

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT M. HAHN,

Plaintiff,

Case No.

Hon:

v

GRETCHEN E. WHITMER, in her personal and representative capacities, JOSEPH M. GASPER, in his individual and representative capacities, and the MICHIGAN STATE POLICE, an agency of the State of Michigan,

Defendants.

James K. Fett (P39461)
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Attorneys for Plaintiff

". . . [I]t is permissible to remedy *discrimination*. It is not permissible to remedy *disparity* . . ." - *Middleton v City of Flint*, 92 F3d 396, 406 (6th Cir 1996)

"Way too White and way too male" - *Defendant Gasper*

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Plaintiff Robert M. Hahn, through his counsel, Fett & Fields, P.C., states the following claims against Defendants:

NATURE OF CLAIM

1. This is a *Fourteenth Amendment, 42 U.S.C. §1983 Equal Protection* and *Elliott-Larsen Civil Rights Act* action for damages and to end blatant racial and gender preferences implemented to (1) satisfy the Whitmer administration's clamor for affirmative action (racial and gender preferences) banned by referendum in 2006, and (2) placate minority advocacy groups that falsely accuse the Michigan State Police of institutional racism. Plaintiff also asserts a retaliation claim based on his opposition to the illegal racial and gender preferences.

JURISDICTION AND PARTIES

2. Plaintiff invokes the jurisdiction of this Court pursuant to *28 U.S.C. §§1331, 1343(a)(3), 1343(a)(4), and 28 U.S.C. §1367*.

3. The events giving rise to this cause of action occurred in the Western District of Michigan.

4. The amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney fees.

5. Plaintiff is a White male, a citizen of the United States and the State of Michigan; he was an inspector with the Michigan State Police ("MSP") until he was discharged for opposing Defendant's illegal racial and gender preferences.

6. Defendant Gretchen E. Whitmer is the duly elected Governor of Michigan and an ardent proponent of the affirmative action preferences prohibited by the *Michigan Constitution of 1963, Art I, § 26*, which she euphemistically refers to as "Diversity." See **Exhibit A**.

7. The Defendant Michigan State Police is the state's premier law enforcement agency; as a para-military organization, its members scrupulously follow policy and orders issued by superiors.

8. Defendant Joseph M. Gasper is the Director of the MSP and the architect of the MSP's most recent "affirmative action" policy (the "Affirmative Action Directive") designed to displace White males at all levels of the MSP with minorities and females.

9. To this end, Defendant Gasper has directed that the MSP set aside 25% of its positions for minorities and 20% for females throughout its ranks even though these percentages cannot be achieved without lowering standards and discriminating against White males in favor of minorities and females; in any event, the relevant qualified work force is inadequate to fill these set asides.

MSP'S STORIED HISTORY OF RACIAL PREFERENCES

10. The MSP's storied history of racial and gender preferences stretches all the way back to the early 1980s.

11. It was then that the MSP adopted unconstitutional measures to increase the number of Blacks in its ranks.

12. One such measure "Augmentation," implemented in 1981, entailed lowering the entrance and promotional standards for blacks and eventually females.

13. "Augmentation" allowed minorities and females to qualify for promotion to sergeant with test scores of 83 and above, while White males qualified only with scores in the middle to high 90s, depending on the year and quota for minorities. See *Herendeen v MSP*, 39 FSupp 2d 899, 902-903 (WD Mich 1999).

14. Command officers were also ordered to consider race and gender each and every time they made promotions from the discriminatorily assembled applicant pool. See *Herendeen*, 39 FSupp 2d at 904.

15. The MSP has conceded in other litigation that it achieved representation of

minorities and females in its workforce which exceeded their representation (percentage) in the relevant qualified workforce in the early 90s; there has been a judicial finding to this effect as well.

16. The MSP continued these naked racial and gender preferences through the 1990s until courageous Trooper Thomas A. Cremonte in 1996 obtained an injunction barring racial and gender preferences in promotions. See **Exhibit B**.

17. The MSP soon violated the injunction and were ordered by the Court to cease and desist; old habits die hard and the MSP continued to discriminate against White males in hiring, promotion and discipline, albeit in a more nuanced, covert manner.

18. Despite the injunction and the fact that it is undisputed that the MSP never engaged in institutional racial or gender discrimination, preference proponents within and without the MSP continued to demand measures to equalize the percentage of minorities in the MSP *workforce* with their percentage in the *population*, which are unconstitutional. *Middleton v. City of Flint*, 92 F3d 396, 406 (6th Cir. 1996) (That is ". . .[I]t is permissible to remedy *discrimination*. It is not permissible to remedy *disparity* without more. . ." (emphasis in original)).

19. The preference proponents made these demands despite the fact that the percentage of Blacks and females in MSP's *workforce* exceeded their percentages in the *relevant qualified workforce* and for Blacks, during most periods, their percentage exceeded their percentage of the *population*.

20. Similarly, the appointment of 2 Black males, a Hispanic and a female to the Director position failed to appease the preference proponents.

21. Because of the pressure brought to bear by White male litigants, the MSP did not acquiesce to the demands of the preference proponents by reinstating the naked racial and gender preferences referenced above (it did continue with the covert, less effective, more nuanced

measures, to be sure). See e.g. *Cremonte v MSP*, *Keuhn v MSP*, *Herendeen v MSP*, *Krafft v MSP*, *Lesnau v MSP*, *Galbraith v MSP* and *Breedveld v MSP*.

22. The preference proponents were further stymied by the Michigan Civil Rights Initiative, a referendum which culminated in amendment of the Michigan Constitution effective December 23, 2006 to bar racial and gender preferences in government employment, contracting and college admissions, see *Art 26, Affirmative Action*; Defendant Whitmore vigorously and very publicly opposed this referendum.

23. Michigan's specific constitutional prohibition on racial and gender preferences dressed up as "affirmative action," as well as the overwhelming popular opposition to preferences everywhere, required Defendants and others to rebrand racial and gender preferences as "diversity" or "equity and inclusion" policies.

24. Defendants now disingenuously characterize their racial and gender preferences as "Valuing Diversity and Inclusion," when in fact the MSP does not value White males and is in fact making great efforts to exclude them.

25. The labels may have evolved but not Defendants' clamor for illegal racial and gender preferences.

BLACK ADVOCACY GROUPS REIGNITE CLAMOR FOR RACIAL PREFERENCES

26. The latest impetus for aggressive racial preferences came when then MSP Director Kriste Kibbey Etue in September 2017 had the temerity to post on her personal Facebook page a meme consisting of a picture of Black NFL players kneeling during the National Anthem with the following message superimposed:

Dear NFL: We will not support millionaire ingrates who hate America and disrespect our Armed Forces and Veterans. Who wins a football game has ZERO impact on our lives. Who fights for and defends our nation has every

impact on our lives. We stand with the Heroes, not a bunch of rich, entitled, arrogant, ungrateful, anti-American, degenerates. Signed, We the people.

27. The outcry from the black advocacy groups was swift and furious.

28. Despite apologizing repeatedly for exercising her Constitutional right to freedom of speech, these black advocacy groups continued to vilify Director Etue and the MSP.

29. Then Governor Snyder had the courage to resist the call for Director Etue's resignation and she continued in her position until the end of Snyder's term.

30. Defendant Governor Gretchen E. Whitmer took office on January 1, 2019, and appointed Defendant Gasper as Director with the mandate to increase the percentages of minorities and women in the agency (see **Exhibit A**), even though it was clear to all that this could be accomplished only by trammeling the rights of White male applicants and long-serving White males.

ROLL OUT OF AFFIRMATIVE ACTION DIRECTIVE TO DISPLACE WHITE MALES WITH MINORITIES AND FEMALES

31. Defendant Gasper on February 6, 2019 convened a Director's Meeting at MSP headquarters where he announced that the number one priority of the agency was affirmative action preferences, which he euphemistically referred to as "diversity."

32. In attendance were Inspector level and above enlisted and civilian personnel.

33. Defendant stated that "diversity" was to be achieved at all levels of the MSP through the recruiting and promotional processes.

34. He also emphasized that gender, race and life experiences carried the same weight as experience and seniority in selecting candidates for hire and promotion.

35. At the Spring Director's Meeting on May 13, 2019, Defendant Gasper again emphasized that the number one priority for the agency is affirmative action and spoke at length

about the importance of diversifying all ranks of the MSP.

36. At the MSP Fall Forum on October 8, 2019, Defendant Gasper again reiterated how the number one priority in the Department is affirmative action preferences for minorities and females, which he continued to call "diversity."

37. He also spoke at length about how the MSP is "**way too White and way too male;**" he then revealed that as part of the Affirmative Action Directive the MSP was to set aside 25% of the positions within the MSP for minorities and 20% for females.

38. On October 9, 2019, Plaintiff and his supervisor Captain Michael Caldwell attended the Field Operations Bureau Meeting chaired by Lieutenant Colonel Arnold, who reported to Defendant Gasper.

39. The meeting was held to have a "difficult discussion" that Defendant Gasper had earlier promised regarding the racial and gender preferences and the consequent demographic changes in the MSP.

40. Lieutenant Colonel Arnold began the meeting by asking the group what they thought of Defendant Gasper's Affirmative Action Directive.

PLAINTIFF AND CAPTAIN CALDWELL OPPOSE RACIAL AND GENDER PREFERENCES

41. Captain Caldwell began the discussion by stating that he was concerned about how the "Affirmative Action Directive" was negatively affecting the White males under his command, explaining that the term "White male" has taken on a negative connotation within the MSP lately and that the term is almost always used in a negative light.

42. Caldwell also went on to state that White male commanders joined the department to serve the people of Michigan and had aspirations of assuming leadership roles in the profession and agency they chose to devote their lives to; he reminded everyone that White males did not

choose to be born White males, they just were; like everyone else in the world, they did not choose their race or ethnicity, but in the current departmental culture, they feel like they are being excluded from promotional opportunities because they are White males.

43. Caldwell then rhetorically asked, when the Director publicly states the number one priority of the department is to "diversify" the upper ranks of the MSP, how does that foster an atmosphere of inclusion for the members who are not identified as female or minority?

44. Plaintiff and Captain Caldwell opposed Defendant's Affirmative Action Directive, stating:

- a. recruiting and promotions should be based on merit only;
- b. it was not the MSP's fault that it was a majority White male agency; and
- c. given that the MSP was a majority White male agency, it was statistically reasonable to expect that the majority of MSP members that have risen to the upper command echelon are White males.

45. Plaintiff also criticized the MSP "hand-wringing over demographics," stating that it was an unwise response to the false claims of institutional racism by Black advocacy groups in the wake of Retired Colonel Etue's race-neutral Facebook post.

46. In addition to the above protected activity, Plaintiff also engaged in protected activity by aiding and encouraging Captain Caldwell in the exercise and enjoyment of his rights under state and federal discrimination laws.

"AFFIRMATIVE ACTION DIRECTIVE" IS MSP STANDARD OPERATING PROCEDURE, A PATTERN AND PRACTICE

47. Coming from the top official of a para-military organization, Defendant Gasper's "Affirmative Action Directive" constitutes standard operating procedure, a pattern and practice of racial and gender preferences designed to displace White males with minorities and females at all levels of the agency.

48. Consequently, MSP has begun a purge of White male command officers as the MSP has begun demoting or terminating them to make way for minorities and females that must make up a quarter of its ranks.

49. Pursuant to Defendants' "Affirmative Action Directive," the MSP has
- a. excluded White male applicants to the extent that a recent applicant roster contains not one White male candidate (see **Exhibit C**);
 - b. promoted less qualified minorities and females rather than White males with far superior employment records and experience;
 - c. converted high-level command officers from classified civil servants to at-will employees by means of mandatory two-year contracts for newly promoted captains and above, thus paving the way for their certain dismissal by non-renewal of contracts, and replacement with minorities and females who will, by then, be eligible for promotion to those ranks;
 - d. imposed harsh discipline on White males and little or no discipline on minorities and females for offenses of comparable seriousness; and
 - e. tied command bonuses to discriminating against White males.

50. Defendants' "Affirmative Action Directive," on its face and as applied, violates:

- a. the *Michigan Constitution* which provides:
 - (i) in *Art I, §2*:

Sec. 2 No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. . .
 - (ii) in *Art XI, §5* provides that MSP promotions are to be "determined by competitive examination and performance on the basis of merit, efficiency and fitness and not based on "religious, racial or partisan considerations."
 - (iii) in *Art I, §26. Affirmative Action*:

(2) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment. . .

- b. the injunction entered in *Cremonte v Michigan State Police*, ("Plaintiff may have injunctive relief, enjoining Defendant from making promotions based upon criteria other than which is contained in the 1963 Constitution, Art XI, § 5.") and
- c. the *Federal Constitution, Amendment XIV, §1* which provides: ". . . nor shall any state deny to any person . . . the equal protection of the laws."

51. Notably, the purpose of Defendants' "Affirmative Action Directive" is *not* to remedy past discrimination (which was remedied long ago) or for operational needs.

52. Rather, Defendant Gasper issued the "Affirmative Action Directive" to (1) satisfy the Whitmer Administration's clamor for the affirmative action preferences barred by Art I, §26 of the Michigan Constitution of 1963, and (2) placate Black advocacy groups that falsely accuse the MSP of institutional racism.

APPLICATION OF "AFFIRMATIVE ACTION DIRECTIVE"

53. On August 29, 2019, Plaintiff and many senior members of the MSP Command, including the Human Resources Director Stephanie Horton, attended a retirement party for an MSP colleague.

54. During the open-mic segment, Sgt. Dwayne Gill, who is a black male assigned to MSP's Recruiting and Selection section, which falls under the umbrella of the Office of Equity and Inclusion, took to the stage and began making racial jokes which Plaintiff knew to be in violation of MSP's Discrimination and Harassment Policy.

55. Plaintiff naively expected that one of the more senior MSP members in attendance would take the action required by the MSP Discrimination and Harassment Policy; he was wrong.

56. When the MSP senior members failed to act, Plaintiff on September 3, 2019, reported the incident to Gill's supervisor Inspector Lisa Rish, Equity and Inclusion Section

Commander, as he was duty bound by policy and his oath of office to do; Rish advised that she would get back to Plaintiff.

57. Rish called Plaintiff on September 9 as promised and asked what he wanted done; Plaintiff responded that was up to her as she was Gill's supervisor.

58. Rish then did all she could to dissuade Plaintiff from demanding an investigation, at one point remarking it was "just Dwayne being Dwayne."

59. Plaintiff replied that is like saying "boys will be boys" to a woman reporting sexual harassment.

60. Rish disputed and belittled Plaintiff's perceptions of Sgt. Gill's conduct at every turn, first defending it as committed while "off-duty," then that the retirement party was not an MSP sponsored event, then that his remarks weren't "insensitive," but rather, "inappropriate."

61. When asked if she would be willing to provide written direction that all MSP members are equally at liberty to make such jokes and remarks while off-duty, or engage in harassing behaviors while off-duty, Rish repeatedly argued that the two things were "apples and oranges."

62. Rish finally advised that she would get back to Plaintiff after the October 7, 2019 Fall Executive Forum, a full month away.

63. Plaintiff objected to the delay because of the gravity of the matter which was cut and dried and required immediate attention.

64. Rish agreed to get back with Plaintiff before the Forum.

65. Plaintiff then viewed Sgt. Gill's comedy videos on YouTube, as he had never seen Gill's stand-up routine, and was by now, from a policy perspective, rightfully concerned about their content.

66. A central part of Gill's comedy routines is his self-identification as a member of the Michigan State Police, although many but not all of his YouTube videos have recently been edited to delete his affiliation with the MSP.

67. Plaintiff's review of Gill's publicly available live routines revealed extensive violations of the MSP Code of Conduct and Discrimination and Harassment Policy, and include numerous racial, gender, LGBTQ and faith-based jokes.

68. Specifically, Gill, after identifying himself in these videos as a member of the MSP:

- a. states that Kalkaska is Michigan's "cracker barrel" and insinuates residents support or are affiliated with the Ku Klux Klan;
- b. mocks Asians and members of the Middle Eastern Community in Dearborn;
- c. disparages Black females as angry and more likely to fight off a Black male's advance than a White female;
- d. mocks the hearing impaired;
- e. mocks special Olympians; and
- f. says he only takes personal checks from White people because he knows they will clear.

69. On September 12, 2019 Plaintiff met with Inspector Lisa Gee-Cram of Human Resources on an unrelated matter, but spoke with her at the end of the meeting about Sgt. Gill's remarks.

70. After hearing Plaintiff's account of Gill's remarks at the retirement party and on his YouTube videos, Gee-Cram confirmed that Gill's conduct violated official orders, on or off duty.

71. Plaintiff, on September 13, sent Gee-Cram an email with a link to one of the videos and described its contents (**Exhibit D**).

72. On September 19, 2019, Plaintiff had an incidental face-to-face discussion with Ms. Stephanie Horton, Director of HR at the Michigan State Police, who remarked that she had been

at the retirement event and was shocked by Gill's remarks; she also advised that she had read Plaintiff's September 13 email to Ms. Gee-Cram and that it had been forwarded up the chain of command, who would be meeting about the email the next day.

73. Plaintiff replied that had he made the same remarks at the event, but about Blacks, an investigation would have been initiated before he made it to his car; Ms. Horton agreed.

74. Weeks later Rish contacted Plaintiff to inform him that the MSP was launching an internal investigation of his complaint.

75. Little did he know that the MSP would soon be launching a bogus investigation of him which would include surreptitious monitoring of his email.

76. The MSP never informed Plaintiff of the outcome of the Gill investigation but sustained the charges and recommended a two-day suspension.

77. The MSP handled Gill's discipline in kid glove fashion, imposing and then waiving the 2-day suspension.

78. Unsatisfied with the results of the investigation, Plaintiff appealed the results of the investigation to the Human Resources Division Commander, indicating:

The actions I took in this matter were "protected activities," taken to remedy a clear double-standard, which has long been condoned by the Michigan State Police, and affords, among other current advantages, a higher level of first amendment protections to certain ethnic and gender classes, than it does others. As the initial, primary complainant in this matter, the obstruction I was required to hurdle in order to stir other responsible commanders and division heads to action, and the lack of corrective measures taken to address Sgt. Gill's improper conduct, are wholly unacceptable and appear discriminatory against members of other ethnicities in Michigan state government. I believe an investigation into the criteria cited in dismissing Sgt. Gill's proposed discipline is in order, as well as an investigation into the gross lack of oversight by those who command the offices, divisions, and bureaus charged with assuring equal and consistent adherence to MSP's Discriminatory Harassment Policy. See **Exhibit E**.

DEFENDANT'S RETALIATION AGAINST PLAINTIFF

79. Plaintiff joined the MSP in 1990; he is 59 years old.

80. Through hard work and dedication, Plaintiff attained the rank of Inspector; some of his accomplishments are listed in **Exhibit F**.

81. Plaintiff has an exemplary employment record as confirmed by his evaluations.

82. Neither Defendant Gasper nor the MSP disciplined Plaintiff until he opposed Defendants' Affirmative Action Directive and the racial double disciplinary standard applied to Dwayne Gill.

83. Shortly after Plaintiff engaged in opposition activity the MSP in late October 2019 began investigating him for following Captain Caldwell's orders regarding an interview process for a transfer; the MSP required the interview process despite the fact that all concerned knew that the transfer request would never be granted.

84. Caldwell's supervisor, Lt. Colonel Arnold, told him that he, Caldwell, retained discretion to deny the transfer request, but that he had to go through the motions of the interview process.

85. Captain Caldwell informed the transfer applicant, Dt. Lt. Bush, before the interview process that his request would be denied; Bush elected to proceed with an interview anyway so that he could tell his wife that he had done everything possible to obtain a transfer to Gaylord.

86. Caldwell directed that Plaintiff convene an interview panel and otherwise "go through the motions;" Plaintiff initiated the interview process and otherwise went through the motions as directed during October 2019.

87. Caldwell denied the transfer request and nobody was surprised - until the MSP, on March 9, 2020, after a 2.5 month rigged investigation, terminated Plaintiff and demoted Captain

Caldwell for obviously pretextual reasons scoffed at by veteran members of the MSP.

88. It is probably no coincidence that Defendants placed Plaintiff and Captain Caldwell on administrative leave the day after Plaintiff sent an email to Caldwell criticizing Defendants' response to his complaint about Sgt. Gill (see **Exhibit G**); on information and belief Defendants knew about the email immediately since they were monitoring Plaintiff's email.

COUNT I
RACE AND GENDER DISCRIMINATION IN VIOLATION OF 42 U.S.C.
§1983 (FOURTEENTH AMENDMENT EQUAL PROTECTION)

89. Plaintiff incorporates by reference the preceding paragraphs.

90. Plaintiff was a high-performing White male command officer with a sterling employment record until wrongfully terminated by Defendant MSP.

91. Defendants were acting under the color of state law when they jump-started the MSP standard operating procedure (pattern and practice) of racial and gender preferences in the terms and conditions of employment (as described above), much to the detriment of White males.

92. Defendants deprived Plaintiff of his right to Equal Protection as guaranteed by the *14th Amendment to the United States Constitution* by:

a. requiring him to abide by the "Affirmative Action Directive" and thereby violate his oath of office which provides:

". . . I do further solemnly swear that I will faithfully enforce the laws of this state, discharging the duties of an officer of the Michigan State Police and will preserve, protect and defend the Constitution of the United States and the Constitution of this state. . ."; and

b. terminating his employment for pretextual reasons based on his status as a White male.

93. Defendants are the usual governmental employers that discriminate against White males.

94. Defendants' illegal race and gender discrimination has caused Plaintiff damages.

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendants providing for:

- a. Economic damages;
- b. Non-economic damages to compensate for the mental and emotional distress, outrage, and humiliation he has suffered, and continues to suffer, as a result of Defendant's illegal actions;
- c. Costs, interest and reasonable attorney fees as provided by 42 U.S.C. §1988;
- d. Punitive damages against Defendants in their personal capacities;
- e. Reinstatement and an injunction against Defendants' illegal racial and gender preferences;
- f. A declaration that Defendants' conduct as described above violates the state and federal constitutions and statutes; and
- g. Such other equitable relief as the Court deems just.

COUNT II - 42 USC §1983 RETALIATION

95. Plaintiff incorporates by reference each of the preceding paragraphs.

96. Plaintiff engaged in protected activity under 42 USC § 1983 by opposing the MSP's racial and gender discrimination against himself, those under his command in the Seventh District and all other members of the MSP.

97. Defendant MSP terminated Plaintiff because he opposed the Affirmative Action Directive's racial and gender preferences, as well as the the double disciplinary standard applied to Sgt. Dwayne Gill.

98. Defendant's termination of Plaintiff on this basis violates 42 USC § 1983.

99. As a proximate result of Defendants' illegal conduct, Plaintiff has suffered, and will continue to suffer, emotional distress, especially outrage, lost opportunities, loss of reputation, embarrassment and the physical manifestations of these injuries, as well as economic damages.

WHEREFORE Plaintiff requests that this Court enter judgment against Defendants providing for:

- a. Economic damages;
- b. Non-economic damages to compensate for the mental and emotional distress, outrage, and humiliation he has suffered, and continues to suffer, as a result of Defendant's illegal actions;
- c. Costs, interest and reasonable attorney fees as provided by 42 U.S.C. §1988;
- d. Punitive damages against Defendants in their personal capacities;
- e. Reinstatement and an injunction against Defendants' illegal racial and gender preferences;
- f. A declaration that Defendants' conduct as described above violates the state and federal constitutions and statutes; and
- g. Such other equitable relief as the Court deems just.

COUNT III
RACE DISCRIMINATION IN VIOLATION OF THE
ELCRA AND ART. I, §26 OF THE MICHIGAN CONSTITUTION

100. Plaintiff incorporates by reference the preceding paragraphs.

101. Plaintiff is a White male.

102. Defendants terminated Plaintiff based on his status as a White male.

103. That is, Plaintiff's status as a White male was at least a factor, if not the only factor, that made a difference in Defendants' decision to terminate Plaintiff.

104. Defendants' termination of Plaintiff violates the Elliot-Larsen Civil Rights Act and Mich Const 1963, Art 1, §26.

105. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff has suffered, and will continue to suffer emotional distress, including humiliation, loss of reputation, outrage and economic loss.

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendants providing for:

- a. Economic damages;
- b. Non-economic damages to compensate for the mental and emotional distress, outrage, and humiliation he has suffered, and continues to suffer, as a result of Defendant's illegal actions;
- c. Costs, interest and reasonable attorney fees as provided by 42 U.S.C. §1988;
- d. Punitive damages against Defendants in their personal capacities;
- e. Reinstatement and an injunction against Defendants' illegal racial and gender preferences;
- f. A declaration that Defendants' conduct as described above violates the state and federal constitutions and statutes; and
- g. Such other equitable relief as the Court deems just.

COUNT IV - RETALIATION IN VIOLATION OF ELCRA

106. Plaintiff incorporates by reference each of the preceding paragraphs.

107. Plaintiff engaged in protected activity under ELCRA and Art I, §26 of the Michigan Constitution of 1963 by opposing the MSP's racial and gender discrimination against himself, those under his command in the Seventh District and all other members of the MSP.

108. Defendants retaliated against Plaintiff because he opposed racial and gender preferences and aided and encouraged Captain Caldwell in the exercise and enjoyment of his rights under state and federal discrimination law.

109. Defendants termination of Plaintiff on this basis violates ELCRA, MCLA 37.2701(a) and (f).

110. As a proximate result of Defendants' illegal conduct, Plaintiff has suffered, and will continue to suffer, emotional distress, especially outrage, lost opportunities, loss of reputation, embarrassment and the physical manifestations of these injuries, as well as economic damages.

WHEREFORE Plaintiff requests that this Court enter judgment against Defendants providing for:

- a. Economic damages;
- b. Non-economic damages to compensate for the mental and emotional distress, outrage, and humiliation he has suffered, and continues to suffer, as a result of Defendant's illegal actions;
- c. Costs, interest and reasonable attorney fees as provided by 42 U.S.C. §1988;
- d. Punitive damages against Defendants in their personal capacities;
- e. Reinstatement and an injunction against Defendants' illegal racial and gender preferences;
- f. A declaration that Defendants' conduct as described above violates the state and federal constitutions and statutes; and
- g. Such other equitable relief as the Court deems just.

Respectfully submitted,

/s/ James K. Fett

By: James K. Fett (P39461)

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734-954-0100

jim@fettlaw.com

Attorneys for Plaintiff

Dated: May 11, 2020

Affidavit of Mailing

I hereby certify that on **May 11, 2020**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **not applicable**, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: **not applicable**.

/s/ James K. Fett

James K. Fett

Fett & Fields, P.C.

805 E. Main St.

Pinckney, MI 48169

734-954-0100

JURY DEMAND

NOW COMES Plaintiff Robert M. Hahn, through his counsel Fett & Fields, P.C., and hereby demands trial by jury in the above-captioned matter.

/s/ James K. Fett

By: James K. Fett (P39461)

Fett & Fields, P.C.

805 E. Main St.

Pinckney, MI 48169

734-954-0100

jim@fettlaw.com

Attorneys for Plaintiff

Dated: May 11, 2020

Affidavit of Mailing

I hereby certify that on **May 11, 2020**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **not applicable**, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: **not applicable**.

/s/ James K. Fett

James K. Fett

Fett & Fields, P.C.

805 E. Main St.

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734-954-0100

INDEX OF EXHIBITS TO COMPLAINT

<u>Exhibit</u>	<u>Description</u>
A.	Strategic Plan for the State - Fiscal Years 2020 to 2025
B.	Opinion in <i>Cremonte v Michigan State Police</i>
C.	Applicant Roster
D.	Email to Lisa Gee-Cram dated September 13, 2019
E.	Email to State of Michigan dated March 13, 2020
F.	Resume of Robert (Mike) Hahn
G.	Email to Captain Caldwell dated March 8, 2020



State of Michigan

Strategic Plan for the State

Fiscal Years 2020 to 2025

Pursuant to the requirements set forth in MCL 18.1363

Contents

- State of Michigan
- Agriculture & Rural Development (MDARD)
- Civil Rights (MDCR)
- Corrections (MDOC)
- Education (MDE)
- Environment, Great Lakes and Energy (EGLE)
- Health and Human Services (MDHHS)
- Insurance and Financial Service (DIFS)
- Labor and Economic Opportunity (LEO)
- Licensing and Regulatory Affairs (LARA)
- Public Service Commission (MPSC)
- Military and Veteran Affairs (DMVA)
- Natural Resources (DNR)
- State Police (MSP)
- Technology, Management & Budget (DTMB)
- Office of Children's Ombudsman (OCO)
- Office of State Employer (OSE)
- State Budget Office (SBO)
- Transportation (MDOT)
- Treasury
- Lottery (MSL)



MSP
01/30/2020

FOUNDATIONS

MISSION
Provide the highest quality law enforcement and public safety services throughout Michigan.

**Michigan State Police
Fiscal Years 2020 - 2025**

VISION
Be a leader and partner in law enforcement and public safety, with a highly trained, full-service state police force that is mobile, flexible, and responsive to emerging public safety needs across Michigan.

VALUES

- Opportunity – that each Michiganian be granted the greatest chance to succeed and advance
- Responsibility – that there is an expectation and duty to embrace opportunity to the best of each person's capability and situation
- Security – that protections are essential for those experiencing unfair, inequitable or unjust circumstances and to create a foundation upon which the benefits of opportunity can be achieved
- Service – that Michiganians receive from the Michigan State Police the highest quality law enforcement and public safety services
- Integrity – that the actions of the Michigan State Police reflect fairness and instill the trust and confidence of our department members, the public, and our stakeholders
- Inclusion – that the Michigan State Police fosters a culture and mindset where the unique contributions of each department member and community member are valued and celebrated

KEY GOALS

Provide the highest quality law enforcement and public safety services by maximizing existing strengths and assets and by forging authentic community connections.

Support our department members by creating an environment that fosters engagement and encourages personal growth and future success.

Build a department culture that values trust, transparency, and individual contributions that will inspire the confidence of department members, the public, and our stakeholders.

KEY STRATEGIES

- Maintain trooper strength and capabilities by conducting a one-for-one replacement for all enlisted attrition, in order to maintain a minimum staffing of 2,000 enlisted members annually by December 31.
- Provide a seamless in-car mobile environment that reduces administrative time for troopers by 10 percent by pursuing technology solutions, including single sign-on capability, enhanced connectivity, and dictation software by Dec. 31, 2022.
- Reduce crime and improve traffic safety by developing and implementing annual district-level plans, comprised of post and section plans, based on data and best practices that focus on crime and traffic initiatives where department resources can make a positive impact by December 31.
- Assess the department's current service delivery model to ensure it meets today's needs, including reviewing work sites, department fleet, and the assigned vehicle program by Dec. 31, 2022.
- Improve throughput for forensic examinations to better serve our partners in the pursuit of criminal justice by Dec. 31, 2022.
- Empower work sites with the resources and latitude to tailor their annual community outreach plan to meet the unique needs of the residents and stakeholders they serve through Dec. 31, 2022.
- Develop an after-action procedure that is implemented following a critical incident to identify lessons learned and opportunities for improvement through Dec. 31, 2022.

- Launch an internal mobile app that will enhance employee communication and engagement by Dec. 31, 2021.
- Establish a department-wide employee mentor program to encourage personal growth and future success by Dec. 31, 2021.
- Establish a civilian onboarding program that will foster employee inclusion and improve retention by Dec. 31, 2022.
- Make training more accessible for department members and our public safety partners by utilizing virtual-reality and modern video-based learning methods and by seeking alternate training locations by Dec. 31, 2022.

- Expand opportunities that foster employee inclusion and provide a platform for open dialogue from diverse perspectives through Dec. 31, 2022.
- Institute recruiting practices that reduce barriers to employment in order to increase the trooper minority applicant pool and female applicant pool by Dec. 31, 2022.
- Review the impact and intent of the department's current youth mentoring and cadet programs with the goal of attracting and building a pipeline for entering recruit school by Dec. 31, 2022.
- Capitalize on new and existing partnerships with community members that will provide department members with diverse perspectives, cultural awareness, and customer feedback by Dec. 31, 2022.

CORE OPERATING PROCESSES

- Delivering law enforcement services statewide
- Investigating crime and enforcing laws
- Protecting people and businesses

- Fostering employee engagement and inclusion
- Developing and retaining talent
- Modernizing training

- Fostering diversity, equity, and inclusion
- Attracting and retaining a diverse workforce
- Seeking diverse perspectives

KEY MEASURES

- 2,000 total enlisted member strength
- 10 percent reduction of time spent by troopers on administrative duties
- 65-day average turnaround time for cases submitted to the Forensic Science DNA Unit

- 79% or higher agree score for the Employee Survey question "I get the information I need to be productive in my job"
- 100% of new civilian employees assigned a mentor within 30 days
- 20% of training offered virtually

- 80% or higher agree score for the Employee Survey question "My work group has a climate in which diverse perspectives are encouraged and valued"
- 25% of trooper applicant pool identifies as a racial minority
- 20% of trooper applicant pool identifies as female



STATE OF MICHIGAN
COURT OF CLAIMS

THOMAS A. CREMONTE,

Plaintiff,

Court of Claims
Case No. 95-15727 CM

v

Consolidated with Livingston County
Circuit Court Case No. 94-13442 NO

MICHIGAN STATE POLICE, an
agency of the STATE OF MICHIGAN,

Defendant.

TRUE COPY
DANIEL A. BURRESS
44th CIRCUIT COURT
CB

OPINION

Plaintiff, Thomas A. Cremonte, filed this two-count Court of Claims complaint against the Michigan Department of State Police on April 12, 1995. In Count I, paragraph 10 of his Complaint, Plaintiff alleges that Defendant's actions of refusing to promote him are "contrary to the public policy embodied in the Michigan and United States Constitutions." In Count II, paragraph 13, Plaintiff alleges that the actions and policies of the State Police constitute a "denial of Plaintiff's right to equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution and the Michigan Constitution."

This action was transferred to this Court and consolidated with the above captioned Elliott-Larsen Civil Rights Action then pending here. Trial of these cases commenced on January 30, 1996, and continued on January 31, February 2nd, 5th, 6th, 7th, 9th, 20th, 21st, and 22nd. The following were called as witnesses, either live or through deposition: Colonel



Michael Robinson, Trooper Donald Arbic, Chief Robert Krichke, Trooper Barry Lewis, Dr. Martin Wing, Livingston County Prosecutor David Morse, Plaintiff Trooper Thomas Cremonte, Deborah Gilmore, Trooper Therese Fogarty-Cremonte, Chief William Smith, Lt. Chris Lewis, Lt. Thomas Finco, Lt. Dianne Garrison, Captain Christopher Hogan, Lt. Michael Knuth, Lt. Shelby Slater, Lt. Britt Weber, Lt. John E. Behnke, Captain Timothy Barker, Captain James Cox, Lt. Steven Brown, Lt. Col. James Bolger, Charles Green, Shirley England, Lt. Robert Young, Prof. Dennis Gilliland, Captain Philip David Charney, Captain Gene Hoakwater, Trooper Daniel Keuhn, Chief (Retired) Michael Oyler, Michael Vance, and Dennis Diggs.

Sixty-six (66) exhibits were received into evidence. The jury rendered judgment in favor of Plaintiff in the sum of \$850,000 in the Circuit Court action. The parties agreed that the opinion in this case would not be rendered until they had the opportunity to submit detailed proposed positions following receipt of the jury verdict in the Circuit Court action. Each party has submitted their proposals which have been considered by the Court.

Many of the essential facts involved in this matter are hotly disputed.

Plaintiff is a classified civil servant employed by the Michigan State Police as a trooper. He began his employment with the Michigan State Police in 1977, and is presently assigned to the Brighton Post. The gravamen of his complaint is that less qualified minorities (i.e., women, African-Americans and Hispanics) have been promoted to sergeant over himself, a white male.

His contention is that he is a victim of race and gender discrimination as a result of the Michigan Department of Civil Service's policy of "augmented certification," which, according to Plaintiff, is contrary to public policy and violates his constitutional equal protection rights.

Augmented certification was a process used by the State Police to place members of protected classes into the pool of applicants considered for a given promotional position. Protected classes or groups include females, Afro-Americans, Hispanics, American-Indians, and Asians.

A trooper's score on the promotional examination determines eligibility for promotion. The applicant's scores are divided into bands.¹ Those achieving a score of 92-100 were placed in the first band, while those whose score was 83-91 were placed in the second band. Under Civil Service rules and procedures, there must be at least three candidates for an appointment or promotion to be made by the appointing authority. When a promotional opening becomes available in a particular geographical area, a list of qualified candidates is forwarded to the hiring agency for consideration.

In regions of the State where underutilization of protected persons exists, the list of persons eligible for promotion is "augmented" by adding to it the names of protected group members from successively lower bands, until the total number of names of the protected group equals three or more. Under this system all first banders were eligible for promotion.

¹ This practice was discontinued June 27, 1994. From May 1987 until June 27, 1994, the scores were divided into four bands. To address concerns that the applicant pool was limited, (9-15 applicants) the bands were widened into two bands. Those with scores of 100-83 are placed in the first band, and those with scores of 82-70 are placed in the second band. The Circuit Court action was commenced March 15, 1994. The Court of Claims action was filed April 12, 1995. This Opinion address the bands as they existed at the time that these consolidated cases were filed.

However, when the list of first banders contained an insufficient number of eligible candidates from a underutilized protected group, the list is augmented by adding to it the names of protected persons from lower bands of test scores. Thus white males from the second band did not have the same promotional opportunities as protected persons from the second band.

Plaintiff first took the sergeant promotional examination in 1984. He testified that he was interested in any promotional assignment, except in the upper peninsula or thumb area. For all practical purposes Plaintiff was ineligible for promotion from 1984 through May, 1993 because he was a second band white male.² In both 1993 and 1995 he scored in the high first band. He claims that he continues to suffer discrimination, along with all other white males, even though he is now in the first band. This is because Defendant considers race and gender in its promotional decisions.

Defendant's affirmative action programs for 1989 and forward set a goal of 13% for minority group representation in the law enforcement personnel ranks.³ As of September 1, 1991, minority group officers comprised 12.8% of all enlisted personnel.⁴ Minorities comprise approximately 17% of the enlisted ranks, including troopers, sergeants and above.⁵

² Protected persons from the second band would have moved into the augmented list of promotional candidates, while white males in the second band were not so shifted.

³ Minorities include African-Americans, Hispanics, American Indians, and Asians. Consent Decree, United States District Court Western District, Southern Division, Civil Action No. G75-472-CA5. Exhibit 21, p. 26. Exhibit 22, p. 25. This Court notes that the "Goals and Timetables" section of these two exhibits appears to be identical.

⁴ Exhibit 22, p. 14.

⁵ Testimony Lt. Steven Brown February 6, 1996.

In 1994, minorities comprised at least 13.5% of the workforce.⁶ As far back as 1990 minorities held 13.4% of the positions in occupational categories applicable to Plaintiff.⁷ Despite this attainment in the Michigan State Police workforce, Defendant, pursuant to the Preference Policy, gave 16.8% of the sergeant promotions to minorities during the period 1993-1995.⁸

Trooper Cremonte started with the Michigan State Police in 1977. He has had various assignments since that time. In 1983 the Department evaluated him for promotional potential.⁹ He was described as:

. . . a very dedicated employee who displays an intense spirit and possesses a unique awareness in the area of criminal investigation. . . his stamina and enthusiasm during prolonged and arduous investigations appears to be endless. . . The respect and confidence which is afforded him by his fellow officers is exceptional. . . Cremonte is an exceptional Detective and is definitely capable of performing the duties of a first line supervisor. His abilities by far exceed that which would be considered acceptable for the position applied for.

He also established that he received a local Trooper of the Year award in 1987, was involved in the organization and operations of a local drug enforcement unit, received a B.B.A. from Cleary College (3.85 GPA), had Post Commander and Sergeant recommendations for promotion, and had experience as Acting Sergeant at the Brighton Post.

⁶ Judicially notice fact, Exhibit P.

⁷ Exhibit 21, Attachment D: Uniform Sergeants (Technicians, 8.6%), Uniform Troopers and Detective Sergeants (Protective Services, 14.6%).

⁸ Exhibit J.

⁹ Exhibit 44. Promotional potential evaluations are no longer utilized by the Department, and were criticized as being too subjective by ranking officers who testified on the subject.

Other witnesses testified to his many good attributes and qualities. Even those witnesses who were called to testify against him attested to his unique ability in the field of drug enforcement. He attributes his lack of promotion to discriminatory practices and policies and to the Department's displeasure concerning his complaints to the Director about what he considered to be unconstitutional and illegal practices in the hiring and promotional process.

Defendant, on the other hand, denies any unconstitutional or illegal practices in the promotional process, and claims that Trooper Cremonte was not promoted for reasons directly related to his own style of doing things. They point out that he questions the authority of supervisors who issue orders that he disagrees with, is not a team player, is too independent and prefers to do things his way despite contrary directions from supervisors, is too strong willed, inflexible, and set in his ways, is not known by some post commanders who have filled sergeant vacancies at their posts, is a poor role model and mentor for new troopers, has indicated a lack of interest in performing the administrative skills of a sergeant, and stereotyped individual members of the State Police based on their skin color and gender.

It is probably an understatement to observe that this case was vigorously contested on both sides. Plaintiff presented what he thought to be his qualifications and reasons why he should have been promoted, and evidence concerning the promotional policies and practices of the Department. Defendant brought out what it thought to be many non-discriminatory and otherwise valid reasons why, in its opinion, Trooper Cremonte was not promoted, and denied any violation of the Constitution or laws. This was met by a response from Trooper Cremonte which demonstrated that other ranking officers within the organization were promoted or retained following disclosure that they too were not perfect.

It is unnecessary to do more than note the existence of this testimony in arriving at a decision in this matter.

PLAINTIFF'S PUBLIC POLICY CLAIM

The Michigan Constitution of 1963 provides:

Art. I, § 2

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Art. XI, §5

State Trooper promotions are to be:

determined by competitive examination and performance on the basis of merit, efficiency and fitness.

Further that:

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, ... in the classified service shall be made for religious, racial, or partisan consideration.

Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Plaintiff claims that he was denied promotion in part, because he opposed violations of the Michigan Constitution. Specifically, in response to a survey request from Colonel

Davis, he wrote a memo objecting to the hiring and promotional policies of the Michigan State Police.¹⁰

Each of the parties has relied upon *Vagts v Perry Drug Stores*, 204 Mich App 481, (1994). In that case the Court of Appeals summarized the three forms of “public policy” claim in the following manner:

Generally, employment relationships are terminable at will, with or without cause, “at any time for any, or no, reason.” *Suchodolski v Michigan Consolidated Gas Co.*, 412 Mich 692, 694-695; 316 NW 2d 710 (1982). “However, an exception has been recognized to that rule, based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable.” *Id.* at 695. These grounds are “[m]ost often ... found in explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty.” *Id.* (first exception). “[C]ourts have also occasionally found sufficient legislative expression of policy to imply a cause of action for wrongful termination even in the absence of an explicit prohibition on retaliatory discharges” such as “where the alleged reason for the discharge ... was the [employee’s] failure or refusal to violate a law in the course of employment.” *Id.* (second exception). Courts have also “found implied a prohibition on retaliatory discharges when the reason for a discharge was the employee’s exercise of a right conferred by a well-established legislative enactment.” *Id.* At 695-696. (third exception). *Vagts v Perry Drug Stores*, 204 Mich App 481, 484 (1994).

Defendant argues that all three forms of a “public policy” claim set forth in *Suchodolski*, supra, require the discharge of an employee before the Courts have recognized a public policy claim. Defendant suggests, as noted in *Vagts*, that the first of the three grounds has probably been eliminated by the Supreme Court’s holding in *Dudewicz v Norris-Schmid Inc*, 443 Mich 68; 503 NW 2d 645 (1993); since the Elliott-Larsen Civil Rights Act provided a remedy for someone discharged or retaliated against for opposing a violation of

¹⁰ Exhibit 2.

the Act. They further point out that Plaintiff has availed himself of the remedies of that Act. However, Plaintiff argues that the Elliott-Larsen Civil Rights Act prohibits retaliation for opposition to a violation of the Elliott-Larsen Civil Rights Act, not to a violation of the Michigan Constitution.

Each of the parties has skillfully argued the facts concerning the weight of the voluminous testimony on the subject of the reasons why Trooper Cremonte should have been, or was not promoted. It is clear to this Court that the Michigan State Police is a close knit organization and that his letter to the Colonel was a major factor causing Trooper Cremonte's star to fall. The obvious result of writing such a letter was best summarized by the testimony of Lt. Steven Brown who characterized Cremonte as being a "very brave or very foolish individual" for voicing his opinion with respect to protected groups. The defense has not argued that he was brave.

A "public policy" cause of action may be found in explicit legislative statements prohibiting the discharge, discipline or other adverse treatment of employees who act in accordance with a statutory right or duty. Here the plaintiff openly opposed violations of the constitutional provision which requires that promotions be determined by competitive examination and performance on the basis of merit, efficiency and fitness, and that no promotion is to be made for religious, racial or partisan consideration. He claims that, as a result, Defendant retaliated against Plaintiff by not promoting him, in spite of his obvious qualifications.

In the Circuit Court Elliott-Larsen Civil Rights action, Plaintiff amended his complaint to include claims of discrimination on the basis of age, gender, race and retaliation for

expressing his opinion with respect to those policies. In his Court of Claims complaint, at ¶9 of his public policy claim, Plaintiff alleges that “Defendant refuses to promote Plaintiff because he expressed the view that Defendant should treat all troopers equally irrespective of age, race, or gender.” Both actions allege retaliation based on the same conduct of Plaintiff. A public policy claim is sustainable only where there is not also an applicable statutory prohibition against retaliation for the conduct at issue. *Dudewicz v Norris-Schmid Inc*, 443 Mich 68, 80; 503 NW 2d 645 (1993). The Elliott -Larsen Civil Rights Act prohibits retaliation “against a person because the person has opposed a violation of [the] act, or because the person has made a charge, . . . under this act.” As a result, because the Elliott -Larsen Civil Rights Act provides relief for the conduct alleged herein, his public policy claim is not sustainable.

CONSTITUTIONAL CLAIM

The Michigan Constitution of 1963 provides:

Art. I, § 2

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

A claim for damages against the state may be brought where the state violates the Michigan Constitution. *Smith v Dept of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987). A plaintiff states a constitutional claim by showing that, by virtue of a custom or policy, the state deprived the plaintiff of a constitutional right. *Marlin v Detroit (After*

Remand), 205 Mich App 335, 338; 517 NW2d 305 (1994); *Johnson v Wayne Co*, 213 Mich App 143; 540 NW2d 66 (1995).

Plaintiff has challenged Defendant's affirmative action plans¹¹ alleging that they embody an illegal preference. The policy challenged herein is remedial governmental action in classification of civil service employees. These classifications, known as protected groups, are challenged in three categories, race-based, gender-based, and age-based.

Equal protection of the law is guaranteed by both the federal and state constitutions. US Const, Am XIV; Const 1963, art 1 § 2. The equal protection guarantee requires that persons in similar circumstances be treated alike. *El Souri v Dep't of Social Services*, 429 Mich 203, 207; 414 NW2d 679 (1987). ... When a ... classification is challenged as violative of equal protection, the test to determine its validity depends on the type of classification and the nature of the interest affected. *Dep't of Civil Rights v Waterford Twp*, 425 Mich 173, 190; 387 NW2d 821 (1986). *Thompson v Merritt*, 192 Mich App 412, 424-425 (1991).

The standard of review to be applied to race-based classification is strict scrutiny. *Adarand Constructors, Inc. v Pena*, 515 US ___, 115 S Ct ___, 132 L Ed 2d 158 (1995).

This standard applies when the race-based government action is remedial in nature. *id.*

Plaintiff has the burden of showing that the totality of the circumstances give rise to an inference of race-based discrimination. *Haberkorn v Chrysler Corp.*, 210 Mich App 354 (1995). To survive judicial scrutiny, the racial classifications must serve a compelling governmental interest, and must be narrowly tailored to further that interest.

Defendant has established a policy of affirmative action which it has implemented through its augmentation certification process.¹² This procedure gives rise to an inference

¹¹ Exhibit 21, pp.22-23; Exhibit 22, p. 22, Exhibit 23.

¹² See Policy Statements Exhibits 21, 22, & 23. And Exhibit 4.

of race-based discrimination, such that the burden shifts to the defendant to show that the racial classifications serve a compelling governmental interest, and are narrowly tailored to further that interest. Defendant implemented the affirmative action policy “to overcome present effects of past exclusion or discrimination, or both, in carrying out its promotion, retention, and other personnel actions with regard to race, color, national origin, or handicap status.”¹³ The affirmative action program was developed with the knowledge that non-discrimination alone had been insufficient to assure equal opportunity.¹⁴

Defendant’s goal was to attain 13% minority representation in the personnel ranks. This goal has been achieved and exceeded, yet Defendant continued to use the “augmentation certification” process for promotions. Defendant continues to consider race and gender in its promotional decisions.¹⁵ While the goal represents a legitimate interest, the continued use of “augmentation” after attaining that goal is not narrowly tailored. The race-based augmentation policy is an unconstitutional discrimination.

Plaintiff also challenges the same policy based on gender discrimination. To be upheld, this gender-based classification scheme must further an important governmental interest and be substantially related to achieving that interest. *Craig v Boren*, 429 US 190; 97 S Ct 451; 50 L Ed 2d 397 (1976), reh den 429 US 1124 (1977).

Defendant’s goal, pursuant to the Consent Decree was to graduate at least 50 women into the position of Trooper 07 (Trooper I) over four academy classes. As early as 1990, this

¹³ Policy Statements Exhibits 21, 22, & 23.

¹⁴ Introductory notes to Affirmative Action Plan.

¹⁵ Deposition testimony Coronal Michael Dean Robinson. (42).

goal was exceeded.¹⁶ According to the Consent Decree, Defendant was to propose a secondary, long-term goal¹⁷ for participation of women in law enforcement with the Michigan State Police. The goal with respect to woman did not change. Defendant continued its augmentation policy with respect to women despite achieving its expressed goal. The gender-based augmentation policy cannot be said to be substantially related to achieving a goal which was realized as early as 1990. The gender-based augmentation policy is an unconstitutional discrimination.

Plaintiff has also challenged Defendant's policies based on age. Absent a fundamental interest or suspect classification, the burden is placed on Plaintiff to show that the classification is arbitrary and not reasonably or rationally related to the object of the policy.

People v Perkins, 107 Mich 440 (1981).

Age is not a suspect classification for equal protection purposes. *Massachusetts Board of Retirement v Murgia*, 427 US 307, 313-314; 96 S Ct 2562; 49 L Ed 2d 520 (1976), *Johnson v City of Opelousas*, 488 F Supp 433(WD La, 1980).
id., p. 443.

Plaintiff has not established that there exists any arbitrary distinction based on age. Further, any discrimination which has occurred due to Defendant's promotional policies appears to be rationally related to the object of that policy, to overcome present effects of past exclusion or discrimination.

¹⁶ Exhibit 21, p.26.

¹⁷ ¶ 4.(c) of the Consent Decree provides:

Not later than two years from the entry of this Decree or the graduation of those four classes, whichever is sooner, the defendants, based on their experience with women in general police work, will propose to plaintiff a long-term goal for participation of women in law enforcement with the Michigan State Police.

Plaintiff has established that he was at least as qualified, or more so, than several applicants who were promoted after being placed on the promotional roster as a result of augmentation based on race or gender.¹⁸

Fashioning an appropriate remedy in this case is problematic. After having considered numerous alternatives, the Court is satisfied that the following award and remedy is appropriate.

Plaintiff may have injunctive relief, enjoining Defendant from making promotions based upon criteria other than that which is contained in the 1963 Constitution, Art XI, § 5.

Plaintiff is awarded damages in the sum of \$850,000.00. Said damages are not to be construed as cumulative to the amount awarded in the Circuit Court action.

Plaintiff shall submit a judgment in conformity with this Opinion within ten (10) days.

MAY 08 1996

Date

DANIEL A. BURRESS

Daniel A. Burress
Court of Claims Judge
by Assignment

¹⁸ See testimony, Captain Chris Hogan, February, 5, 1996; Lt. Britt Weber, February 6, 1996; and Lt. John Behnki February 6, 1996.

Last Name	First Name	City	Zipcode	Districts	Home Phone	Gender
				1		Male
						Female
				2		Male
				2		Female
				2		Female
				1		Male
				2		Male
				2		Female
				2		Female
				1		Female
				2		Male
						Male
				7		Female
				2		Male
				2		Male
				3		Male
				3		Male
						Male
				1		Male
						Male
						Female
						Male
				2		Female
				2		Male
						Male
				1		Female
				1		Male
						Male
				1		Female
						Female
				2		Male
						Female
				3		Female
				1		Female
						Male
						Female
						Male
				3		Male
				2		Female
				2		Male
				2		Male
						Female



Ethnicity	Status
Black	Agility Test
White	Agility Test
Black	Agility Test
Hispanic or Latino	Agility Test
White	Agility Test
Black	Agility Test
Black	Agility Test
White	Agility Test
Black	Agility Test
Two or More Races	Agility Test
Asian	Agility Test
Black	Agility Test
White	Agility Test
Black	Agility Test
Black	Agility Test
Black	Agility Test
Two or More Races	Agility Test
Two or More Races	Agility Test
Hispanic or Latino	Agility Test
Hispanic or Latino	Agility Test
White	Agility Test
Hispanic or Latino	Agility Test
Black	Agility Test
Black	Agility Test
Two or More Races	Agility Test
Black	Agility Test
Black	Background in Field
American Indian or Alaska Native	Background in Field
White	Background in Field
White	Background in Field
Two or More Races	Background in Field
White	Background in Field
White	Background in Field
White	Background in Field
Black	Background in Field
White	Background in Field
Hispanic or Latino	Background in Field
Black	Background in Field
Two or More Races	Background Review
Hispanic or Latino	Background Review
Black	Background Review
White	Background Review

H
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A
E
C
C
F
C
F
I
I
I

	Female
1	Male
2	Male
	Male
	Female
	Male
	Male
	Female
	Female
	Female
2	Female
	Male
2	Male
1	Male
2	Male
	Female
2	Female
	Male
2	Male
3	Male
2	Female
	Female
2	Male
2	Female
2	Male
	Female
1	Male
	Male
	Male
2	Male
2	Female
2	Male
1	Female
	Male
	Female
	Male
	Male
2	Male
	Female
	Male
2	Female
1	Male
3	Male
2	Female

2

White	Conditional Offer
Black	Conditional Offer
Black	Conditional Offer
Two or More Races	Conditional Offer
White	Conditional Offer
Hispanic or Latino	Hiring Interview
Hispanic or Latino	Hiring Interview
White	Hiring Interview
Hispanic or Latino	Hiring Interview
Black	Hiring Interview
Two or More Races	Hiring Interview
Black	Hiring Interview
White	Hiring Interview
American Indian or Alaska Native	Hiring Interview
Asian	Hiring Interview
Two or More Races	Hiring Interview
Two or More Races	Hiring Interview
White	Hiring Interview
White	Minimum Education and Experience
Black	Minimum Education and Experience
Two or More Races	Minimum Education and Experience
Black	Minimum Education and Experience
White	Minimum Education and Experience
Hispanic or Latino	Minimum Education and Experience
Hispanic or Latino	Minimum Education and Experience
Black	Minimum Education and Experience
White	Minimum Education and Experience
Black	Minimum Education and Experience
Black	Minimum Education and Experience
Black	Minimum Education and Experience
Hispanic or Latino	Minimum Education and Experience
Black	Minimum Education and Experience
White	Minimum Education and Experience
Two or More Races	Minimum Education and Experience
Black	Minimum Education and Experience
Hispanic or Latino	Minimum Education and Experience
Black	Minimum Education and Experience
Black	Minimum Education and Experience

2a

Black	Pass/No Conditional
Hispanic or Latino	Pending Background
White	Pending Background
Black	Pending Background
Black	Pending Background
White	Pending Background
American Indian or Alaska Native	Pending Background
Two or More Races	Pending Background
White	Pending Documentation
Black	Pending Documentation
Black	Pending Documentation
Two or More Races	Pending Documentation
Hispanic or Latino	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
White	Pending Documentation
White	Pending Documentation
Black	Pending Documentation
Black	Pending Documentation
Black	Pending Documentation
Hispanic or Latino	Pending Documentation
Black	Pending Documentation
Two or More Races	Pending Documentation
Hispanic or Latino	Pending Documentation
White	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Hispanic or Latino	Pending Documentation
Hispanic or Latino	Pending Documentation
White	Pending Documentation
Native Hawaiian or Other Pacific Islander	Pending Documentation
Two or More Races	Pending Documentation
White	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Two or More Races	Pending Documentation

Two or More Races	Pending Documentation
American Indian or Alaska Native	Pending Documentation
Two or More Races	Pending Documentation
White	Pending Documentation
White	Pending Documentation
White	Pending Documentation
Two or More Races	Pending Documentation
Hispanic or Latino	Pending Documentation
Black	Pending Documentation
Black	Pending Documentation
Hispanic or Latino	Pending Documentation
Hispanic or Latino	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Native Hawaiian or Other Pacific Islander	Pending Documentation
Two or More Races	Pending Documentation
Asian	Pending Documentation
Hispanic or Latino	Pending Documentation
Asian	Pending Documentation
Black	Pending Documentation
Two or More Races	Pending Documentation
Two or More Races	Pending Documentation
American Indian or Alaska Native	Pending Documentation
Two or More Races	Pending Documentation
Two or More Races	Pending Documentation
Black	Pending Documentation
Black	Pending Documentation
White	Pending Documentation
Two or More Races	Pending Documentation
White	Pre-Screen Interview
Hispanic or Latino	Pre-Screen Interview
White	Pre-Screen Interview
Hispanic or Latino	Pre-Screen Interview
Black	Pre-Screen Interview
Hispanic or Latino	Pre-Screen Interview
Black	Pre-Screen Interview
Black	Pre-Screen Interview
Two or More Races	Pre-Screen Interview
Hispanic or Latino	Pre-Screen Interview

4a



3
2

Female
Female
Male
Male
Female

5

Black	Pre-Screen Interview
Two or More Races	Pre-Screen Interview
Hispanic or Latino	Pre-Screen Interview
Black	Pre-Screen Interview
White	Pre-Screen Interview

5a

-----Original Message-----

From: Hahn, Mike (MSP)

Sent: Friday, September 13, 2019 7:17 AM

To: Gee-Cram, Lisa (MSP) <GeeCramL@michigan.gov>

Cc: Caldwell, Mike A. (MSP) <CaldwellM@michigan.gov>

Subject: Sgt. Gill, "Not Racist, I'm a Cop!" - YouTube

Good morning Lisa,

The link below is the one I described yesterday. It opens with an immediate slur about police officers, intimating the majority are racists. The whole thing is laced with derogatory remarks about less-advantaged, inner-city African Americans; poking fun at the "Hands up, don't shoot" narrative and the choke-hold controversy, both of which have made recruiting and policing in America more difficult. He later implies African Americans cannot be relied upon to pass clearable checks. (This is very similar material contained in the Chris Rock video our department rightfully stopped from being disseminated through department computers.)

On a personal note, Sgt. Gill remarks that people might be "as confused as Amish people in a Best Buy store." My grandparents were Mennonites, however, I'm not personally offended since I'm not outraged by everything. I only point this out because the routine preys on so many different demographics and hot-button issues in just a few short minutes.

I don't believe Sgt. Gill intends to hurt others through his material, but rather to make people laugh and have a good time, which is great. Unfortunately, his routine is not in step with the direction our department and society are trying to move, and is much at odds with the EIO position he holds. Toward the end he tacitly identifies his employer.

I've captured the video since they can be removed from YouTube by the uploader. There are several others you should view as well.

Mike

<https://m.youtube.com/watch?v=FOV2DhodtAY>

Sent from my iPad



Karen Butts

From: Mike Hahn <mikehahn133@yahoo.com>
Sent: Friday, March 13, 2020 1:55 PM
To: HortonS@michigan.gov; mdcrservicecenter@michigan.gov; mdcr-info@michigan.gov
Cc: Jim Fett; stolickerc@michigan.gov
Subject: Request for Investigative Appeal

Good afternoon:

Ms. Stephanie Horton, Director, Human Resources Department, Michigan State Police
Ms. Mary Engelman, Interim Director, Michigan Department of Civil Rights
Mr. Alfredo Hernandez, Equality Officer, Michigan Department of Civil Rights
Mr. Anthony Lewis, Community and Business Affairs Liaison, Michigan Department of Civil Rights

On August 29, 2019, I attended a retirement function for an MSP colleague where the recruiting and selection sergeant for the Michigan State Police, Dwayne Gill, made racially disparaging remarks during the event's open microphone portion. Sgt. Gill was, and remains assigned to the department's office of Equality and Inclusion, and is a direct report to Inspector Lisa Rish, who heads that department. Sgt. Gill's remarks were witnessed by multiple command officers of higher rank than me (I am an Inspector, Administrative Manager-16), as well as the department's director of human resources, Ms. Stephanie Horton. This incident was the catalyst for what took place in the paragraphs and e-mails below.

To preface, Sgt. Gill is a talented, and very well known comedian, who has appeared at many MSP functions, as well as comedy clubs throughout the country. The pivotal part of his stage persona is identifying himself as a police officer at the onset of his routine. In his many, globally accessible Youtube videos, he has identified himself as an officer with the Michigan State Police.

Following the retirement event mentioned above, I had hoped one of the more senior members in attendance would take the appropriate action mandated by, and clearly defined in the Michigan State Police, Discrimination and Harassment Policy, under the "Rights and Responsibilities" section. After days of no action, I did so myself, and have paid a price for it.

Prior to reporting the incident, I felt it might be worth viewing Sgt. Gill's comedy material on Youtube, as I had never seen his performance. What I witnessed in every video clip was in direct violation of the department's official code of conduct and the discrimination and harassment policy mentioned above. In the videos, which remain on Youtube, Sgt. Gill makes numerous, racial, gender, LGBTQ, and faith based jokes, which would likely be deemed offensive by members of the protected classes he mocks. Remarks of this nature, whether engaged in for outside employment, joking purposes at government related retirement events, or any other public venue, is in direct conflict with Michigan's governmental standards for equality and inclusion; especially when the source is a well known supervisory figure in Michigan State Government.

I reported Sgt. Gill's remarks and on-line videos to his direct supervisor, Inspector Lisa Rish (MSP EIO), who did all she could to dissuade me from demanding investigative action be taken. At one point, she remarked that it was "just Dwayne being Dwayne," which I replied was the equivalency of saying "boys will be boys," to a woman reporting sexual harassment. She disputed and belittled my perceptions of Sgt. Gill's conduct at every turn, first defending it as committed while "off-duty," then that the retirement party wasn't an MSP sponsored event, then that his remarks weren't "insensitive," but rather, "inappropriate." When asked if she would be willing to provide written direction that all MSP members are equally at liberty to make such jokes and remarks while off-duty, or engage in harassing behaviors while off-duty, she repeatedly argued that the two things were "apples and oranges." She



finally advised she would get back to me after the 2019 Fall Executive Forum, which was scheduled a full month away. I rejected this delay since the matter was very cut and dried and should be addressed immediately. The call was ended with her advising she would look into it and get back to me sooner than the forum. This conversation was witnessed by my superior, Captain Michael Caldwell, who could hear Equality and Inclusion Insp. Rish debating me over the telephone. Capt. Caldwell took some notes which I still possess.

In the interim, I had a face to face discussion with Ms. Stephanie Horton, Director of HR at the Michigan State Police, who remarked that she had been at the retirement event, had witnessed the remarks made by Sgt. Gill, and agreed they were very inappropriate. I replied that had I made the same remarks at the event, but about members of Sgt. Gill's ethnic group, an investigation would have been initiated before I made it to my car. Ms. Horton agreed. She then informed me my original e-mailed complaint to Insp. Lisa Gee-Cram had been forwarded around MSP's executive leadership team and that they were meeting the following Friday to discuss what to do. This entire conversation was witnessed by my superior, Captain Michael Caldwell.

Weeks later, I was contacted by Insp. Rish and informed the department was launching an internal investigation into my complaint. As part of this investigation, I was interviewed by F/Lt. Brody Broucher of MSP's Office of Professional Standards. I recorded the interview with his permission. To this date, I have never heard back from anyone as to the outcome of my complaint. I did however hear through a third party that the allegations against Sgt. Gill had been sustained, and that a two day suspension had been proposed. I also heard from the same third party that the Deputy Director of Field Operations Bureau, Lt/Col. Rick Arnold, served as the hearing officer at Sgt. Gill's disciplinary hearing. A Lt/Colonel serving as the deciding officer at a discipline hearing held for a sergeant was, until that time, unprecedented. It was also revealed through the third party, though I was never officially informed, that Sgt. Gill's two-day suspension was waived by Lt/Col. Arnold, who, incidentally, oversees the department's "Fair and Impartial Policing" training programs. At the time of this incident, Sgt. Gill also served as Colonel Gasper's interview host on his monthly pod-casts.

I have reviewed the Michigan State Police, Discriminatory Harassment Policy, and noted that complainants who are not satisfied with the results of an investigation may appeal to the following entities: The Human Resources Division Commander and/or the Civil Service Employee Assistance Program. That stated, please accept this e-mail as my official appeal in the matter concerning the investigation of Sgt. Gill and the waiving of proposed disciplinary measures. I cannot provide an official I.A. complaint number, as I was never again spoken to about the matter by anyone, nor was I ever commended for taking corrective action to address prohibited conduct, engaged in at the expense of protected classes, by an enforcement member assigned to defend equality and inclusion for MSP members and public citizens.

The actions I took in this matter were "protected activities," taken to remedy a clear double-standard, which has long been condoned by the Michigan State Police, and affords, among other current advantages, a higher level of first amendment protections to certain ethnic and gender classes, than it does others. As the initial, primary complainant in this matter, the obstruction I was required to hurdle in order to stir other responsible commanders and division heads to action, and the lack of corrective measures taken to address Sgt. Gill's improper conduct, are wholly unacceptable and appear discriminatory against members of other ethnicities in Michigan state government. I believe an investigation into the criteria cited in dismissing Sgt. Gill's proposed discipline is in order, as well as an investigation into the gross lack of oversight by those who command the offices, divisions, and bureaus charged with assuring equal and consistent adherence to MSP's Discriminatory Harassment Policy.

As you will see in the e-mail exchange below, the lack of action taken by the Michigan State Police was a tacit "green-light" for Sgt. Gill to proceed with the same misconduct I reported, and has caused me embarrassment, stress, and a feeling of exclusion from the upper command ranks in the department I have served for 30 years without blemish. In addition, the "protected activities" I engaged in to bring this matter to bear, have resulted in my dismissal from employment with the MSP, costing me irreparable damage to my public reputation, irrevocable income loss, and greatly diminished capacity to gain future employment in law enforcement or other career paths involving public trust and governmental security.

My actions in this matter were most un-welcome by the department's executive leadership, and as a result, I was targeted for retaliation via an aggressively biased internal investigation into a minor administrative policy matter. The investigation was poorly managed, far from thorough, and arrived at absurd conclusions about my actions with little factual basis. It is stunning to me, and many others, that this anemic investigation resulted in my termination from a department I have served with honor for over 30 years, and with each one ending with high performance service ratings and a spotless discipline record.

Please consider this e-mail address as the requested avenue for all future communications regarding this matter, which I will forward to my attorney for on-going review. Thank you.

Sincerely,

Robert (Mike) Hahn
Michigan State Police,
Assistant Commander, Seventh District, Terminated: March 13, 2020

MICHIGAN STATE POLICE RESUME: ROBERT (MIKE) HAHN

JAN. 1990: Entered Michigan State Police as a member of the 107th Recruit School

May 1990: Graduated 33rd out of 119 graduates and was assigned to Flat Rock Post

May 1990 – Nov. 1994: Worked freeway patrol at Flat Rock Post

Nov. 1994 – Nov. 1998: Assigned to STING as undercover narcotics enforcement officer

Nov. 1998 – April 1998: Assigned as uniform trooper to West Branch Post

April 1998: Promoted to Uniform Sergeant

April 1998 – Feb. 1999: Uniform sergeant duties at Metro-North Post

Feb. 1999: Lateral transfer to COMET (narcotics) as administrative detective sergeant

Oct. 1999: Lateral transfer to HUNT (narcotics)

Oct. 1999 – Jan. 2012: Detective sergeant of street operations at HUNT

Jan. 2012: Promoted to First Lieutenant

Jan. 2012 – Aug. 2015: Commander of Alpena Post

Aug. 2015: Promoted to Inspector

Aug. 2015 – March 2020: Assistant Commander of Seventh District

Throughout my 30 year career, I received high performance ratings on every annual performance appraisal and was never disciplined. I received awards for Professional Excellence, two Unit Citations, and one letter of commendation. I led H-platoon throughout the "Right to Work Protests" of December of 2012.



Sent from Yahoo Mail for iPad

Begin forwarded message:

On Sunday, March 8, 2020, 10:35 AM, Hahn, Mike (MSP) <HahnM@michigan.gov> wrote:

Captain Caldwell,

I am unhappy that Sgt. Dwayne Gill's inappropriate comedy material remains on the internet following the internal affairs investigation I'm told was sustained on him, and of which, I was never given any official feedback other than what I was generously provided by you on a third party basis. In this case, having taken the "courageous action" our Director continues to solicit in matters concerning the preservation of equality, inclusion, and diversity, I do not feel that doing so was appreciated at all by him, or any of the headquarters staff; most particularly the leadership at Field Operations Bureau and EIO Insp. Lisa Rish, who did all she could to dissuade me from taking my initial action. To date, she has never thanked me for taking bold steps to right a serious mission-conflict within inside her own section. Nor has Lt/Col. Arnold, who, as you know, headed the department's efforts toward Fair and Impartial Policing.

Having once again reviewed Sgt. Gill's YouTube postings, it appears he has removed the all-out reference to his MSP membership from his clips, however, he still identifies himself as a trooper from Michigan in at least one of them. That action alone will never remedy the situation since any internet search on "Dwayne Gill" yields multiple articles and video clips showing him in our uniform representing Recruiting and Selection for the Michigan State Police.

In the link I've included below, Sgt. Gill disparages our Seventh District town of Kalkaska by mocking the fact that the letter K appears in the name three times. He then states that Kalkaska is Michigan's "cracker barrel." (Everyone knows the term "cracker" is a racist label typically used by African Americans to disparage Caucasian Americans.) Calling our Seventh District Kalkaska citizens "crackers" and insinuating their support or affiliation with the Ku Klux Klan, joking or not, is once again offensive and insensitive. I wonder if this video has been viewed by our Kalkaska natives and/or our Kalkaska LE partners, with whom we have an excellent relationship. And what of D/Sgt. Steven Porter, who has resided in Kalkaska for years with his wife and kids. Is it permissible "for certain members" of the MSP to call other members "crackers" and suspected members of the KKK?

The clip also mocks Asians, African Americans, members of our Middle Eastern Community in Dearborn, and also disparages African American females as angry and more likely to fight off an African American male's advances than a Caucasian female.



At this point, I feel the double-standard concerns I made known to our EIO, the Office of Professional Standards, the director of our Human Resources Division, and my bureau leadership, continue to be ignored. Because of this, I feel rather foolish for having stepped up to assure EQUAL rights and protections for ALL department members. I sense that I am now being viewed as a dissenter and "rabble-rouser" by my peers, and as someone they would do well, professionally, not to be associated with. I also sense that I am now viewed in a negative light by various members of the leadership team in Lansing, most specifically Lt/Col. Arnold and the director. I took that "courageous action" and feel I'm being punished for it. Who and what are our members supposed to believe anymore? The official orders? The civil service rules? Our leadership team?

If our department finds it acceptable that globally accessible video footage of its "easily identifiable" recruiting and selection sergeant making racist and sexist jokes, in direct conflict with the official orders and our Director's own mandate regarding inclusiveness and equality, then we have official orders in need of immediate amendment. How can remarks like this be acceptable from the sergeant at the Office of Equality and Inclusion; particularly after the behavior was recently condemned by the department? Is this why Sgt. Gill's two day suspension was waived by Lt/Col. Arnold? Because it really isn't a problem in their eyes?

If "ONE" allows for double-standards then it's just a word and nothing more. At this point I'm convinced the true mission of "ONE" is dependent upon them.

Please consider this an internal matter between you and I, for now, and one which I would like to discuss with you as soon as possible. Thanks.

Insp.

<https://www.youtube.com/watch?v=nqqmG-ezaBE>

Sent from my iPad