other rationales for Mr. Black’s termination. Respectfully, they do not hold water. The Mayor principally has cited alleged “abusive” communication by Mr. Black directed at subordinate City employees. While Mr. Black vehemently disputes these allegations, it is important to note that the Mayor, by his own admission, was aware of such alleged issues long before March 2018. The Mayor and City Council agreed to give Mr. Black a salary raise in September 2015 and the Mayor offered his public support of Mr. Black during the Mayor’s reelection campaign in the fall of 2017. It was only after the March 8 call that the Mayor pushed to remove Mr. Black. Councilman Landsman, in turn, cited the death of teenager Kyle Plush as a purported justification for terminating Mr. Black, even though it was patently unfair to blame Mr. Black for this tragedy. Moreover, it made little sense to immediately terminate Mr. Black while the police department’s investigation of the death was still ongoing and weeks before the investigation report was completed. Furthermore, to terminate Mr. Black regarding his management of the 911 call center was particularly dubious given that the Mayor had publicly praised Mr. Black — again, during the Mayor’s 2017 reelection campaign — for “cleaning up” the longstanding issues at the call center.

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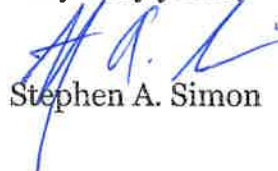
The City Has Irrevocably Damaged Mr. Black's Job Prospects.

Regrettably, the damage done to Mr. Black was not confined to his simply losing his job. Starting almost immediately after the Mayor first asked him to resign, Mr. Black's name and reputation were dragged through the mud in a very public way. In fact, the Mayor specifically threatened Mr. Black that he would suffer damage to his reputation if he did not accede to the Mayor's demand that he quit. Due to the hurtful rumors and drumbeat of negative stories about Mr. Black that circulated around City Hall and in the media during the weeks leading to his separation of employment, Mr. Black feared that his hard-earned reputation as an effective municipal government executive could not be salvaged. Mr. Black's diligent job search in the past month has, unfortunately, confirmed his worst fears: his career in municipal government has been destroyed. At age 55, he should be in the prime earning capacity of his work life. Instead, he finds himself trying to reinvent his career. In short, his economic losses are staggering. If this matter proceeds to litigation and Mr. Black prevails at trial, we submit that the award could be in the seven-figure range.

Before, however, we complete our preparation of a complaint in this matter, we are reaching out to explore the potential for a pre-suit resolution, in light of the attendant costs and inconvenience associated with litigation. Like you perhaps, we are not interested in a protracted weeks-long discussion. In this vein we suggest that, if there is genuine interest on both sides, the parties consider mediation.

Thank you in advance for your prompt consideration. As a courtesy, we ask that you respond to this letter no later than Friday, June 8.

Very truly yours,



Stephen A. Simon

cc: Harry Black