
From: Dickerson, Currie []
To: Allen, Carolyn [Carolyn.Allen@eog.myflorida.com]; Bustamante, Jeri [Jeri.Bustamante@eog.myflorida.com]; Dickerson, Currie [Currie.Dickerson@eog.myflorida.com]; Edwards, Nathan [Nathan.Edwards@eog.myflorida.com]; Fenske, Taryn [Taryn.Fenske@eog.myflorida.com]; Lattanze, Clare [Clare.Lattanze@eog.myflorida.com]; Schenone, Lauren [Lauren.Schenone@eog.myflorida.com]; Schutz, Jackie [Jackie.Schutz@eog.myflorida.com]; Tupps, John [John.Tupps@eog.myflorida.com]; Wyland, Kerri [Kerri.Wyland@eog.myflorida.com]
CC:
Subject: Call Log
Sent: Wednesday, September 02, 2015 11:00:58

Time	Name	Outlet	Issue	Contact Info	Deadline	9/2, 12PM	Abe Aboraya	WMFE	Had
			follow up questions on politico story on AHCA this morning.	407-273-2300 ext. 183					
	aaboraya@wmfe.com	9/2, 3PM	9/2, 11:06AM	Trent Kelly	NBC 2		Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright?		

He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition.

I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today. (239) 410-4394

trent.kelly@nbc-2.com	9/2, 5PM	9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?	502-582-4702
jgerth@courier-journal.com		9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242
305.522.4182						
tohara@keysnews.com	9/2, COB	9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami.	

I run the station's consumer protection segment.

We had a question about the attached notary.

1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778

Are there any closed/open investigations into this person/notary number?

2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?

3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work? My Cell: 305-900-8138

CVazquez@wplg.com

9/3, COB 9/1, 10:23AM Mark Cavitt Lakeland Ledger I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a

personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being a entrepreneur-friendly state. T: 863-401-6969 M: 248-912-4854

Mark.Cavitt@theledger.com 9/4, COB

7/30, 9:47AM Troy Dunn

The Locator Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida 239-872-2112

troydunn@gmail.com 9/1, 10:12AM Ashley Lopez WFPL (KY Radio) Looking for more info on KY trip- request for phone interview

(Forwarded over the press release) 502-814-6553

alopez@wfpl.org

7/6, 4:31 PM Catherine Welch WMFE public radio Orlando Looking to schedule an off the record lunch with the Gov. 407-273-2300

Cwelch@WMFE.org 1/23, 1:33 PM Anthony Cusumano NBC 6 Miami Just checking in to see if there's any time on the Governor's schedule to be a guest on NBC 6 Impact with Jackie Nespral. Please let me know if there's any opportunities coming up soon. anthony.cusumano@nbcuni.com

DIRECT: 954-622-6369

CELL: 305-308-8526

NEWS DESK: 954-622-6111

From: [Sams, Savannah](#)
To: [Gorman, Amanda](#)
Subject: FW: Extradition of Curtis Wayne Wright Sr.
Date: Friday, October 30, 2015 9:13:45 AM
Attachments: [SKM_454e15101610360.pdf](#)
Importance: High

Savannah Sams

Office of Open Government

Executive Office of Governor Rick Scott
PL-04 The Capitol
Tallahassee, FL 32399
(850) 717-9245

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure. Under Florida law email addresses are public records.

Learn more about how Governor Rick Scott is creating an environment where private-sector jobs can grow and Florida's schools prepare students for college and careers. Sign up to receive Governor Scott's e-mail updates at www.FLGov.com/newsletter.

@FLGovScott

From: Smith, Susan
Sent: Friday, October 16, 2015 1:35 PM
To: Sams, Savannah
Subject: FW: Extradition of Curtis Wayne Wright Sr.
Importance: High

Attached is the agent's appointment, requisition to the Governor of Missouri and the Application from the state attorney's office.

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



www.KeepFloridaWorking.com

From: Bryant, Linda C. [<mailto:Linda.Bryant@DOS.MyFlorida.com>]
Sent: Friday, October 16, 2015 11:38 AM
To: Smith, Susan <Susan.Smith@eog.MyFlorida.com>
Subject: RE: Extradition of Curtis Wayne Wright Sr.
Importance: High
Susan,

Here you go, as requested.

Have a good day,

Linda

Linda Bryant

Accountant I

Department of State

Administrative Code and Register

500 South Bronough Street

Tallahassee, Florida 32399-0250

(850) 245-6275

From: Smith, Susan [<mailto:Susan.Smith@eog.MyFlorida.com>]

Sent: Friday, October 16, 2015 11:27 AM

To: Bryant, Linda C.

Subject: Extradition of Curtis Wayne Wright Sr.

Linda,

Please send me a copy of the agent's appointment and requisition signed by Governor Scott for the extradition of Curtis Wayne Wright, Sr. It was issued on September 8th and was coming from Lee County and went to Missouri.

Susan L. Smith

Criminal Justice Liaison &

Victims' Rights Coordinator

Executive Office of Governor Rick Scott

The Capitol, Suite 209

Tallahassee, FL 32399-0001

Phone: 850.717.9310

Direct: 850.717.9311

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www.KeepFloridaWorking.com

The Department of State is committed to excellence.
Please take our [Customer Satisfaction Survey](#).

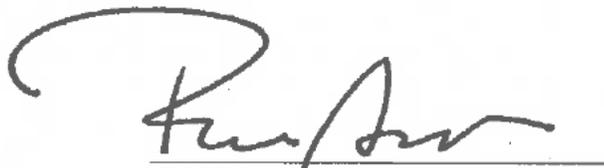
STATE OF FLORIDA

EXECUTIVE DEPARTMENT

TO ALL SHERIFFS TO WHOM THESE PRESENTS SHALL COME,
GREETINGS:

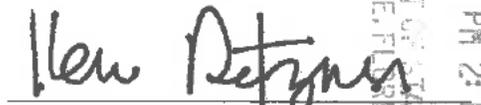
I, RICK SCOTT, GOVERNOR, hereby appoint SHERIFF MIKE SCOTT and/or authorized agent(s), of the State of Florida to receive CURTIS WAYNE WRIGHT JR, fugitive from justice, who is in the custody/jurisdiction of JEFFERSON COUNTY JAIL HILLSBORO, MISSOURI, from the appropriate authorities of the State of MISSOURI, and convey said fugitive to the State of Florida, to be dealt with according to law.

IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.


GOVERNOR



BY THE GOVERNOR


SECRETARY OF STATE

2015 SEP - 8 PM 2:15
TALLAHASSEE, FLORIDA
DEPARTMENT OF STATE

FILED

STATE OF FLORIDA

EXECUTIVE DEPARTMENT

THE GOVERNOR OF THE STATE OF FLORIDA, TO HIS EXCELLENCY THE GOVERNOR OF THE STATE OF MISSOURI:

WHEREAS, it appears by the annexed application for requisition and copies of **WARRANT, AFFIDAVIT MADE BEFORE A MAGISTRATE OF THE STATE OF FLORIDA** and allied papers, which I certify are authentic and duly authenticated in accordance with the laws of the State of Florida, that under the laws of this State **CURTIS WAYNE WRIGHT JR** stands **CHARGED** with the crime of **SECOND DEGREE MURDER**, committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State, and is now to be found in the State of **MISSOURI**;

NOW, THEREFORE I, Rick Scott, Governor of Florida, pursuant to the provisions of the Constitution and the laws of the United States and laws of the State of Florida, I do hereby respectfully demand that the above-named fugitive from justice be arrested, secured and delivered to **SHERIFF MIKE SCOTT** and/or authorized agent(s) hereby authorized to receive, convey, and transport this fugitive to this State, to be dealt with according to law.

IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.




GOVERNOR

BY THE GOVERNOR


SECRETARY OF STATE

DEPT. OF STATE
TALLAHASSEE, FLORIDA

2015 SEP -8 PM 2: 15

FILED

NAME OF FUGITIVE: Curtis Wayne Wright, Jr.
STATE OF REFUGE: Missouri
AGENCY MAKING APPLICATION: Office of the State Attorney Twentieth Judicial Circuit
OFFICIAL MAKING APPLICATION: Hamid N. Hunter, Assistant State Attorney
PHONE NUMBER: (239) 533-1330

COPY

APPLICATION FOR REQUISITION

TO HIS EXCELLENCY, THE HONORABLE RICK SCOTT, GOVERNOR OF FLORIDA:

Pursuant to F.S. §941.02, I have the honor to make application for your requisition upon the governor of the STATE OF MISSOURI for the arrest and rendition of Curtis Wayne Wright, Jr., who is charged in this county and state with the commission of the following crime(s) Second Degree Murder, and who on or about Sunday, June 28, 2015, is a fugitive from the justice of the State, and has taken refuge in the STATE OF MISSOURI.

I respectfully certify:

1. THAT I have carefully examined the case, and believe that the facts stated in the accompanying proof are true and that the fugitive is guilty of the crime(s) charged; that ends of public justice require that the fugitive be brought back to this State at the public expense; that I have as I believe sufficient evidence to secure the fugitive's conviction; that the charge was and this application is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the fugitive is returned to this State the criminal proceedings will not be used for any of these purposes, but that it is my intention to diligently prosecute the fugitive for the crime(s) charged.
2. THAT no other application has been made for a requisition for the fugitive growing out of the transaction from which the charge(s) herein originated.
3. THAT the fugitive is properly charged, in due form, in accordance with the laws of this State; that to the best of my belief the fugitive was personally and physically present in this State at the time of the commission of the crime(s), and to avoid arrest and prosecution, fled from the justice of this State and is under arrest in the City of Hillsboro, STATE OF MISSOURI and has refused to waive extradition.
4. THAT in support of this application, I enclose true and correct copies of the Warrant To Arrest, Probable Cause Affidavit, which allege the facts required to be established, and the following additional documents FINGERPRINTS and PHOTOGRAPH of the defendant, all of which are authentic and properly authenticated in accordance with the laws of this State; and that the papers submitted have been compared with each other and are in all respects exact counterparts; and that this application together with all accompanying documents have been prepared in quadruplicate, and the additional copies are exact counterparts of this application and accompanying documents.

NAME OF FUGITIVE: Curtis Wayne Wright, Jr.

STATE OF REFUGE: Missouri

AGENCY MAKING APPLICATION: Office of the State Attorney Twentieth Judicial Circuit

OFFICIAL MAKING APPLICATION: Hamid N. Hunter, Assistant State Attorney

PHONE NUMBER: (239) 533-1330

COPY

I nominate Sheriff Mike Scott, Sheriff of Lee County and/or his designated authorized agent(s) as a proper person(s) to be designated by you as agent(s) to return the fugitive back to this State, and I certify that the nominated agent(s) is a public officer and has no private interest whatsoever in the arrest of the fugitive.

Respectfully submitted this 1 day of September , 2015.

STEPHEN B. RUSSELL
STATE ATTORNEY

BY:



Hamid N. Hunter
Assistant State Attorney
Florida Bar Number 0194468
Post Office Box 399
Fort Myers, Florida 33902-0399
(239) 533-1000

I, Hamid N. Hunter, Assistant State Attorney in and for the Twentieth Judicial Circuit, hereby certify that I have read the foregoing application and know the contents thereof and attest the same as true and correct to the best of my knowledge and belief.



Hamid N. Hunter
Assistant State Attorney

Sworn to and subscribed before me,

this 1st day of September, 2015.



Notary Public



ERIN L. LEE
Commission # FF 158195
Expires October 18, 2018
Bonded thru Troy Felt Insurance 200-385-7019

From: [Gorman, Amanda](#)
To: [Lipscomb, Jessica](#)
Cc: [Sams, Savannah](#)
Subject: RE: extradition question
Date: Thursday, October 15, 2015 4:41:47 PM

Ms. Lipscomb,

I apologize for the delay, we were intending on getting back with you today regarding this request. While searching for the record, we discovered the Executive Office of the Governor is not the custodian of the record you requested. The State Attorney's office in the 20th Judicial Circuit in Lee County should have the record you are looking for. Their contact information is found below:

Phone: (239) 533-1000

Email: stateattorney@sao.cjis20.org

Again, we are sorry for the delay.

Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Lipscomb, Jessica [mailto:jessica.lipscomb@naplesnews.com]

Sent: Thursday, October 15, 2015 3:05 PM

To: Gorman, Amanda

Cc: Oates, Ehren ; Sams, Savannah

Subject: Re: extradition question

Hi there,

I wanted to check the status of this request. Is a copy available yet?

Thanks,

Jessica

From: Gorman, Amanda <Amanda.Gorman@eog.myflorida.com>

Sent: Tuesday, September 22, 2015 4:42:35 PM

To: Lipscomb, Jessica

Cc: Oates, Ehren; Sams, Savannah

Subject: RE: extradition question

Ms. Lipscomb,

We are currently compiling the records for your request and hope to have your records to you shortly. We do apologize for the delay, thank you for your patience.

Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399
850.717.9248

From: Lipscomb, Jessica [<mailto:jessica.lipscomb@naplesnews.com>]
Sent: Monday, September 21, 2015 1:37 PM
To: Gorman, Amanda <Amanda.Gorman@eog.myflorida.com>
Cc: Sams, Savannah <Savannah.Sams@eog.myflorida.com>
Subject: RE: extradition question

Hi there,

Just wanted to check and see if this document was available. I didn't get the impression it was very lengthy. Can you advise?

Thanks,
Jessica Lipscomb
Naples Daily News

From: Gorman, Amanda [<mailto:Amanda.Gorman@eog.myflorida.com>]
Sent: Thursday, September 10, 2015 12:10 PM
To: Lipscomb, Jessica
Cc: Sams, Savannah
Subject: RE: extradition question

Ms. Lipscomb,

The Governor's Office of Open Government is in receipt of your request for records as stated in your email below. A search for responsive records will be initiated and someone from this office will be back in touch with you soon. If the search produces a volume of records which indicates that there will be a fee associated with your request, you will be provided with a fee estimate for your review.

Thank you for contacting the Executive Office of the Governor.

Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Bustamante, Jeri
Sent: Wednesday, September 09, 2015 6:51 PM
To: _Open Government <_OpenGovernment@eog.myflorida.com>
Cc: Schenone, Lauren <Lauren.Schenone@eog.myflorida.com>
Subject: Fwd: extradition question

For tomorrow ...

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: "Lipscomb, Jessica" <jessica.lipscomb@naplesnews.com>
Date: September 9, 2015 at 6:35:38 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: RE: extradition question

One last question: Is there any way to get a copy of that application at this point?

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:31 PM
To: Lipscomb, Jessica
Subject: Re: extradition question
No worries.

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Thank you so much for the quick response!

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:26 PM
To: Lipscomb, Jessica
Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

On Sep 9, 2015, at 6:20 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Hi Geri,

Thanks again for your help. I was calling in reference to the death of Dr. Teresa Sievers in Bonita Springs. Warrants have been issued for second-degree murder for suspects Curtis Wayne Wright and Jimmy Rodgers, both in Missouri. I am hearing that Gov. Scott may have signed something calling for the extradition of one or both of these men back to

Florida.
My cell is 407-718-7667.
Thanks again for your help.
Respectfully,
Jessica Lipscomb
Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Lipscomb, Jessica](#)
To: [Gorman, Amanda](#)
Cc: [Oates, Ehren](#); [Sams, Savannah](#)
Subject: Re: extradition question
Date: Thursday, October 15, 2015 3:04:47 PM

Hi there,

I wanted to check the status of this request. Is a copy available yet?

Thanks,
Jessica

From: Gorman, Amanda
Sent: Tuesday, September 22, 2015 4:42:35 PM
To: Lipscomb, Jessica
Cc: Oates, Ehren; Sams, Savannah
Subject: RE: extradition question

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Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Lipscomb, Jessica [mailto:jessica.lipscomb@naplesnews.com]

Sent: Monday, September 21, 2015 1:37 PM

To: Gorman, Amanda

Cc: Sams, Savannah

Subject: RE: extradition question

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Just wanted to check and see if this document was available. I didn't get the impression it was very lengthy. Can you advise?

Thanks,

Jessica Lipscomb

Naples Daily News

From: Gorman, Amanda [mailto:Amanda.Gorman@eog.myflorida.com]

Sent: Thursday, September 10, 2015 12:10 PM

To: Lipscomb, Jessica

Cc: Sams, Savannah

Subject: RE: extradition question

Ms. Lipscomb,

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Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Bustamante, Jeri

Sent: Wednesday, September 09, 2015 6:51 PM

To: _Open Government <_OpenGovernment@eog.myflorida.com>

Cc: Schenone, Lauren <Lauren.Schenone@eog.myflorida.com>

Subject: Fwd: extradition question

For tomorrow ...

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

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www.FLGov.com

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Subject: RE: extradition question

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Sent: Wednesday, September 09, 2015 6:31 PM

To: Lipscomb, Jessica

Subject: Re: extradition question

No worries.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

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Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:8505442800)

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Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Robin Wolf](#)
To: [Media](#)
Subject: Curtis Wayne Wright Gov warrant
Date: Thursday, October 15, 2015 9:29:38 AM

Good Morning Wink News would like to request a copy of the Governor's Warrant for Curtis Wayne Wright. This was signed last month. Wright is now in the Lee County Jail.
Thank You so much

Robin Wolf
robin.wolf@winknews.com
239-344-5000

From: [Gorman, Amanda](#)
To: [Smith, Susan](#)
Cc: [Oates, Ehren](#); [Sams, Savannah](#)
Subject: Public Records Request
Date: Thursday, September 24, 2015 11:44:36 AM

Just wanted to follow up with two requests Savannah put in with you a week or two ago:

Wolf 1 – copy of extradition letter for Curtis Wayne Wright

Lipscomb 1 – application to extradite Curtis Wayne Wright

Thank you,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: [Gorman, Amanda](#)
To: [Lipscomb, Jessica](#)
Cc: [Oates, Ehren](#); [Sams, Savannah](#)
Subject: RE: extradition question
Date: Tuesday, September 22, 2015 4:42:40 PM

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Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

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Naples Daily News

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Office of Open Government

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Sent: Wednesday, September 09, 2015 6:31 PM
To: Lipscomb, Jessica
Subject: Re: extradition question
No worries.

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

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My cell is 407-718-7667.

Thanks again for your help.

Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Lipscomb, Jessica](#)
To: [Gorman, Amanda](#)
Cc: [Sams, Savannah](#)
Subject: RE: extradition question
Date: Monday, September 21, 2015 6:16:30 PM

Hi there,

Just wanted to check and see if this document was available. I didn't get the impression it was very lengthy. Can you advise?

Thanks,
Jessica Lipscomb
Naples Daily News

From: Gorman, Amanda [mailto:Amanda.Gorman@eog.myflorida.com]
Sent: Thursday, September 10, 2015 12:10 PM
To: Lipscomb, Jessica
Cc: Sams, Savannah
Subject: RE: extradition question

Ms. Lipscomb,

The Governor's Office of Open Government is in receipt of your request for records as stated in your email below. A search for responsive records will be initiated and someone from this office will be back in touch with you soon. If the search produces a volume of records which indicates that there will be a fee associated with your request, you will be provided with a fee estimate for your review.

Thank you for contacting the Executive Office of the Governor.

Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Bustamante, Jeri
Sent: Wednesday, September 09, 2015 6:51 PM
To: _Open Government <_OpenGovernment@eog.myflorida.com>
Cc: Schenone, Lauren <Lauren.Schenone@eog.myflorida.com>
Subject: Fwd: extradition question
For tomorrow ...

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Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

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www.FLGov.com

Begin forwarded message:

From: "Lipscomb, Jessica" <jessica.lipscomb@naplesnews.com>
Date: September 9, 2015 at 6:35:38 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: RE: extradition question

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Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:2392634829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Smith, Susan](#)
To: [Bryant, Linda C.](#)
Subject: RE: Extradition - Curtis Wayne Wright Jr.
Date: Friday, September 18, 2015 3:25:02 PM

Thanks Linda. You too!

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



From: Bryant, Linda C. [mailto:Linda.Bryant@DOS.MyFlorida.com]
Sent: Friday, September 18, 2015 2:40 PM
To: Smith, Susan
Subject: RE: Extradition - Curtis Wayne Wright Jr.
Importance: High

Here you go, let me know if you need anything else.

Have a good weekend,

Linda

Linda Bryant

Accountant I

Department of State

Administrative Code and Register

500 South Bronough Street

Tallahassee, Florida 32399-0250

(850) 245-6275

From: Smith, Susan [mailto:Susan.Smith@eog.MyFlorida.com]

Sent: Friday, September 18, 2015 2:22 PM

To: Bryant, Linda C.

Subject: Extradition - Curtis Wayne Wright Jr.

Please provide a copy of the agent's appointment and requisition (both signed by Governor Scott) in this extradition. We issued these documents on September 8, 2015. Thank you,

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209

Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



www.KeepFloridaWorking.com

The Department of State is committed to excellence.
Please take our [Customer Satisfaction Survey](#).

From: [Bryant, Linda C.](#)
To: [Smith, Susan](#)
Subject: RE: Extradition - Curtis Wayne Wright Jr.
Date: Friday, September 18, 2015 2:40:35 PM
Attachments: [Curtis Wayne Wright Jr..pdf](#)
Importance: High

Here you go, let me know if you need anything else.

Have a good weekend,

Linda

Linda Bryant

Accountant I

Department of State

Administrative Code and Register

500 South Bronough Street

Tallahassee, Florida 32399-0250

(850) 245-6275

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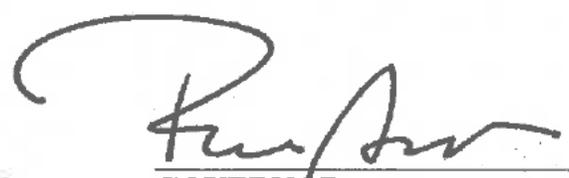
STATE OF FLORIDA

EXECUTIVE DEPARTMENT

TO ALL SHERIFFS TO WHOM THESE PRESENTS SHALL COME,
GREETINGS:

I, RICK SCOTT, GOVERNOR, hereby appoint SHERIFF MIKE SCOTT and/or authorized agent(s), of the State of Florida to receive CURTIS WAYNE WRIGHT JR, fugitive from justice, who is in the custody/jurisdiction of JEFFERSON COUNTY JAIL HILLSBORO, MISSOURI, from the appropriate authorities of the State of MISSOURI, and convey said fugitive to the State of Florida, to be dealt with according to law.

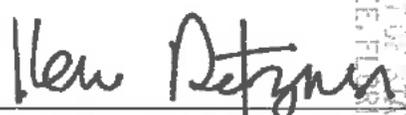
IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.



GOVERNOR



BY THE GOVERNOR



SECRETARY OF STATE

2015 SEP -8 PM 2:15
TALLAHASSEE, FLORIDA

FILED

STATE OF FLORIDA

EXECUTIVE DEPARTMENT

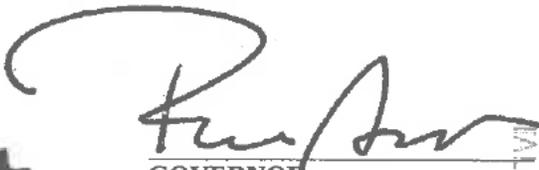
THE GOVERNOR OF THE STATE OF FLORIDA, TO HIS EXCELLENCY THE GOVERNOR OF THE STATE OF MISSOURI:

WHEREAS, it appears by the annexed application for requisition and copies of **WARRANT, AFFIDAVIT MADE BEFORE A MAGISTRATE OF THE STATE OF FLORIDA** and allied papers, which I certify are authentic and duly authenticated in accordance with the laws of the State of Florida, that under the laws of this State **CURTIS WAYNE WRIGHT JR** stands **CHARGED** with the crime of **SECOND DEGREE MURDER**, committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State, and is now to be found in the State of **MISSOURI**;

NOW, THEREFORE I, Rick Scott, Governor of Florida, pursuant to the provisions of the Constitution and the laws of the United States and laws of the State of Florida, I do hereby respectfully demand that the above-named fugitive from justice be arrested, secured and delivered to **SHERIFF MIKE SCOTT** and/or authorized agent(s) hereby authorized to receive, convey, and transport this fugitive to this State, to be dealt with according to law.

IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.




GOVERNOR

BY THE GOVERNOR


SECRETARY OF STATE

RECEIVED BY THE STATE
TALLAHASSEE, FLORIDA

2015 SEP -8 PM 2:15

FILED

From: [Smith, Susan](#)
To: [Bryant, Linda C.](#)
Subject: Extradition - Curtis Wayne Wright Jr.
Date: Friday, September 18, 2015 2:21:35 PM

Please provide a copy of the agent's appointment and requisition (both signed by Governor Scott) in this extradition. We issued these documents on September 8, 2015. Thank you,

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



www.KeepFloridaWorking.com

From: [Smith, Susan](#)
To: [Sams, Savannah](#)
Subject: RE: Public Records Request
Date: Friday, September 18, 2015 12:58:48 PM

I should have something by end of day.

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



From: Sams, Savannah
Sent: Friday, September 18, 2015 10:54 AM
To: Smith, Susan
Cc: Gorman, Amanda ; Oates, Ehren
Subject: Public Records Request

Just a follow up – Were you able to locate the record responsive to the request below?

Savannah Sams

Office of Open Government

Executive Office of Governor Rick Scott
PL-04 The Capitol
Tallahassee, FL 32399
(850) 717-9245

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure. Under Florida law email addresses are public records.

Learn more about how Governor Rick Scott is creating an environment where private-sector jobs can grow and Florida's schools prepare students for college and careers. Sign up to receive Governor Scott's e-mail updates at www.FLGov.com/newsletter.

@FLGovScott

From: Sams, Savannah
Sent: Thursday, September 10, 2015 1:43 PM
To: Smith, Susan <Susan.Smith@eog.MyFlorida.com>
Cc: Gorman, Amanda <Amanda.Gorman@eog.myflorida.com>

Subject: FW:

Please see the request below. Thank you,

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PL-04 The Capitol

Tallahassee, FL 32399

(850) 717-9245

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@FLGovScott

From: Schenone, Lauren

Sent: Thursday, September 10, 2015 12:57 PM

To: _Open Government <_OpenGovernment@eog.myflorida.com>

Subject:

9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
------------------	---------------	------	---	--	--------------

From: [Gorman, Amanda](#)
To: [Smith, Susan](#)
Cc: [Sams, Savannah](#); [Oates, Ehren](#)
Subject: FW: extradition question
Date: Friday, September 18, 2015 10:58:18 AM

Please see the records request below.

Thank you,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

Begin forwarded message:

From: "Lipscomb, Jessica" <jessica.lipscomb@naplesnews.com>
Date: September 9, 2015 at 6:35:38 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: RE: extradition question

One last question: Is there any way to get a copy of that application at this point?

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My cell is 407-718-7667.

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Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Sams, Savannah](#)
To: [Smith, Susan](#)
Cc: [Gorman, Amanda](#); [Oates, Ehren](#)
Subject: Public Records Request
Date: Friday, September 18, 2015 10:53:41 AM

Just a follow up – Were you able to locate the record responsive to the request below?

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PL-04 The Capitol

Tallahassee, FL 32399

(850) 717-9245

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@FLGovScott

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Sent: Thursday, September 10, 2015 1:43 PM
To: Smith, Susan
Cc: Gorman, Amanda
Subject: FW:

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Subject:

9/10, 11:30AM	Robin Wolf	WINK	Request for copy of	239-344-5000	9/10, 2PM
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		extradition letter for Curtis Wayne Wright	Desk@winknews.com	
--	--	---	--	--

From: [Sams, Savannah](#)
To: [Smith, Susan](#)
Cc: [Gorman, Amanda](#)
Subject: FW:
Date: Thursday, September 10, 2015 1:43:01 PM

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From: Lipscomb, Jessica
To: Gorman, Amanda
Cc: Sams, Savannah
Subject: RE: extradition question
Date: Thursday, September 10, 2015 1:07:08 PM

Thanks!

From: Gorman, Amanda [mailto:Amanda.Gorman@eog.myflorida.com]
Sent: Thursday, September 10, 2015 12:10 PM
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Subject: RE: extradition question

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Executive Office of the Governor
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Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Gorman, Amanda](#)
To: desk@winknews.com
Cc: [Sams, Savannah](#)
Subject: RE:
Date: Thursday, September 10, 2015 1:03:28 PM

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Office of Open Government
Executive Office of the Governor
PL-04 The Capitol
Tallahassee, Florida 32399
850.717.9248

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Sent: Thursday, September 10, 2015 12:57 PM
To: _Open Government <_OpenGovernment@eog.myflorida.com>
Subject:

9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
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From: [Schenone, Lauren](#)
To: [Open Government](#)
Date: Thursday, September 10, 2015 12:57:14 PM

9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
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From: [Schenone Lauren](#)
To: [_Press; Lattanze Clare](#)
Subject: Call Log
Date: Thursday, September 10, 2015 12:54:32 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/10, 12:52PM	Arek Sarkissian	Naples Daily News	Will GE move to FL?	Cell: 850-559-7620 Arek.sarkissian@naplesnews.com	
9/10, 11:30AM	Amber Jackson	Villages Daily Sun	Heard Gov will be at the Villages tomorrow for a school visit? Wants more info on schedule	570-916-1968 Amber.jackson@thevillagesmedia.com	
9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
9/10, 11:30AM	Eliot Kleinberg	PB Post	Is there any sound or text from gaggle yesterday when Gov. talked about UBER?	561-820-4418 ek@pbpost.com	
9/10, 9:29AM	Andy Reid	Sun Sentinel	I have a few follow-up questions: Was Blake Guillory asked by state officials to resign as executive director of the South Florida Water Management District? What is the governor's response to the leadership change at the district? Why has Pete Antonacci been chosen as the replacement? How does the governor	abreid@sunsentinel.com 561-635-6747	

			respond to concerns about Antonacci's lack of water management experience?		
9/10, 10:04AM	Chris Curry	Gainesville Sun	How will the program work? Is there coordination between the different agencies to track patient progress?	352-374-5088 Chris.curry@gainesville.com	9/10, COB
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary	My Cell: 305-900-8138 CVazquez@wplg.com	9/10, COB

			<p>number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			<p>he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>	<p>239-872-2112 troydunn@gmail.com</p>
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553 alopez@wfpl.org</p>
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300 Cwelch@WMFE.org</p>
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to</p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>

			<p>be a guest on <i>NBC 6 Impact with Jackie Nespral.</i> Please let me know if there's any opportunities coming up soon.</p>	
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From: [Schenone Lauren](#)
To: [_Press; Lattanze Clare](#)
Subject: Call Log
Date: Thursday, September 10, 2015 12:54:26 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/10, 12:52PM	Arek Sarkissian	Naples Daily News	Will GE move to FL?	Cell: 850-559-7620 Arek.sarkissian@naplesnews.com	
9/10, 11:30AM	Amber Jackson	Villages Daily Sun	Heard Gov will be at the Villages tomorrow for a school visit? Wants more info on schedule	570-916-1968 Amber.jackson@thevillagesmedia.com	
9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
9/10, 11:30AM	Eliot Kleinberg	PB Post	Is there any sound or text from gaggle yesterday when Gov. talked about UBER?	561-820-4418 ek@pbpost.com	
9/10, 9:29AM	Andy Reid	Sun Sentinel	I have a few follow-up questions: Was Blake Guillory asked by state officials to resign as executive director of the South Florida Water Management District? What is the governor's response to the leadership change at the district? Why has Pete Antonacci been chosen as the replacement? How does the governor	abreid@sunsentinel.com 561-635-6747	

			respond to concerns about Antonacci's lack of water management experience?		
9/10, 10:04AM	Chris Curry	Gainesville Sun	How will the program work? Is there coordination between the different agencies to track patient progress?	352-374-5088 Chris.curry@gainesville.com	9/10, COB
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary	My Cell: 305-900-8138 CVazquez@wplg.com	9/10, COB

			<p>number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			<p>he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>	<p>239-872-2112 troydunn@gmail.com</p>
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553 alopez@wfpl.org</p>
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300 Cwelch@WMFE.org</p>
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to</p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>

			<p>be a guest on <i>NBC 6 Impact with Jackie Nespral.</i> Please let me know if there's any opportunities coming up soon.</p>	
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From: [Gorman, Amanda](#)
To: jessica.lipscomb@naplesnews.com
Cc: [Sams, Savannah](#)
Subject: RE: extradition question
Date: Thursday, September 10, 2015 12:10:19 PM

Ms. Lipscomb,

The Governor's Office of Open Government is in receipt of your request for records as stated in your email below. A search for responsive records will be initiated and someone from this office will be back in touch with you soon. If the search produces a volume of records which indicates that there will be a fee associated with your request, you will be provided with a fee estimate for your review. Thank you for contacting the Executive Office of the Governor.

Sincerely,

Amanda Gorman

Office of Open Government

Executive Office of the Governor

PL-04 The Capitol

Tallahassee, Florida 32399

850.717.9248

From: Bustamante, Jeri
Sent: Wednesday, September 09, 2015 6:51 PM
To: _Open Government <_OpenGovernment@eog.myflorida.com>
Cc: Schenone, Lauren
Subject: Fwd: extradition question
For tomorrow ...

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: "Lipscomb, Jessica" <jessica.lipscomb@naplesnews.com>
Date: September 9, 2015 at 6:35:38 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: **RE: extradition question**

One last question: Is there any way to get a copy of that application at this point?

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:31 PM
To: Lipscomb, Jessica
Subject: Re: extradition question
No worries.

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
(850) 544-2800
www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Thank you so much for the quick response!

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:26 PM
To: Lipscomb, Jessica
Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
(850) 544-2800
www.FLGov.com

On Sep 9, 2015, at 6:20 PM, Lipscomb, Jessica
<jessica.lipscomb@naplesnews.com> wrote:

Hi Geri,

Thanks again for your help. I was calling in reference to the death of Dr. Teresa Sievers in Bonita Springs. Warrants have been issued for second-degree murder for suspects Curtis Wayne Wright and Jimmy Rodgers, both in Missouri. I am hearing that Gov. Scott may have signed something calling for the extradition of one or both of these men back to

Florida.
My cell is 407-718-7667.
Thanks again for your help.
Respectfully,
Jessica Lipscomb
Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Wyland Kerri](#)
To: [_Press](#)
Subject: Call Log
Date: Thursday, September 10, 2015 11:39:17 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/10, 11:30AM	Amber Jackson	Villages Daily Sun	Heard Gov will be at the Villages tomorrow for a school visit? Wants more info on schedule	570-916-1968 Amber.jackson@thevillagesmedia.com	
9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
9/10, 11:30AM	Eliot Kleinberg	PB Post	Is there any sound or text from gaggle yesterday when Gov. talked about UBER?	561-820-4418 ek@pbpost.com	
9/10, 9:29AM	Andy Reid	Sun Sentinel	I have a few follow-up questions: Was Blake Guillory asked by state officials to resign as executive director of the South Florida Water Management District? What is the governor's response to the leadership change at the district? Why has Pete Antonacci been chosen as the replacement? How does the governor respond to concerns about	abreid@sunsentinel.com 561-635-6747	

			Antonacci's lack of water management experience?		
9/10, 10:04AM	Chris Curry	Gainesville Sun	How will the program work? Is there coordination between the different agencies to track patient progress?	352-374-5088 Chris.curry@gainesville.com	9/10, COB
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary	My Cell: 305-900-8138 CVazquez@wplg.com	9/10, COB

			<p>Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			<p>on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>	<p>239-872-2112 troydunn@gmail.com</p>
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553 alopez@wfpl.org</p>
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300 Cwelch@WMFE.org</p>
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with</i></p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>

			<p><i>Jackie Nespral.</i> Please let me know if there's any opportunities coming up soon.</p>		
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From: [Wyland Kerri](#)
To: [_Press](#)
Subject: Call Log
Date: Thursday, September 10, 2015 11:39:15 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/10, 11:30AM	Amber Jackson	Villages Daily Sun	Heard Gov will be at the Villages tomorrow for a school visit? Wants more info on schedule	570-916-1968 Amber.jackson@thevillagesmedia.com	
9/10, 11:30AM	Robin Wolf	WINK	Request for copy of extradition letter for Curtis Wayne Wright	239-344-5000 Desk@winknews.com	9/10, 2PM
9/10, 11:30AM	Eliot Kleinberg	PB Post	Is there any sound or text from gaggle yesterday when Gov. talked about UBER?	561-820-4418 ek@pbpost.com	
9/10, 9:29AM	Andy Reid	Sun Sentinel	I have a few follow-up questions: Was Blake Guillory asked by state officials to resign as executive director of the South Florida Water Management District? What is the governor's response to the leadership change at the district? Why has Pete Antonacci been chosen as the replacement? How does the governor respond to concerns about	abreid@sunsentinel.com 561-635-6747	

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			<p>Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			<p>on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>	<p>239-872-2112 troydunn@gmail.com</p>
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553 alopez@wfpl.org</p>
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300 Cwelch@WMFE.org</p>
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with</i></p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>

			<p><i>Jackie Nespral.</i> Please let me know if there's any opportunities coming up soon.</p>		
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From: [Luna, Ashleigh](#)
To: [Luna, Ashleigh](#); [Smith, Susan](#)
Subject: RE: Wright,Curtis
Date: Thursday, September 10, 2015 8:07:22 AM
Sensitivity: Private

[Sorry, his name is Curtis Wayne Wright](#)

From: Luna, Ashleigh
Sent: Thursday, September 10, 2015 8:05 AM
To: 'Smith, Susan'
Subject: Wright,Curtis
Importance: High
Sensitivity: Private
Susan,
Please advise if the GW has been signed and sent to MO
Wright,Wayne WM 07/21/1968

IMPORTANT MESSAGE

This message is intended for the use of the person or entity to whom it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If the reader of this email is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is **STRICTLY PROHIBITED**. If you have received this email by error, please notify us immediately and destroy the related message. This footnote also confirms that this email message has been swept for the presence of computer viruses, worms, hostile scripts and other email-borne network threats. PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from government officials are public records available to the public and media upon request. Your email communications may be subject to public disclosure per Sec. 119 F.S.

From: [Adam Wright](#)
To: [Bustamante, Jeri](#)
Subject: Re: WINK INQUIRY!
Date: Wednesday, September 09, 2015 11:01:39 PM

Sorry this is late, but thank you!

Sent from my iPhone

On Sep 9, 2015, at 6:28 PM, Bustamante, Jeri <Jeri.Bustamante@eog.myflorida.com> wrote:

Hi Adam,

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

On Sep 9, 2015, at 6:19 PM, Adam Wright <adamawright89@gmail.com> wrote:

Hi Jeri,
Can you confirm the Governor signed the extradition request for
Curtis Wayne Wright?
Thanks,
Adam
Sent from my iPhone

From: [Montoya-Ocampo, Melissa](#)
To: [Bustamante, Jeri](#)
Subject: RE: Inquiry
Date: Wednesday, September 09, 2015 7:47:00 PM

Thank you so much. I appreciate the evening response.

From: Bustamante, Jeri [mailto:Jeri.Bustamante@eog.myflorida.com]

Sent: Wednesday, September 09, 2015 7:24 PM

To: Montoya-Ocampo, Melissa

Subject: Inquiry

Hi Melissa,

Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

From: [Bustamante, Jeri](#)
To: mmontoya@news-press.com
Subject: Inquiry
Date: Wednesday, September 09, 2015 7:24:28 PM

Hi Melissa,

Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

From: [Bustamante, Jeri](#)
To: Amy.wegmann@fox4now.com
Cc: [Schenone, Lauren](#)
Subject: Inquiry
Date: Wednesday, September 09, 2015 7:23:39 PM

Hi Amy,

Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.

Jeri Bustamante

Office of Governor Rick Scott

[*jeri.bustamante@eog.myflorida.com*](mailto:jeri.bustamante@eog.myflorida.com)

[*\(850\) 544-2800*](tel:8505442800)

[*www.FLGov.com*](http://www.FLGov.com)

From: [Bustamante, Jeri](#)
To: [Open Government](#)
Cc: [Schenone, Lauren](#)
Subject: Fwd: extradition question
Date: Wednesday, September 09, 2015 6:50:47 PM

For tomorrow ...

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: "Lipscomb, Jessica" <jessica.lipscomb@naplesnews.com>
Date: September 9, 2015 at 6:35:38 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: RE: extradition question

One last question: Is there any way to get a copy of that application at this point?

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:31 PM
To: Lipscomb, Jessica
Subject: Re: extradition question
No worries.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Thank you so much for the quick response!

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]
Sent: Wednesday, September 09, 2015 6:26 PM
To: Lipscomb, Jessica
Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:20 PM, Lipscomb, Jessica
<jessica.lipscomb@naplesnews.com> wrote:

Hi Geri,

Thanks again for your help. I was calling in reference to the death of Dr. Teresa Sievers in Bonita Springs. Warrants have been issued for second-degree murder for suspects Curtis Wayne Wright and Jimmy Rodgers, both in Missouri. I am hearing that Gov. Scott may have signed something calling for the extradition of one or both of these men back to Florida.

My cell is 407-718-7667.

Thanks again for your help.

Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: Bustamante_Jeri
To: Katie.Jones@fox4now.com
Subject: Re: Gov. Scott signs extradition warrant
Date: Wednesday, September 09, 2015 6:47:30 PM

Hi Katie,

Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:37 PM, Media <Media@eog.myflorida.com> wrote:

From: Jones, Katie
Sent: Wednesday, September 9, 2015 6:36:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: Media
Subject: Gov. Scott signs extradition warrant

Hi there, this is Katie Jones with Fox4. Looking to get some confirmation that the Governor has signed an extradition warrant for Curtis Wayne Wright - arrested in the murder of Bonita Springs Dr. Teresa Sievers.

Thanks

Katie Jones, Reporter

WFTX-TV | 621 SW Pine Island Road | Cape Coral | FL 33991

618-971-6935 Katie.Jones@fox4now.com

The E.W. Scripps Company | "Give light and the people will find their own way."



From: [Jones, Katie](#)
To: [Bustamante, Jeri](#)
Subject: Gov. Scott signs extradition warrant
Date: Wednesday, September 09, 2015 6:44:30 PM

Hi Jeri, this is Katie with Fox4 in Fort Myers. Looking to get confirmation that Governor Scott signed an extradition warrant for Curtis Wayne Wright who has been charged with the murder of Bonita Springs Dr. Teresa Sievers. Thanks!

Katie Jones, Reporter

WFTX-TV | 621 SW Pine Island Road | Cape Coral | FL 33991

618-971-6935 Katie.Jones@fox4now.com

The E.W. Scripps Company | "Give light and the people will find their own way."



From: [Media](#)
To: [Press](#)
Subject: FW: Gov. Scott signs extradition warrant
Date: Wednesday, September 09, 2015 6:37:07 PM

From: Jones, Katie
Sent: Wednesday, September 9, 2015 6:36:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: Media
Subject: Gov. Scott signs extradition warrant

Hi there, this is Katie Jones with Fox4. Looking to get some confirmation that the Governor has signed an extradition warrant for Curtis Wayne Wright - arrested in the murder of Bonita Springs Dr. Teresa Sievers.
Thanks

Katie Jones, Reporter

WFTX-TV | 621 SW Pine Island Road | Cape Coral | FL 33991

618-971-6935 Katie.Jones@fox4now.com

The E.W. Scripps Company | "Give light and the people will find their own way."



From: [Jones, Katie](#)
To: [Media](#)
Subject: Gov. Scott signs extradition warrant
Date: Wednesday, September 09, 2015 6:37:02 PM

Hi there, this is Katie Jones with Fox4. Looking to get some confirmation that the Governor has signed an extradition warrant for Curtis Wayne Wright - arrested in the murder of Bonita Springs Dr. Teresa Sievers.

Thanks

Katie Jones, Reporter

WFTX-TV | 621 SW Pine Island Road | Cape Coral | FL 33991

618-971-6935 Katie.Jones@fox4now.com

The E.W. Scripps Company | "Give light and the people will find their own way."



From: [Lipscomb, Jessica](#)
To: [Bustamante, Jeri](#)
Subject: RE: extradition question
Date: Wednesday, September 09, 2015 6:35:48 PM

One last question: Is there any way to get a copy of that application at this point?

From: Bustamante, Jeri [mailto:Jeri.Bustamante@eog.myflorida.com]
Sent: Wednesday, September 09, 2015 6:31 PM
To: Lipscomb, Jessica
Subject: Re: extradition question
No worries.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Thank you so much for the quick response!

From: Bustamante, Jeri [mailto:Jeri.Bustamante@eog.myflorida.com]
Sent: Wednesday, September 09, 2015 6:26 PM
To: Lipscomb, Jessica
Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:20 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Hi Geri,

Thanks again for your help. I was calling in reference to the death of Dr. Teresa Sievers in Bonita Springs. Warrants have been issued for second-degree murder for suspects Curtis Wayne Wright and Jimmy Rodgers, both in Missouri. I am hearing that Gov. Scott may have signed something calling for the extradition of one or both of these men back to Florida. My cell is 407-718-7667.

Thanks again for your help.

Respectfully,

Jessica Lipscomb
Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Ann Peay](#)
To: [Bustamante, Jeri](#)
Subject: Re: WINK INQUIRY!
Date: Wednesday, September 09, 2015 6:32:55 PM

Thank you!
Ann

Ann Peay
Assignment Editor
WINK News
2824 Palm Beach Blvd
Fort Myers, FL 33916
239-344-5000 Office
954-347-7397 Cell



From: Bustamante, Jeri
Sent: Wednesday, September 9, 2015 6:28 PM
To: Adam Wright
Cc: assignments@winknews.com
Subject: Re: WINK INQUIRY!
Hi Adam,

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

On Sep 9, 2015, at 6:19 PM, Adam Wright <adamawright89@gmail.com> wrote:

Hi Jeri,
Can you confirm the Governor signed the extradition request for Curtis Wayne Wright?
Thanks,

Adam

Sent from my iPhone

From: [Bustamante, Jeri](mailto:Bustamante_Jeri)
To: [Lipscomb, Jessica](mailto:Lipscomb_Jessica)
Subject: Re: extradition question
Date: Wednesday, September 09, 2015 6:31:03 PM

No worries.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 6:26 PM, Lipscomb, Jessica <jessica.lipscomb@naplesnews.com> wrote:

Thank you so much for the quick response!

From: Bustamante, Jeri [<mailto:Jeri.Bustamante@eog.myflorida.com>]

Sent: Wednesday, September 09, 2015 6:26 PM

To: Lipscomb, Jessica

Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

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Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

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My cell is 407-718-7667.

Thanks again for your help.
Respectfully,
Jessica Lipscomb
Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Bustamante, Jeri](#)
To: [Adam Wright](#)
Cc: desk@winknews.com
Subject: Re: WINK INQUIRY!
Date: Wednesday, September 09, 2015 6:28:25 PM

Hi Adam,

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

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Hi Jeri,

Can you confirm the Governor signed the extradition request for Curtis Wayne Wright?

Thanks,

Adam

Sent from my iPhone

From: [Lipscomb, Jessica](#)
To: [Bustamante, Jeri](#)
Subject: RE: extradition question
Date: Wednesday, September 09, 2015 6:26:56 PM

Thank you so much for the quick response!

From: Bustamante, Jeri [mailto:Jeri.Bustamante@eog.myflorida.com]

Sent: Wednesday, September 09, 2015 6:26 PM

To: Lipscomb, Jessica

Subject: Re: extradition question

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

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Hi Geri,

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Thanks again for your help.

Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

From: [Bustamante, Jeri](#)
To: [Lipscomb, Jessica](#)
Subject: Re: extradition question
Date: Wednesday, September 09, 2015 6:26:10 PM
Attachments: [image001.png](#)

Hi Jessica,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

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My cell is 407-718-7667.

Thanks again for your help.

Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

Naples Daily News

NaplesNews.com

From: [Lipscomb, Jessica](#)
To: [Bustamante, Jeri](#)
Subject: extradition question
Date: Wednesday, September 09, 2015 6:20:18 PM
Attachments: [image001.png](#)

Hi Geri,

Thanks again for your help. I was calling in reference to the death of Dr. Teresa Sievers in Bonita Springs. Warrants have been issued for second-degree murder for suspects Curtis Wayne Wright and Jimmy Rodgers, both in Missouri. I am hearing that Gov. Scott may have signed something calling for the extradition of one or both of these men back to Florida.

My cell is 407-718-7667.

Thanks again for your help.

Respectfully,

Jessica Lipscomb

Naples Daily News

Jessica Lipscomb | Night reporter

O: [239-263-4829](tel:239-263-4829)

E: jessica.lipscomb@naplesnews.com

A: 1100 Immokalee Road | Naples, FL 34110

Naples Daily News
NaplesNews.com

Naples Daily News

NaplesNews.com

From: [Adam Wright](#)
To: [Bustamante, Jeri](#)
Subject: WINK INQUIRY!
Date: Wednesday, September 09, 2015 6:19:09 PM

Hi Jeri,

Can you confirm the Governor signed the extradition request for Curtis Wayne Wright?

Thanks,
Adam

Sent from my iPhone

From: [Media](#)
To: [Press](#)
Subject: FW: Extradition question
Date: Wednesday, September 09, 2015 6:12:42 PM

From: Ann Peay
Sent: Wednesday, September 9, 2015 6:12:33 PM (UTC-05:00) Eastern Time (US & Canada)
To: Media
Subject: Extradition question

Did Governor just sign an extradition for Curtis Wayne Wright today? He is a suspect held in Missouri for the death of Dr. Teresa Sievers.

Thank you,
Ann

Ann Peay
Assignment Editor
WINK News
2824 Palm Beach Blvd
Fort Myers, FL 33916
239-344-5000 Office
954-347-7397 Cell



From: [Ann Peay](#)
To: [Media](#)
Subject: Extradition question
Date: Wednesday, September 09, 2015 6:12:40 PM

Did Governor just sign an extradition for Curtis Wayne Wright today? He is a suspect held in Missouri for the death of Dr. Teresa Sievers.

Thank you,
Ann

Ann Peay
Assignment Editor
WINK News
2824 Palm Beach Blvd
Fort Myers, FL 33916
239-344-5000 Office
954-347-7397 Cell



From: [Bustamante, Jeri](#)
To: [Dave Elias](#)
Subject: Re: Statement
Date: Wednesday, September 09, 2015 6:05:35 PM

No problem.

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

On Sep 9, 2015, at 5:58 PM, Dave Elias <dave.elias@nbc-2.com> wrote:

Jeri...

Thank you so much.
I appreciate that information!!! ;)

Dave

Dave Elias
Chief Political Correspondent
NBC-2 News
Fort Myers, FL 33901
(239) 850-5591
[NBC-2 Investigations](#)

On Wed, Sep 9, 2015 at 4:53 PM, Bustamante, Jeri
<Jeri.Bustamante@eog.myflorida.com> wrote:

Hi Dave,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

”Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.”

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

From: [Bustamante, Jeri](#)
To: [Schenone, Lauren](#)
Subject: Fwd: Statement
Date: Wednesday, September 09, 2015 6:05:27 PM

FYI

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: Dave Elias <dave.elias@nbc-2.com>
Date: September 9, 2015 at 5:58:08 PM EDT
To: "Bustamante, Jeri" <Jeri.Bustamante@eog.myflorida.com>
Subject: Re: Statement

Jeri...

Thank you so much.
I appreciate that information!!! ;)

Dave

Dave Elias
Chief Political Correspondent
NBC-2 News
Fort Myers, FL 33901
(239) 850-5591
[NBC-2 Investigations](#)

On Wed, Sep 9, 2015 at 4:53 PM, Bustamante, Jeri
<Jeri.Bustamante@eog.myflorida.com> wrote:

Hi Dave,

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”Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.”

Jeri Bustamante
Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

From: [Dave Elias](#)
To: [Bustamante, Jeri](#)
Subject: Re: Statement
Date: Wednesday, September 09, 2015 5:58:13 PM

Jeri...

Thank you so much.
I appreciate that information!!! ;)

Dave

Dave Elias
Chief Political Correspondent
NBC-2 News
Fort Myers, FL 33901
(239) 850-5591
[NBC-2 Investigations](#)

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”Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.”

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
[\(850\) 544-2800](tel:(850)544-2800)
www.FLGov.com

From: [Bustamante, Jeri](#)
To: dave.elias@nbc-2.com
Cc: [Schenone, Lauren](#)
Subject: Statement
Date: Wednesday, September 09, 2015 4:53:14 PM

Hi Dave,

Please include the following in your story. On background: we have not received any applications regarding Jimmy Rogers extradition. Thanks!

”Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri.”

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

From: [Schenone, Lauren](#)
To: [Bustamante, Jeri](#)
Date: Wednesday, September 09, 2015 4:49:56 PM

Time	Name	Outlet	Issue	Contact Info
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com

DEADLINE: 9/9, 5PM

QUESTION: Has the Governor been asked to sign a warrant to extradite Jimmy Rogers?

BACKGROUND:

- Jimmy Rogers is facing federal charges

DRAFT RESPONSE:

Statement

"Governor Scott signed the application to extradite Curtis Wayne Wright and forwarded it to officials in Missouri."

On background:

- We have not received any applications regarding Jimmy Rogers extradition

From: [Schenone, Lauren](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 4:35:47 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	<p>My Cell: 305-900-8138</p> <p>CVazquez@wplg.com</p>	9/10, COB
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special	(904) 245-8866 (904) 718-7503	

			<p>hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	<p>Rich.Jones@coxinc.com</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>	<p>239-872-2112 troydunn@gmail.com</p>	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553 alopez@wfpl.org</p>	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300 Cwelch@WMFE.org</p>	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please</p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>	

			let me know if there's any opportunities coming up soon.		
--	--	--	--	--	--

From: [Schenone, Lauren](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 4:35:44 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
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9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

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1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please</p>	<p>anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111</p>	

			let me know if there's any opportunities coming up soon.		
--	--	--	--	--	--

From: [Schenone, Lauren](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 4:34:52 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond?</p>	<p>My Cell: 305-900-8138</p> <p>CVazquez@wplg.com</p>	9/10, COB

			How does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526	

			Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	NEWS DESK: 954-622-6111	
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From: [Schenone, Lauren](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 4:34:49 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond?</p>	<p>My Cell: 305-900-8138</p> <p>CVazquez@wplg.com</p>	9/10, COB

			How does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526	

			<p>Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please let me know if there's any opportunities coming up soon.</p>	<p>NEWS DESK: 954-622-6111</p>	
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From: [Schenone, Lauren](#)
To: [Press: Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 3:04:10 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vasquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any</p>	My Cell: 305-900-8138 CVasquez@wplg.com	9/10, COB

			<p>closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [Press: Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 3:04:05 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vasquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any</p>	My Cell: 305-900-8138 CVasquez@wplg.com	9/10, COB

			<p>closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Dickerson, Currie](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 3:00:27 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

			<p>and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			he could call in with his perspective? Thanks in advance!		
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7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Dickerson, Currie](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 3:00:23 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 2:35PM	Lauren Verno	WCJB	Does Gov. Scott have a statement to not receiving FEMA funding from Obama?	954-856-9638 verno.lauren@gmail.com	9/9, 4PM
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			statement, please forward the press release to me. My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
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			<p>and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

			he could call in with his perspective? Thanks in advance!		
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Wyland, Kerri](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 1:51:58 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any</p>	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

			<p>closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Wyland, Kerri](#)
To: [Press](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 1:51:56 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 1:50PM	Chris Curry	Gainesville Sun	Looking for more info on EO: what programs/agencies will be reviewed? How is it determined? Looking for specifics in Alachua Co.	352-374-5088 Chris.curry@gainesville.com	9/9, COB (May be later but please follow up)
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky - cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778</p> <p>Are there any</p>	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

			<p>closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/3, 7:26AM	Rich Jones	104.5 WOKV	<p>We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!</p>	<p>(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com</p>

7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press; Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 12:04:16 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 Jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky -- cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

segment.
We had a question about the attached notary.

1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778

Are there any closed/open investigations into this person/notary number?

2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number.

Is this person a certified notary? Is this a real number?

3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can

			that consumer victim file a claim against the notary's bond? How does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	

9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip- request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press: Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 12:04:11 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 11:50AM	Jeremy Wallace	TB Times	How much money in tax cuts since Gov. Scott took office?	850-224-7263 jwallace@tampabay.com	
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM

			My deadline is 5 p.m. today.		
9/9, 10:16AM	Jim Turner	NSF	<p>1. Saw the release on the EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky -- cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>	772-215-9889 jimturner23@gmail.com	
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

segment.
We had a question about the attached notary.

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Is this person a certified notary? Is this a real number?

3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can

			that consumer victim file a claim against the notary's bond? How does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	

9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip- request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral.</i> Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press; Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 11:52:05 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM
9/9, 10:16AM	Jim Turner	NSF	1. Saw the release on the	772-215-9889 jimturner23@gmail.com	

			<p>EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky -- cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>		
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778

Are there any closed/open investigations into this person/notary number?

2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?

3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How

			does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip- request for phone interview	502-814-6553 alopez@wfpl.org	

			(Forwarded over the press release)	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

From: [Schenone, Lauren](#)
To: [_Press; Lattanze, Clare](#)
Subject: Call Log
Date: Wednesday, September 09, 2015 11:52:00 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/9, 9:26AM	Dave Elias	NBC 2	It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder. Thanks in advance!	dave.elias@nbc-2.com	
9/9, 10:25AM	Iris Holton	Florida Sentinel Bulletin	I am contacting you to determine if Governor Scott has decided if he will ask Sam Rashid to step down from the Hillsborough County Aviation Authority. Rashid allegedly posted a disparaging remark on Facebook about Ms. Beth Leytham, calling her a "slut." If the Governor has issued a statement, please forward the press release to me. My deadline is 5 p.m. today.	(813) 248-1921 iholton@flsentinel.com	9/9, 5PM
9/9, 10:16AM	Jim Turner	NSF	1. Saw the release on the	772-215-9889 jimturner23@gmail.com	

			<p>EFI ad. Has a date for the Kentucky trip been set?</p> <p>2. Where is this ad going to play in Kentucky -- cities, radio stations -- and for how long? How much is EFI spending for the air time?</p>		
9/9, 9:50AM	Michael Allen	WOIS	Looking for updated list of applicants for the Franklin Co Commission	manager@oysterradio.com 850-670-8450	9/9, COB
9/9, 8:35AM	Teri Hornstein	NBC 2 Ft Myers	There is a petition in response to 5 people dying in the Ft. Myers area due to reckless driving. Is the Gov.'s office aware of the petition?	239-707-3632 Teresa.hornstein@nbc-2.com	9/9, 4PM
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.	My Cell: 305-900-8138 CVazquez@wplg.com	9/9, COB

1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778

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			does that work?		
9/3, 7:26AM	Rich Jones	104.5 WOKV	We're putting together a special hour on WOKV at 6am on Thursday, September 17th after the next GOP Presidential Debate, and I'm hoping to secure a short live interview with the Governor. I'm assuming he has plans to watch the CNN debate on the 16th. Can you identify a 5 minute chunk of time in the 6am hour that he could call in with his perspective? Thanks in advance!	(904) 245-8866 (904) 718-7503 Rich.Jones@coxinc.com	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip- request for phone interview	502-814-6553 alopez@wfpl.org	

			(Forwarded over the press release)	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

From: [Schenone, Lauren](#)
To: [Bustamante, Jeri](#)
Subject: RE: NBC 2 Request
Date: Wednesday, September 09, 2015 9:42:17 AM

deadline?

From: Bustamante, Jeri
Sent: Wednesday, September 09, 2015 9:26 AM
To: Schenone, Lauren
Subject: Fwd: NBC 2 Request
Add to log

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: Dave Elias <dave.elias@nbc-2.com>
Date: September 9, 2015 at 9:25:33 AM EDT
To: Jeri Bustamante <Jeri.Bustamante@eog.myflorida.com>, "jackie.schutz@eog.myflorida.com" <jackie.schutz@eog.myflorida.com>
Subject: NBC 2 Request

It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder.

Thanks in advance!

Dave Elias

Sent from my iPhone

From: [Bustamante, Jeri](#)
To: [Schenone, Lauren](#)
Subject: Fwd: NBC 2 Request
Date: Wednesday, September 09, 2015 9:26:30 AM

Add to log

Jeri Bustamante

Office of Governor Rick Scott

jeri.bustamante@eog.myflorida.com

[\(850\) 544-2800](tel:(850)544-2800)

www.FLGov.com

Begin forwarded message:

From: Dave Elias <dave.elias@nbc-2.com>
Date: September 9, 2015 at 9:25:33 AM EDT
To: Jeri Bustamante <Jeri.Bustamante@eog.myflorida.com>, "jackie.schutz@eog.myflorida.com" <jackie.schutz@eog.myflorida.com>
Subject: NBC 2 Request

It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr.

SIEVERS murder.

Thanks in advance!

Dave Elias

Sent from my iPhone

From: [Dave Elias](#)
To: [Bustamante, Jeri](#); [Schutz, Jackie](#)
Subject: NBC 2 Request
Date: Wednesday, September 09, 2015 9:25:44 AM

It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder.

Thanks in advance!

Dave Elias

Sent from my iPhone

From: [Dave Elias](#)
To: [Bustamante, Jeri](#); [Schutz, Jackie](#)
Subject: NBC 2 Request
Date: Wednesday, September 09, 2015 9:25:41 AM

It's coming to our attention that the governor at be asked to sign a govs warrant to extradite Jimmy Rogers back to Lee County to face charges in the death of Dr. SIEVERS murder.

Thanks in advance!

Dave Elias

Sent from my iPhone

From: [Schenone, Lauren](#)
To: [Trent Kelly](#)
Subject: RE: WBBH-TV MEDIA REQUEST
Date: Thursday, September 03, 2015 4:36:37 PM

No update today

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Thursday, September 03, 2015 11:52 AM

To: Schenone, Lauren

Subject: Re: WBBH-TV MEDIA REQUEST

Sounds good, thank you!

On Thu, Sep 3, 2015 at 11:44 AM, Schenone, Lauren

<Lauren.Schenone@eog.myflorida.com> wrote:

Hey Trent!

I'll check again and get back to you by the end of the day.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Thursday, September 03, 2015 11:28 AM

To: Schenone, Lauren

Subject: Re: WBBH-TV MEDIA REQUEST

Hi Lauren!

Just checking in to see if you've found out anything about this. Thanks!

--Trent

On Wed, Sep 2, 2015 at 2:08 PM, Schenone, Lauren

<Lauren.Schenone@eog.myflorida.com> wrote:

Hey Trent,

I don't have an update now. I'll let you know when I have any more information.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Wednesday, September 02, 2015 11:06 AM

To: Schenone, Lauren

Subject: Re: WBBH-TV MEDIA REQUEST

Thanks Lauren. It looks like we are indeed running another story on it today.

Not sure what time it will air yet, likely this afternoon.

On Wed, Sep 2, 2015 at 11:02 AM, Schenone, Lauren

<Lauren.Schenone@eog.myflorida.com> wrote:

Hey Trent,

I'll check to see if there is an update. Are you running another story today on it?

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Wednesday, September 02, 2015 10:50 AM

To: Schenone, Lauren

Subject: WBBH-TV MEDIA REQUEST

Good morning Lauren,

Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright?

He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition.

I believe a colleague of mine may have asked about this yesterday. I just wanted to

check and see if anything has changed today.

Thanks,

Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Trent Kelly](#)
To: [Schenone, Lauren](#)
Subject: Re: WBBH-TV MEDIA REQUEST
Date: Thursday, September 03, 2015 11:51:41 AM

Sounds good, thank you!

On Thu, Sep 3, 2015 at 11:44 AM, Schenone, Lauren
<Lauren.Schenone@eog.myflorida.com> wrote:

Hey Trent!

I'll check again and get back to you by the end of the day.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]
Sent: Thursday, September 03, 2015 11:28 AM

To: Schenone, Lauren
Subject: Re: WBBH-TV MEDIA REQUEST

Hi Lauren!

Just checking in to see if you've found out anything about this. Thanks!

--Trent

On Wed, Sep 2, 2015 at 2:08 PM, Schenone, Lauren
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Hey Trent,

I don't have an update now. I'll let you know when I have any more information.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]
Sent: Wednesday, September 02, 2015 11:06 AM
To: Schenone, Lauren
Subject: Re: WBBH-TV MEDIA REQUEST

Thanks Lauren. It looks like we are indeed running another story on it today.

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On Wed, Sep 2, 2015 at 11:02 AM, Schenone, Lauren
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From: Trent Kelly [mailto:trent.kelly@nbc-2.com]
Sent: Wednesday, September 02, 2015 10:50 AM
To: Schenone, Lauren
Subject: WBBH-TV MEDIA REQUEST

Good morning Lauren,

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Thanks,

Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Schenone, Lauren](#)
To: [Trent Kelly](#)
Subject: RE: WBBH-TV MEDIA REQUEST
Date: Thursday, September 03, 2015 11:44:49 AM

Hey Trent!

I'll check again and get back to you by the end of the day.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Thursday, September 03, 2015 11:28 AM

To: Schenone, Lauren

Subject: Re: WBBH-TV MEDIA REQUEST

Hi Lauren!

Just checking in to see if you've found out anything about this. Thanks!

--Trent

On Wed, Sep 2, 2015 at 2:08 PM, Schenone, Lauren <Lauren.Schenone@eog.myflorida.com> wrote:

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To: Schenone, Lauren

Subject: WBBH-TV MEDIA REQUEST

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Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Trent Kelly](#)
To: [Schenone, Lauren](#)
Subject: Re: WBBH-TV MEDIA REQUEST
Date: Thursday, September 03, 2015 11:28:21 AM

Hi Lauren!

Just checking in to see if you've found out anything about this. Thanks!

--Trent

On Wed, Sep 2, 2015 at 2:08 PM, Schenone, Lauren <Lauren.Schenone@eog.myflorida.com> wrote:

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To: Schenone, Lauren
Subject: Re: WBBH-TV MEDIA REQUEST

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Thanks,

Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Schenone, Lauren](#)
To: [Trent Kelly](#)
Subject: RE: WBBH-TV MEDIA REQUEST
Date: Wednesday, September 02, 2015 2:08:47 PM

Hey Trent,

I don't have an update now. I'll let you know when I have any more information.

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Wednesday, September 02, 2015 11:06 AM

To: Schenone, Lauren

Subject: Re: WBBH-TV MEDIA REQUEST

Thanks Lauren. It looks like we are indeed running another story on it today.

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Thanks,

Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Wyland, Kerri](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 12:34:12 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 12:20PM	Tim O'Hara	Key West Citizen	Request for resignation letter for Melva Wagner (FL Keys Aqueduct)	305-522-4182 tohara@keysnews.com	9/2, 5PM
9/2, 12PM	Abe Aboraya	WMFE	Had follow up questions on politico story on AHCA this morning.	407-273-2300 ext. 183 aaboraya@wmfe.com	9/2, 3PM
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM

			changed today.		
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?	502-582-4702 jgerth@courier-journal.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vasquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre	My Cell: 305-900-8138 CVasquez@wplg.com	9/3, COB

			<p>Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number? 3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>		
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			<p>2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites	239-872-2112 troydunn@gmail.com

			<p>people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553</p> <p>alopez@wfpl.org</p>	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300</p> <p>Cwelch@WMFE.org</p>	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please let me know if there's any opportunities coming up soon.</p>	<p>anthony.cusumano@nbcuni.com</p> <p>DIRECT: 954-622-6369</p> <p>CELL: 305-308-8526</p> <p>NEWS DESK: 954-622-6111</p>	

From: [Wyland, Kerri](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 12:34:11 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 12:20PM	Tim O'Hara	Key West Citizen	Request for resignation letter for Melva Wagner (FL Keys Aqueduct)	305-522-4182 tohara@keysnews.com	9/2, 5PM
9/2, 12PM	Abe Aboraya	WMFE	Had follow up questions on politico story on AHCA this morning.	407-273-2300 ext. 183 aaboraya@wmfe.com	9/2, 3PM
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM

			changed today.		
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?	502-582-4702 jgerth@courier-journal.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vasquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre	My Cell: 305-900-8138 CVasquez@wplg.com	9/3, COB

			<p>Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number? 3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>		
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

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7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites	239-872-2112 troydunn@gmail.com

			<p>people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida</p>		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	<p>Looking for more info on KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>502-814-6553</p> <p>alopez@wfpl.org</p>	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	<p>Looking to schedule an off the record lunch with the Gov.</p>	<p>407-273-2300</p> <p>Cwelch@WMFE.org</p>	
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From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 12:01:03 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 12PM	Abe Aboraya	WMFE	Had follow up questions on politico story on AHCA this morning.	407-273-2300 ext. 183 aaboraya@wmfe.com	9/2, 3PM
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter	502-582-4702 jgerth@courier-journal.com	

			to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?		
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this	My Cell: 305-900-8138 CVazquez@wplg.com	9/3, COB

			<p>person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>		
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	<p>I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index.</p>	<p>T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com</p>	9/4, COB

			<p>Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest</p>	<p>239-872-2112 troydunn@gmail.com</p>

			missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
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From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 12:01:02 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 12PM	Abe Aboraya	WMFE	Had follow up questions on politico story on AHCA this morning.	407-273-2300 ext. 183 aaboraya@wmfe.com	9/2, 3PM
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM
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9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
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7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 11:47:52 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did	502-582-4702 jgerth@courier-journal.com	

			that pay off? How many businesses came? What businesses were they?		
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary Section of the Executive	My Cell: 305-900-8138 CVazquez@wplg.com	9/3, COB

			<p>Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>		
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	<p>I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation.</p>	<p>T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com</p>	9/4, COB

			<p>I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov.</p>	<p>239-872-2112 troydunn@gmail.com</p>

			Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 11:47:50 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 11:06AM	Trent Kelly	NBC 2	Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.	(239) 410-4394 trent.kelly@nbc-2.com	9/2, 5PM
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did	502-582-4702 jgerth@courier-journal.com	

			that pay off? How many businesses came? What businesses were they?		
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary Section of the Executive	My Cell: 305-900-8138 CVazquez@wplg.com	9/3, COB

			<p>Office of the Governor - The Office of the General Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>		
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	<p>I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation.</p>	<p>T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com</p>	9/4, COB

			<p>I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov.</p>	<p>239-872-2112 troydunn@gmail.com</p>

			Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 11:26:39 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 10:39AM	Christina Vasquez	WPLG	<p>This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary.</p> <p>1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number?</p> <p>2) Can the Notary Section of the Executive Office of the Governor - The Office of the General</p>	<p>My Cell: 305-900-8138</p> <p>CVazquez@wplg.com</p>	

			<p>Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/2, 11:06AM	Trent Kelly	NBC 2	<p>Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's</p>	<p>(239) 410-4394</p> <p>trent.kelly@nbc-2.com</p>
				9/2, 5PM

			<p>apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.</p>		
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	<p>Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?</p>	<p>502-582-4702 jgerth@courier-journal.com</p>	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	<p>Is Melma Wagner a resident in her Aquaduct Authority</p>	<p>305.292.7777 ext 242 305.522.4182 tohara@keysnews.com</p>	9/3, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	<p>I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation.</p>	<p>T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com</p>	9/4, COB

			<p>I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov.</p>	<p>239-872-2112 troydunn@gmail.com</p>

			Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Wednesday, September 02, 2015 11:26:37 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/2, 10:39AM	Christina Vasquez	WPLG	This is Christina Vazquez from WPLG * Local 10 News in Miami. I run the station's consumer protection segment. We had a question about the attached notary. 1) As per the helpful information on your website – we wanted to submit a request for complaints and/or disciplinary action as it relates to Deandre Arnold #EE166778 Are there any closed/open investigations into this person/notary number? 2) Can the Notary Section of the Executive Office of the Governor - The Office of the General	My Cell: 305-900-8138 CVazquez@wplg.com	

			<p>Counsel be able to authenticate this name/number. Is this person a certified notary? Is this a real number?</p> <p>3) We were also reaching out for consumer protection information: If someone believes a notary notarized a fraudulent document what actions can be taken? Can that consumer victim file a claim against the notary's bond? How does that work?</p>	
9/2, 11:06AM	Trent Kelly	NBC 2	<p>Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright? He was arrested in Missouri in connection with a murder case in our viewing area. He's</p>	<p>(239) 410-4394</p> <p>trent.kelly@nbc-2.com</p>
				9/2, 5PM

			<p>apparently fighting his extradition. I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.</p>		
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	<p>Thanks. Two years ago, Gov. Scott sent a letter to Kentucky businesses, asking them to move or expand to Florida. Did that pay off? How many businesses came? What businesses were they?</p>	<p>502-582-4702 jgerth@courier-journal.com</p>	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	<p>Is Melma Wagner a resident in her Aquaduct Authority</p>	<p>305.292.7777 ext 242 305.522.4182 tohara@keysnews.com</p>	9/3, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	<p>I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation.</p>	<p>T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com</p>	9/4, COB

			<p>I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov.</p>	<p>239-872-2112 troydunn@gmail.com</p>

			Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Trent Kelly](#)
To: [Schenone, Lauren](#)
Subject: Re: WBBH-TV MEDIA REQUEST
Date: Wednesday, September 02, 2015 11:06:03 AM

Thanks Lauren. It looks like we are indeed running another story on it today.

Not sure what time it will air yet, likely this afternoon.

On Wed, Sep 2, 2015 at 11:02 AM, Schenone, Lauren
<Lauren.Schenone@eog.myflorida.com> wrote:

Hey Trent,

I'll check to see if there is an update. Are you running another story today on it?

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]
Sent: Wednesday, September 02, 2015 10:50 AM
To: Schenone, Lauren
Subject: WBBH-TV MEDIA REQUEST

Good morning Lauren,

Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright?

He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition.

I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.

Thanks,

Trent Kelly

Reporter, WBBH-TV

[\(239\) 410-4394](tel:(239)410-4394)

From: [Schenone, Lauren](#)
To: [Trent Kelly](#)
Subject: RE: WBBH-TV MEDIA REQUEST
Date: Wednesday, September 02, 2015 11:02:14 AM

Hey Trent,

I'll check to see if there is an update. Are you running another story today on it?

From: Trent Kelly [mailto:trent.kelly@nbc-2.com]

Sent: Wednesday, September 02, 2015 10:50 AM

To: Schenone, Lauren

Subject: WBBH-TV MEDIA REQUEST

Good morning Lauren,

Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright?

He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition.

I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.

Thanks,

Trent Kelly

Reporter, WBBH-TV

(239) 410-4394

From: [Trent Kelly](#)
To: [Schenone, Lauren](#)
Subject: WBBH-TV MEDIA REQUEST
Date: Wednesday, September 02, 2015 10:57:22 AM

Good morning Lauren,

Can you tell me whether the Governor's office has been contacted about signing a involuntary extradition order for a Mr. Curtis "Wayne" Wright?

He was arrested in Missouri in connection with a murder case in our viewing area. He's apparently fighting his extradition.

I believe a colleague of mine may have asked about this yesterday. I just wanted to check and see if anything has changed today.

Thanks,

Trent Kelly
Reporter, WBBH-TV
(239) 410-4394

From: [Bustamante, Jeri](#)
To: [Schenone, Lauren](#)
Subject: Re: approved - do you want to email or me?
Date: Tuesday, September 01, 2015 3:48:01 PM

You can cc me

Jeri Bustamante
Office of Governor Rick Scott
jeri.bustamante@eog.myflorida.com
(850) 544-2800
www.FLGov.com

On Sep 1, 2015, at 3:41 PM, Schenone, Lauren <Lauren.Schenone@eog.myflorida.com> wrote:

Time	Name	Outlet	Issue	Contact Info
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright Is the Governor aware of this situation?	dave.elias@nbc-2.com (239) 850-5591

DEADLINE: 9/2, 5PM

QUESTION:

<!--[if !supportLists]-->1. <!--[endif]-->Will the Governor order an issue of extradition for Curtis Wayne Wright
<!--[if !supportLists]-->2. <!--[endif]-->Is the Governor aware of this situation?

BACKGROUND:

<!--[if !supportLists]-->• <!--[endif]-->Curtis Wayne Wright and Jimmie Rogers are wanted for the murder of an Estero doctor
<!--[if !supportLists]-->◦ <!--[endif]-->Rogers has a federal charge
<!--[if !supportLists]-->• <!--[endif]-->Wright has not been formally charged
<!--[if !supportLists]-->• <!--[endif]-->Wright has refused to waive his extradition
<!--[if !supportLists]-->◦ <!--[endif]-->Sept. 30th hearing in Missouri scheduled
<!--[if !supportLists]-->• <!--[endif]-->Yesterday, a Lee County prosecutor said he will ask Florida Gov. Rick Scott for a warrant to involuntarily extradite Wright
<!--[if !supportLists]-->• <!--[endif]-->SA has to charge first

DRAFT RESPONSE:

"Our office has not notified by the state attorney's office of a request for extradition." – JB

From: [Schenone, Lauren](#)
To: [Bustamante, Jeri](#)
Subject: approved - do you want to email or me?
Date: Tuesday, September 01, 2015 3:41:41 PM

Time	Name	Outlet	Issue	Contact Info
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright Is the Governor aware of this situation?	dave.elias@nbc-2.com (239) 850-5591

DEADLINE: 9/2, 5PM

QUESTION:

1. Will the Governor order an issue of extradition for Curtis Wayne Wright
2. Is the Governor aware of this situation?

BACKGROUND:

- Curtis Wayne Wright and Jimmie Rogers are wanted for the murder of an Estero doctor
 - Rogers has a federal charge
- Wright has not been formally charged
- Wright has refused to waive his extradition
 - Sept. 30th hearing in Missouri scheduled
- Yesterday, a Lee County prosecutor said he will ask Florida Gov. Rick Scott for a warrant to involuntarily extradite Wright
- SA has to charge first

DRAFT RESPONSE:

“Our office has not notified by the state attorney’s office of a request for extradition.” – JB

From: [Fenske, Taryn](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 3:27:55 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1	Rhema Thompson	FL Times Union	How often are Shine Awards announced? What is the process for choosing Shine Award recipients? Is it coincidental they were all from N.FL?	Rhema Thompson, 904-359-4693	
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Looking for details on Gov.'s trip to KY. When? Have any meeting been scheduled? Also, Gov. sent letter to KY businesses 2 years ago...was that successful?	502-582-4702 jgerth@courier-journal.com	9/1, 5PM
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM

			Wayne Wright		
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.		
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch	407-273-2300 Cwelch@WMFE.org	

			with the Gov.		
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Fenske, Taryn](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 3:27:52 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1	Rhema Thompson	FL Times Union	How often are Shine Awards announced? What is the process for choosing Shine Award recipients? Is it coincidental they were all from N.FL?	Rhema Thompson, 904-359-4693	
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Looking for details on Gov.'s trip to KY. When? Have any meeting been scheduled? Also, Gov. sent letter to KY businesses 2 years ago...was that successful?	502-582-4702 jgerth@courier-journal.com	9/1, 5PM
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM

			Wayne Wright		
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.		
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch	407-273-2300 Cwelch@WMFE.org	

			with the Gov.		
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Fenske, Taryn](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 3:27:46 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1	Rhema Thompson	FL Times Union	How often are Shine Awards announced? What is the process for choosing Shine Award recipients? Is it coincidental they were all from N.FL?	Rhema Thompson, 904-359-4693	
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Looking for details on Gov.'s trip to KY. When? Have any meeting been scheduled? Also, Gov. sent letter to KY businesses 2 years ago...was that successful?	502-582-4702 jgerth@courier-journal.com	9/1, 5PM
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM

			Wayne Wright		
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.		
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com	
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch	407-273-2300 Cwelch@WMFE.org	

			with the Gov.		
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 2:56:26 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Looking for details on Gov.'s trip to KY. When? Have any meeting been scheduled? Also, Gov. sent letter to KY businesses 2 years ago...was that successful?	502-582-4702 jgerth@courier-journal.com	9/1, 5PM
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB

9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being a entrepreneur-	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB
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			friendly state.	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> .	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

			Please let me know if there's any opportunities coming up soon.		
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From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 2:56:24 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 2:52PM	Joe Gerth	Louisville Courier Journal	Looking for details on Gov.'s trip to KY. When? Have any meeting been scheduled? Also, Gov. sent letter to KY businesses 2 years ago...was that successful?	502-582-4702 jgerth@courier-journal.com	9/1, 5PM
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB

9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being a entrepreneur-	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB
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			friendly state.	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> .	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

			Please let me know if there's any opportunities coming up soon.		
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From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 2:40:03 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
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9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			<p>entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest</p>	<p>239-872-2112 troydunn@gmail.com</p>

			missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Dickerson, Currie](#)
To: [Allen, Carolyn](#); [Bustamante, Jeri](#); [Dickerson, Currie](#); [Edwards, Nathan](#); [Fenske, Taryn](#); [Lattanze, Clare](#); [Schenone, Lauren](#); [Schutz, Jackie](#); [Tupps, John](#); [Wyland, Kerri](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 2:40:01 PM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 2:35PM	Asia Aikens	Palatka Daily News	Will Gov. Scott be doing a meet-n-greet in Palatka tonight? Was scheduled to before Erika but didn't see it on his schedule today...	386-312-5230 aaikens@palatkadailynews.com	
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kettters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			<p>entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest</p>	<p>239-872-2112 troydunn@gmail.com</p>

			missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida		
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 11:25:54 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	ketters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being a entrepreneur-friendly state.	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on	502-814-6553

			<p>KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>alopez@wfpl.org</p>	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	<p>407-273-2300</p> <p>Cwelch@WMFE.org</p>	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please let me know if there's any opportunities coming up soon.</p>	<p>anthony.cusumano@nbcuni.com</p> <p>DIRECT: 954-622-6369</p> <p>CELL: 305-308-8526</p> <p>NEWS DESK: 954-622-6111</p>	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 11:25:52 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	ketters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	9/4, COB

			owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being a entrepreneur-friendly state.	
7/30, 9:47AM	Troy Dunn	The Locator	Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	239-872-2112 troydunn@gmail.com
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on	502-814-6553

			<p>KY trip-request for phone interview</p> <p>(Forwarded over the press release)</p>	<p>alopez@wfpl.org</p>	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	<p>407-273-2300</p> <p>Cwelch@WMFE.org</p>	
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	<p>Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i>. Please let me know if there's any opportunities coming up soon.</p>	<p>anthony.cusumano@nbcuni.com</p> <p>DIRECT: 954-622-6369</p> <p>CELL: 305-308-8526</p> <p>NEWS DESK: 954-622-6111</p>	

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 11:15:51 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	

			<p>in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children</p>	<p>239-872-2112 troydunn@gmail.com</p>

			cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

From: [Schenone, Lauren](#)
To: [_Press](#)
Subject: Call Log
Date: Tuesday, September 01, 2015 11:15:49 AM

Time	Name	Outlet	Issue	Contact Info	Deadline
9/1, 11:00AM	Dave Elias	NBC 2	Will the Governor order an issue of extradition for Curtis Wayne Wright	dave.elias@nbc-2.com (239) 850-5591	9/1, 5PM
9/1, 10:12AM	Ashley Lopez	WFPL (KY Radio)	Looking for more info on KY trip-request for phone interview (Forwarded over the press release)	502-814-6553 alopez@wfpl.org	
9/1, 10:31AM	Karl Etters	Tallahassee Democrat	Gadsden Co Sheriff question	kletters@tallahassee.com	
9/1, 9:30AM	Tim O'Hara	Key West Citizen	Is Melma Wagner a resident in her Aquaduct Authority	305.292.7777 ext 242 305.522.4182 tohara@keysnews.com	9/2, COB
9/1, 10:23AM	Mark Cavitt	Lakeland Ledger	I'm writing an in-depth story for The Ledger regarding a December 2014 study. The study was done by the Small Business Policy Index. Florida ranks as the fifth most entrepreneur-friendly state	T: 863-401-6969 M: 248-912-4854 Mark.Cavitt@theledger.com	

			<p>in the nation. I would like to gather a few comments from Governor Scott. Why is Florida appealing to small business owners and why do small businesses want to begin their journey in Florida? Incentives for starting a business here that other states may not offer? Just a personal opinion of why Governor Scott believes in Florida and its high ranking when it comes to being an entrepreneur-friendly state.</p>	
7/30, 9:47AM	Troy Dunn	The Locator	<p>Has a television show called "The Locator" that reunites people with lost family members. Says he has solved one of the oldest missing children</p>	<p>239-872-2112 troydunn@gmail.com</p>

			cases in Florida, but needs help from Gov. Scott to help the man travel from Costa Rica back to Florida	
7/6, 4:31 PM	Catherine Welch	WMFE public radio Orlando	Looking to schedule an off the record lunch with the Gov.	407-273-2300 Cwelch@WMFE.org
1/23, 1:33 PM	Anthony Cusumano	NBC 6 Miami	Just checking in to see if there's any time on the Governor's schedule to be a guest on <i>NBC 6 Impact with Jackie Nespral</i> . Please let me know if there's any opportunities coming up soon.	anthony.cusumano@nbcuni.com DIRECT: 954-622-6369 CELL: 305-308-8526 NEWS DESK: 954-622-6111

From: [Antonacci, Peter](mailto:Antonacci.Peter)
To: ["junger@gray-robinson.com"](mailto:junger@gray-robinson.com)
Subject: FW: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 4:08:12 PM
Attachments: [Potter v. City of Hanceville \(f1\).pdf](#)

From: Pinkard, Eric [mailto:PINKARD@ccmr.state.fl.us]
Sent: Monday, August 26, 2013 2:52 PM
To: Cynthia@jangeloslaw.com
Cc: Antonacci, Peter
Subject: Complaint concerning the Florida Supreme Court Nominating Commission

Ms. Cynthia Georgette Angelos
Chair
Florida Supreme Court Judicial Nominating Commission
Post Office Box 9163
Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated.

I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely “in the interest of justice” reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States . For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and may determine by ordinance the other officers of the city or town, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrtcy.D-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrtcy.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrtcy.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), *cert. denied* 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that **[**31]** she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages **[**32]** pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[33]** not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially **[**315]** inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, **HN8** the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal **[**34]** statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52](#).

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [**318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later *Anderson v. Creighton*, 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for *Section 1983* claims. See also *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004); and *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

Saucier, 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in *Saucier*, 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Antonacci, Peter](#)
To: [Stearns, Heather](#); [Gibson, Ben](#)
Subject: FW: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 4:03:19 PM
Attachments: [Potter v. City of Hanceville \(f1\).pdf](#)

Need some legal fleshing out

From: Pinkard, Eric [mailto:PINKARD@ccmr.state.fl.us]
Sent: Monday, August 26, 2013 2:52 PM
To: Cynthia@jangeloslaw.com
Cc: Antonacci, Peter
Subject: Complaint concerning the Florida Supreme Court Nominating Commission
Ms. Cynthia Georgette Angelos

Chair

Florida Supreme Court Judicial Nominating Commission

Post Office Box 9163

Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment

matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated. I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely "in the interest of justice" reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States . For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and *may determine by ordinance the other officers of the city or town*, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrtcy.D.-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrtcy.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrtcy.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), *cert. denied* 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that [**31] she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages [**32] pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[**33] not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially [**315] inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, *HN8* the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal [**34] statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52](#).

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [*318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later *Anderson v. Creighton*, 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for *Section 1983* claims. See also *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004); and *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

Saucier, 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in *Saucier*, 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Antonacci, Peter](#)
To: [Stearns, Heather](#); [Gibson, Ben](#)
Subject: FW: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 4:03:19 PM
Attachments: [Potter v. City of Hanceville \(f1\).pdf](#)

Need some legal fleshing out

From: Pinkard, Eric [mailto:PINKARD@ccmr.state.fl.us]
Sent: Monday, August 26, 2013 2:52 PM
To: Cynthia@jangeloslaw.com
Cc: Antonacci, Peter
Subject: Complaint concerning the Florida Supreme Court Nominating Commission

Ms. Cynthia Georgette Angelos
Chair
Florida Supreme Court Judicial Nominating Commission
Post Office Box 9163
Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter

Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated.

I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely “in the interest of justice” reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmoving party's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States. For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and *may determine by ordinance the other officers of the city or town*, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrtcy.D-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrtcy.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrtcy.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), cert. denied 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that **[**31]** she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages **[**32]** pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[33]** not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially **[**315]** inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, **HN8** the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal **[**34]** statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52](#).

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [**318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later *Anderson v. Creighton*, 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for *Section 1983* claims. See also *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004); and *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

Saucier, 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in *Saucier*, 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Antonacci, Peter](#)
To: [Stearns, Heather](#); [Gibson, Ben](#)
Subject: FW: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 4:03:19 PM
Attachments: [Potter v. City of Hanceville \(f1\).pdf](#)

Need some legal fleshing out

From: Pinkard, Eric [mailto:PINKARD@ccmr.state.fl.us]
Sent: Monday, August 26, 2013 2:52 PM
To: Cynthia@jangeloslaw.com
Cc: Antonacci, Peter
Subject: Complaint concerning the Florida Supreme Court Nominating Commission
Ms. Cynthia Georgette Angelos

Chair

Florida Supreme Court Judicial Nominating Commission

Post Office Box 9163

Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment

matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated. I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely "in the interest of justice" reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States . For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and *may determine by ordinance the other officers of the city or town*, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrcty.D-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrcty.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrcty.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), cert. denied 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that **[**31]** she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages **[**32]** pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[33]** not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially **[**315]** inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, **HN8** the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal **[**34]** statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52.](#)

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [**318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. [Eastland v. United States Servicemen's Fund](#), 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. [Stump v. Sparkman](#), 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see [Nixon v. Fitzgerald](#), 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later [Anderson v. Creighton](#), 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for [Section 1983](#) claims. See also [Holloman v. Harland](#), 370 F.3d 1252, 1269 (11th Cir. 2004); and [I.A. Durbin, Inc. v. Jefferson National Bank](#), 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See [Saucier v. Katz](#), 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

[Saucier](#), 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in [Saucier](#), 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Cynthia Angelo"s](#)
To: [Antonacci, Peter](#)
Subject: [Spam:***** SpamScore] Fwd: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 3:24:07 PM
Attachments: [Potter v. City of Hanceville \(f11.pdf](#)
[ATT245759.htm](#)

Hi Pete,

I'm currently on an air plane, but please call me on my cell at your convenience. (772)332-0844. Thank you.

Cynthia

Sent from my iPad

Begin forwarded message:

From: "Pinkard, Eric" <PINKARD@ccmr.state.fl.us>
Date: August 26, 2013, 2:51:56 PM EDT
To: "Cynthia@jangeloslaw.com" <Cynthia@jangeloslaw.com>
Cc: "peter.antonacci@eog.myflorida.com" <peter.antonacci@eog.myflorida.com>
Subject: Complaint concerning the Florida Supreme Court Nominating Commission

Ms. Cynthia Georgette Angelos
Chair
Florida Supreme Court Judicial Nominating Commission
Post Office Box 9163
Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license,

permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated.

I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely “in the interest of justice” reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments
Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States . For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and *may determine by ordinance the other officers of the city or town*, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrtcy.D.-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrtcy.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrtcy.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), cert. denied 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that **[**31]** she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages **[**32]** pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[33]** not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially **[**315]** inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, **HN8** the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal **[**34]** statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52.](#)

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [**318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later *Anderson v. Creighton*, 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for *Section 1983* claims. See also *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004); and *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

Saucier, 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in *Saucier*, 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Pinkard, Eric](#)
To: Cynthia@jangeloslaw.com
Cc: [Antonacci, Peter](#)
Subject: Complaint concerning the Florida Supreme Court Nominating Commission
Date: Monday, August 26, 2013 2:54:05 PM
Attachments: [Potter v. City of Hanceville \(f11.pdf\)](#)

Ms. Cynthia Georgette Angelos
Chair
Florida Supreme Court Judicial Nominating Commission
Post Office Box 9163
Port St. Lucie, Florida 34985

Re: Complaint alleging misconduct pursuant to Section X of the Rules of Procedure of the Supreme Court Judicial Nominating Commission

Dear Ms. Angelos,

Recently I was a candidate for the position of the Capital Collateral Regional Counsel for the Northern District. The interviews for that position were conducted on August 19, 2013 and three candidates names were sent to Governor Scott by the committee.

I believe there was misconduct by the committee in the consideration of my application. Specifically, I believe my name was not sent to the Governor due to a Chapter 7 Bankruptcy filing which I disclosed on my application.

11 U.S.C.S. Section 525(a) states:

“a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this [title \[11 USCS §§ 101 et seq.\]](#) or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this [title \[11 USCS §§ 101 et seq.\]](#), or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this [title \[11 USCS §§ 101 et seq.\]](#) or that was discharged under the Bankruptcy Act”.

During my interview several members of the committee repeatedly asked me about my Chapter Seven Bankruptcy case, which I had explained in detail on my application. The questioning even went into the details of how a townhouse I owned burned down and whether I had insurance, whether a credit check would reveal “adverse items”, and details as to what debts had been discharged.

This type of questioning is precisely what section 525(a) was designed to prevent. A discharged

debtor in a Bankruptcy is supposed to be provided a “fresh start” and no governmental entity has a right to interfere with that right by using it as a means to deny employment. Even Bank Presidents or Officers in the Department of Homeland Security cannot be discriminated against in employment matters due to a Bankruptcy.

In *Potter v. City of Hanceville*, BK 03-82842-JAC the Bankruptcy Court for the Northern District of Alabama held that a discharged bankruptcy debtor was entitled to bring an action under 42 U.S.C.S Section 1983 where he was denied employment as the Police Chief of the City of Hanceville, Alabama, due to a Bankruptcy, by the City Council and the Mayor. The Court further held that no qualified immunity prevented the suit because a longstanding federal right had been violated.

I believe that the manner of questioning I received establishes that I was discriminated against due to my Bankruptcy filing, or by the existence of debts that were discharged in the Bankruptcy proceeding, in clear violation of section 525(a).

I do not wish to file a 1983 action as Mr. Potter did. I simply wish to have a fair process where candidates are considered based upon their merits and not improperly excluded for an unlawful reason. As no final hiring decision has been made, there is still time to remedy this injustice in the process. The Governor can merely “in the interest of justice” reject the names presently before him and call for names again. The question concerning the bankruptcy filing should be eliminated from the application and if the committee has any information about any candidate having obtained a discharge in a Bankruptcy proceeding, it should not be considered in any way by the committee. I have sent a copy of this correspondence to Peter Antonacci, Esq., counsel for Governor Scott, for his consideration.

In closing let me say I have full respect for all members of the JNC and Governor Scott. I am sure that this situation was not intentional and the committee and counsel for the Governor were simply unaware of section 525(a). I am hopeful that a fair remedy can be reached which avoids any litigation or the need for me to retain private counsel.

Sincerely,

Eric C. Pinkard

cc Peter Antonacci

User Name: Eric Pinkard
Date and Time: 08/26/2013 11:09 AM EDT
Job Number: 4405354

Document(1)

1. Potter v. City of Hanceville (In re Potter), 354 B.R. 301
Client/matter: -None-
Linked from: 11 USCS § 525



Caution

As of: August 26, 2013 11:09 AM EDT

Potter v. City of Hanceville (In re Potter)

United States Bankruptcy Court for the Northern District of Alabama, Western Division

November 6, 2006, Decided

BK 03-82842-JAC-7, AP 05-70053-CMS

Reporter: 354 B.R. 301; 2006 Bankr. LEXIS 3938

IN RE: EDWARD LEE POTTER, DEBTOR. EDWARD LEE POTTER, PLAINTIFF, vs. CITY OF HANCEVILLE, et al., DEFENDANTS.

Core Terms

deposition, qualified immunity, police chief, summary judgment motion, summary judgment, appointment, elected, bankruptcy court, city council, light most favorable, credit union, constitutional right, federal right, successor, federal statute, council member, conversation, terminate, absolute immunity, bankruptcy filing, cause of action, trier of fact, governmental unit, discretionary, reappointment, cancellation, foreclose, talked, newly, deprivation

Case Summary

Procedural Posture

Defendants, a city and city officials, filed motions for summary judgment in Chapter 7 debtor's action, which alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy, in violation of [11 U.S.C.S. § 525\(a\)](#), and that the violation entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C.S. § 1983](#), and to attorneys fees under [42 U.S.C.S. § 1988](#).

Overview

Debtor was a police chief. While serving as chief, debtor filed a Chapter 7 bankruptcy petition. Debtor's bankruptcy filing became the subject of conversation in the rumor mill in the city. A newly elected city council was sworn in. On the same day, the council appointed another person as chief of police. Debtor alleged that defendants denied him continued employment based only on the fact that he had filed bankruptcy. The court held that disputed and inconclusive facts prevented summary judgment for defendants as to the [11 U.S.C.S. § 525\(a\)](#) claim. The court did hold that debtor was not barred from bringing a [42 U.S.C.S. § 1983](#) claim based on a violation of [11 U.S.C.S. § 525\(a\)](#) because [§ 525\(a\)](#) created a right in a debtor or former debtor not to be discriminated against by public actors in employment and other

economic transactions solely because of the bankruptcy, and there was no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclosed use of the [42 U.S.C.S. § 1983](#) remedy. The court also held that, at such an early stage in the proceedings, qualified immunity could not be applied to shield defendants from liability.

Outcome

The court denied defendants' motions for summary judgment.

LexisNexis® Headnotes

Governments > Local Governments > Employees & Officials

HN1 See [Ala. Code § 11-43-4](#) (1975).

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > ... > Summary Judgments > Entitlement as Matter of Law > General Overview

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#); [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > Judgments > Summary Judgments > Evidentiary Considerations

HN3 On a motion for summary judgment, a court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN4 [11 U.S.C.S. § 525\(a\)](#) provides that a governmental unit may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under title 11 solely because such bankrupt or debtor has not paid a debt that is dischargeable in the case under title 11.

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

HN5 See [11 U.S.C.S. § 525\(a\)](#).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN6 See [11 U.S.C.S. § 105\(a\)](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN7 See [42 U.S.C.S. § 1983](#).

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope
Evidence > Burdens of Proof > Ultimate Burden of Persuasion

HN8 The U.S. Supreme Court has refined analysis for determining whether a plaintiff may litigate a [42 U.S.C.S. § 1983](#) claim for denial of a federal statutory right. First, the plaintiff must assert the violation of a federal right. [Section 1983](#) speaks in terms of rights, privileges, or immunities, not violations of federal law. In deciding whether a federal right has been violated, the Court has considered whether the provision in question creates obligations binding on the governmental unit or rather does no more than express a congressional preference for certain kinds of treatment. The Court has also asked whether the provision in question was intended to benefit the putative plaintiff. Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress specifically foreclosed a remedy under [§ 1983](#), by providing a comprehensive enforcement mechanism for protection of a federal right. The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a [§ 1983](#) remedy. The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

HN9 [42 U.S.C.S. § 1983](#) does not provide an avenue for relief every time a state actor violates a federal law. Further analysis is needed to determine if the law in question actually created a right. Accordingly, to sustain a [§ 1983](#) action, a plaintiff must demonstrate that the federal statute creates an individually enforceable right in the

class of beneficiaries to which he belongs. Even after that showing, there is only a rebuttable presumption that the right is enforceable under [§ 1983](#). The defendant may defeat the presumption by demonstrating that Congress did not intend that remedy for a newly created right. Evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under [§ 1983](#). The crucial consideration is what Congress intended. The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [§ 1983](#).

Bankruptcy Law > Debtor Benefits & Duties > Protection Against Discriminatory Treatment
Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

HN10 [11 U.S.C.S. § 525\(a\)](#) creates a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of [§ 525\(a\)](#), and its subsequent interpretive jurisprudence lead inevitably to that conclusion. Further, there is no specific remedy or procedural requirements for enforcement set out in [§ 525](#) itself that foreclose use of the [42 U.S.C.S. § 1983](#) remedy.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers
Civil Rights Law > Protection of Rights > Section 1983 Actions > General Overview

HN11 The strict construction of [11 U.S.C.S. § 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself. Consequently, a bankruptcy court cannot interpret the very general language of [§ 105\(a\)](#) as the sort of comprehensive enforcement scheme that, under U.S. Supreme Court precedent, would bar access to a [42 U.S.C.S. § 1983](#) claim.

Civil Rights Law > Protection of Rights > Immunity From Liability > Executive Officials

HN12 Immunity defenses are of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, the defense of "absolute immunity" has been recognized. The absolute immunity of legislators in their legislative functions, and of judges in their judicial functions, is now well settled. Absolute immunity has also been extended to certain officials of the Executive Branch. These include prosecutors and similar officials, executive officers engaged in adju-

dicative functions, and the President of the United States . For executive officials in general, however, qualified immunity represents the norm.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN13 Public officials performing discretionary functions may be immune as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. The protection turns on the objective legal reasonableness of the action. Generally, if conduct is plainly a violation of such a "clearly established" right, ignorance of the law will not immunize officials from suit for [42 U.S.C.S. § 1983](#) claims.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN14 A court required to rule upon the qualified immunity issue must consider a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? That must be the initial inquiry. In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. That is the process for the law's elaboration from case to case, and it is one reason for insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN15 If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. That inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity
Evidence > Burdens of Proof > Burden Shifting

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing dis-

cretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN17 A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) that right was clearly established at the time of the alleged violation.

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN18 A right can be clearly established under a qualified immunity analysis in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law; (2) some broad statements of principle in case law can be sufficient; and (3) there can be a case with indistinguishable material facts.

Civil Procedure > Trials > Judgment as Matter of Law > General Overview
Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN19 Defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a [Fed. R. Civ. P. 50\(a\)](#) motion. It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty.

Counsel: **[**1]** For Edward Lee Potter, Plaintiff: Kenneth Haynes, LEAD ATTORNEY, Haynes & Haynes, P.C., Birmingham, AL.

For City of Hanceville, Alabama, Katie Whitley, individually and in her official capacity as Mayor of the City of Hanceville, Wayne Armstrong, individually and in his official capacity as Councilman for the City of Hanceville, Hubert Jones, individually and in his official capacity as Councilman for the City of Hanceville, Selma Barnett, individually and in her official capacity as Councilwoman for the City of Hanceville, Larry Cornett, individually and in his official capacity as City Councilman for the City of Hanceville, Defendants: G Me-

ador Akins, Thomas S Hale, LEAD ATTORNEYS,
Victoria Jeanne Franklin-Sisson, Burgess & Hale LLC,
Birmingham, AL.

For EDWARD POTTER, AKA BRYANT'S SEAFOOD
OF SO CAROLINA AKA EG'S INC, Debtor: Stuart L
Moore, Cullman, AL.

Judges: C. Michael Stilson, United States Bankruptcy
Judge.

Opinion by: C. Michael Stilson

Opinion

[*304] MEMORANDUM OF DECISION

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against [*2] him because of his bankruptcy. The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants motions, filed under *Fed. R. Civ. P. 56*, are due to be **DENIED**; and the plaintiff's objections to summary judgments **SUSTAINED**.

FINDING OF FACTS

The plaintiff Edward Lee Potter was the police chief of Hanceville, Alabama, from September 12, 2002 until October 4, 2004, when a newly elected City Council appointed another candidate as chief of police. The City of Hanceville and five of the members of its council are defendants in this action. Defendants include the City of Hanceville, Alabama; Mayor Katie Whitley; and Council Members Wayne Armstrong, Hubert Jones, Selma Barnett, and Larry Cornett.

The complaint was filed February 4, 2005 in the United States District Court for the Northern District of Alabama. District Judge Lynwood Smith referred the action to the Bankruptcy Court for the Northern District pursuant to *28 U.S.C. § 157(a)* on October 26, 2005. The action then became Adversary Proceeding No. 05-70053.

The individual defendants and the defendant City of Hanceville, [*3] each filed a motion for summary judgment and briefs in support their motions. Included within each brief is a statement of facts, the plaintiff Potter also filed a brief in response and in opposition to these motions for summary judgment, which agreed with many of the facts stated in defendants' briefs. For convenience, the court will refer to plaintiff's response (AP Doc. 136) to identify those agreed-upon facts.

Potter was appointed chief of police on September 12, 2002 by a prior council. Pursuant to *Ala. Code § 11-*

43-4, his service was to continue until a successor was appointed by the City Council and qualified. In July of 2003, while serving as chief, Potter filed a Chapter 7 bankruptcy petition. (AP Docs. 94-99, Potter deposition at p. 138). The plaintiff's bankruptcy filing became the subject of conversation in the rumor mill in the City of Hanceville. (Doc. 136 at p. 6) Potter's Chapter 7 discharge was entered on October 23, 2003.

Hanceville had a population of approximately 2,951 residents as of the 2000, census. All seats on its City Council and the mayor's office were up for election in the 2004 campaign. The parties have described a form of municipal government [*4] in which the mayor sits on the council and has an equal vote with other council members. Those elected in the city election took office October 4, 2004. (Doc. 136 at page 3-4).

Ala. Code § 11-43-4 (1975), as amended, provides as follows:

§ 11-43-4. Election of clerk, etc., in towns and in cities having less than 6,000 inhabitants; filling of vacancies in council generally.

HNI In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, and *may determine by ordinance the other officers of the city or town*, their salary, the manner of their election and the terms of office, and shall fill all vacancies in the council by a majority vote of the council; and all members of the council may vote to fill vacancies [*305] any provision of law to the contrary notwithstanding. *The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified.* (emphasis added)

The parties have not provided the court with a copy of an ordinance establishing the office of chief of police, but have stipulated that "in the City of Hanceville (as well as most, [*5] if not all, cities of similar population in Alabama) the position of Chief of Police, as well as City Attorney, City Clerk and Municipal Judge, serves at the pleasure of, is appointed by, and whose term of appointment coincides with the elected term of the Mayor and City Council" (Doc. 136 at p. 3).

Mayor-elect Katie Whitley heard the rumor about Potter's bankruptcy and went to the United States Bankruptcy Court in Decatur to obtain copies of part of the plaintiff's bankruptcy petition (AP Doc. 89-92, Whitley deposition p. 29-32). This was approximately September 1, 2004. (Plaintiff's Exhibit 10 to AP Doc. 137) Whitley showed these copies to Barnett (Whitley deposition at p. 37), and Cornett (Whitley deposition at p. 46), giving copies to Cornett.

To one extent or another, the fact that the plaintiff had filed bankruptcy was a subject of conversation among all those who were elected to the City Council. Prior to being sworn in as mayor and city council members, the soon-to-be city officials began looking for someone other than Potter to appoint as chief of police. The City of Hanceville and the newly elected mayor and council did not advertise the chief of police position as an opening. [**6] Instead, they conducted the search for potential candidates as described below:

Whitley, Jones, and Barnett met with Craig Richie at the Dairy Queen in Hartselle, Alabama around September 10, 2004. (Richie deposition at p. 11). At a second meeting at the Dairy Queen, Richie also met with Whitley and Cornett. (Richie deposition at p. 13)

Wayne Armstrong and Jones also talked with Jimmy Rogers about the possibility of Rogers becoming police chief. Rogers declined. (Armstrong deposition at pp. 25-26) Armstrong talked with Steve Conner about the job and Conner stated that he was not interested in the police chief position. (Armstrong deposition pp. 27-28)

On October 4, 2004, the individual defendants and Councilwoman Betty Walls (who is not named as a defendant in Potter's suit) were sworn in as the new mayor and City Council of Hanceville. AP Doc. 130 is the minutes of the City of Hanceville organizational meeting of October 4, 2004. These minutes reflect the following:

The mayor recommended Craig Richie as Chief of Police. Alderman Jones moved to elect Craig Richie as Chief of Police. Seconded by Alderman Armstrong. Ayes: Alderman Cornett, Jones, Armstrong, Alderwoman Barnett [**7] and Mayor Whitley. Nays: Alderwoman Walls: Motion carried.

Craig Richie thereby became chief of police, and his appointment ended Potter's term as chief. Although Councilman Armstrong seconded the motion to hire Richie as chief of police, his deposition at p. 30 stated that he had never met him before Richie's appointment. The newly elected mayor and city council also voted to appoint a new city clerk and a new municipal judge. (Walls deposition at pp. 50-51)

Potter has alleged in his complaint that the Hanceville defendants denied him continued employment based only on the fact that he had filed bankruptcy; and that the alleged violation of [11 U.S.C. § 525\(a\)](#) entitled him to damages pursuant to the discrimination cause of action created by [42 U.S.C. § 1983](#), [**306] and to attorneys fees under [42 U.S.C. § 1988](#).

The defendants, in their motions for summary judgment, argue (1) that their action did not constitute a [Section 525\(a\)](#) violation; (2) that, even if it did, a [Section 525\(a\)](#)

violation cannot serve as a predicate for a [Section 1983](#) suit; and (3) that, even if a [Section 525\(a\)](#) violation made Potter eligible [**8] for [Section 1983](#) damages, "qualified immunity" shielded named council members from suit as individuals.

This court heard the arguments for and against summary judgment on these three grounds at a July 27, 2006 hearing. The court took the motions under submission following that hearing. The record includes seven depositions, and 14 exhibits in support of, and in opposition to, the six motions for summary judgment.

The following portion of the memoranda will constitute a more detailed analysis of the factual record, as well as the court's conclusions of law. Orders, consistent with these findings pursuant to [Fed. R. Bankr. P. 7052](#), will be entered separately.

CONCLUSIONS OF LAW

The Bankruptcy Court for the Northern Division of the Northern District of Alabama has jurisdiction over Edward Lee Potter's Chapter 7 case pursuant to [28 U.S.C. § 1334\(a\)](#). This Bankruptcy Court for the Western Division of the Northern District has jurisdiction of this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). Jurisdiction is referred to the bankruptcy courts by the General Order of Reference of the United States District Courts for the Northern [**9] District of Alabama, Signed July 16, 1984, As Amended July 17, 1984.

HN2 Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(c\)](#) and [Fed. R. Bankr. P. 7056](#). A genuine issue exists only when "the evidence is such that a reasonable jury (trier of fact) could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202, (1986); and [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

HN3 The court must view all the evidence in the light most favorable to the non-moving party and draw all inferences in the nonmovant's favor. In making its determination, the court's sole function is to determine whether there is any dispute of fact that requires resolution at trial. The merits of the factual dispute itself are to be addressed by the fact-finder at trial. See [Anderson](#), 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a [**10] motion for summary judgment or for a directed verdict." [Anderson](#), 477 U.S. at 255.

In this case, the Bankruptcy Court must weigh the Hanceville defendants' motions for summary judgment under

these longstanding rules. It must view the, evidence, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," (see [Rule 56\(c\)](#)) in the record in the light most favorable to Edward Lee Potter.

I.

Disputed and inconclusive facts prevent summary judgment for the defendants as to the [11 U.S.C. § 525\(a\)](#) claim.

A. To win a [Section 525\(a\)](#) discrimination action, plaintiff must prove that the, bankruptcy filing was the "sole" reason for a negative employment decision.

*HN4 [11 U.S.C. § 525\(a\)](#) provides that a governmental unit may not "deny employment [*307] to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... solely because such bankrupt or debtor ... has not paid a debt that is dischargeable in the case under this title ..."(emphasis added).¹*

[**11] It is undisputed that defendant City of Hanceville is a governmental unit in the meaning of [Section 525\(a\)](#), acting through its agent, the City Council; and that the other defendants are voting members of the City Council (including Mayor Whitley). It is undisputed that in 2003, Potter, while serving as Hanceville Police Chief under a previous City Council, filed a Chapter 7 bankruptcy case in the Bankruptcy Court for the Northern District of Alabama, Northern Division, at Decatur, Alabama. He received his Chapter 7 discharge that same year. It is also undisputed that Potter's term as chief of police ended when the newly elected City Council selected Craig Richie as successor chief of police.

Potter alleged in his complaint that his right not to be discriminated against based on a past bankruptcy was violated by the acts of the defendants. Defendants, however, asserted that they merely filled, by appointment, a position which was vacant by virtue of [Ala. Code § 11](#)

[-43-4](#). However, [Section 11-43-4](#) provides only "the clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified." The statute defines when the terms [**12] of appointive city officers will end, but it does not, in itself, vacate their appointments by operation of state law. The language does not *mandate* every new council to "elect" successors for existing city personnel every election cycle.

The council's election of a new police chief effectively ended the term of the plaintiff's service as police chief. While the action appears to conform to [Ala. Code § 11-43-4](#), that does not mean it might not also have violated [11 U.S.C. § 525\(a\)](#). Such action could be interpreted to have terminated the employment of, or discriminated with respect to, the employment of the plaintiff, solely because he had been a debtor in a bankruptcy case.

When the inconclusive record facts are considered in the light most favorable to the plaintiff, it is conceivable that a jury could determine that the defendants undertook to replace the plaintiff as chief of police solely because he had filed bankruptcy. Such a finding would show that he was denied employment, terminated or discriminated against with respect to his employment [**308] as a result of having been a debtor. On the other hand, a jury might take a different view. It is impossible [**13] to determine the issues as a matter of law based on the facts in this record.

The [Section 525\(a\)](#) question turns on whether the city, as a municipal corporation, acting through its agent, the council; and members of the council, chose another candidate as police chief "solely because" of Potter's 2003 bankruptcy filing. This record does not determine that issue.

In the years since the bankruptcy anti-discrimination statute took effect, the majority of courts have applied a strict, plain-meaning construction to the phrase "solely because" of bankruptcy. In [Federal Communications Com-](#)

¹ The full text of [11 U.S.C. 525\(a\)](#) provides the following:

HN5 Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act (the Bankruptcy Act of 1898, replaced by the Bankruptcy Code of 1978), or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (emphasis added)

mission v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003), the Supreme Court considered whether the Federal Communications Commission's (FCC's) cancellation of a Chapter 11 debtor's broadband personal communications service licenses violated [Section 525\(a\)](#). Justice Scalia, writing for the majority, found that it did. The FCC had contended the bankruptcy was not the only cause for its revocation, citing the debtor's payment default and other "regulatory motives" as additional causes.

The Supreme Court stated:

The FCC has not denied that the proximate cause for its cancellation [**14] of the licenses was NextWave's failure to make the payments that were due. It contends, however, that [§ 525](#) does not apply because the FCC had a "valid regulatory motive" for the cancellation. ... In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive [§ 525](#) of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e.g.*, [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233(1971); [In re The Bible Speaks](#), 69 B.R. 368, 374 (Bkrcty.D.-Mass. 1987), or punishing lawlessness, *e.g.*, [In re Adams](#), 106 B.R. 811, 827 (Bkrcty.D.N.J. 1989); [In re Colon](#), 102 B.R. 421, 428 (Bkrcty.E.D. Pa. 1989), or even (quite simply) making itself financially whole. [Section 525](#) means nothing more or less [**15] than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation -- the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be.

[NextWave Communications](#), 537 U.S. at 301-02.

[Section 525\(a\)](#) was included in the Bankruptcy Code of 1978 following the Supreme Court's 1971 decision in [Perez v. Campbell](#), 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, declaring an Arizona motor vehicle law unconstitutional under the supremacy clause of the U.S. Constitution. The Arizona law suspended debtors' drivers' licenses for their failure to pay judgments which had been discharged in bankruptcy. See also [Exquisito Services, Inc. v. United States \(In re Exquisito Services, Inc.\)](#),

823 F.2d 151, 153-154 (5th Cir. 1987); [Laracuenta v. Chase Manhattan Bank](#), 891 F.2d 17, 21-22 (1st Cir. 1989); [Toth v. Michigan State Housing Development Authority](#), 136 F.3d 477, 480 (6th Cir. 1998), *cert. denied* 524 U.S. 954, 118 S. Ct. 2371, 141 L. Ed. 2d 739 (1998) (applying "plain language" interpretation of [Section 525\(a\)](#) as to prohibited transactions); [Smith v. St. Louis Housing Authority \(In re Smith\)](#), 259 B.R. 901, 906 (8th Cir. BAP 2001); [**16] [Taylor v. U.S. \(In re Taylor\)](#), 263 B.R. 139, 147 (N.D. Ala. 2001) (plain-language reading of [Section 525\(c\)\(1\)](#)); and [Pastore v. Medford Savings Bank](#), 186 B.R. 553, 555 (D. Mass. 1995) (differentiating between the broader "plain language" prohibitions in [Section 525\(a\)](#), and the narrower limitations on private employers in [Section 525\(b\)](#)).

Potter, the non-moving party, has so far offered evidence and arguments suggesting, but not proving, that his bankruptcy filing alone accounted for the City Council's failure to appoint him police chief. The Hanceville defendants, the moving parties, have offered evidence and arguments suggesting, but not proving, other motives. No witnesses have testified in open court, subject to formal cross-examination, on these alleged facts.

Proving the strictly construed proximate cause requirement can present problems for both offense and defense in [Section 525](#) suits. In [B.F. Goodrich Employees Federal Credit Union v. Patterson \(In re Patterson\)](#), 967 F.2d 505 (11th Cir. 1992), the Eleventh Circuit Court of Appeals held that a credit union manager's own testimony conclusively proved that the debtors' bankruptcy [**17] was the "sole" cause of the credit union's freeze of their checking account. The facts in [Patterson](#), which originated in this Bankruptcy Court, were somewhat unusual. The debtor was not in default to the credit union when he filed bankruptcy because he paid by payroll deduction, a deduction that continued for some months postpetition. The [Patterson](#) claim was filed under [11 U.S.C. § 525\(b\)](#) which was added to the statute by the 1984 bankruptcy amendments. The amendment extended the bankruptcy discrimination prohibition to private employers and their affiliates, as well as governmental entities. As with [Section 525\(a\)](#), [525\(b\)](#) also limited the prohibition to discrimination "solely because" of bankruptcy.

The Eleventh Circuit stated:

The Credit Union discriminated against the Pattersons solely on the basis of their bankruptcy filing. The discriminatory act was suspending the Pattersons' membership privileges. The Credit Union maintains a policy that any member who causes the credit union a loss shall be denied services. Mr. Phillips (the credit union manager) testified, however, that the Pattersons had not caused the credit union a loss at the time the [**18] Credit Union decided to suspend services to the Pattersons. Instead, the Credit Union

made that decision upon being informed that the Pattersons had filed for bankruptcy. On this basis, the bankruptcy court found, and we agree, that the Credit Union applied its policy in a manner that discriminates against those who file for bankruptcy. Nothing in this holding abrogates the general proposition that a creditor should not be forced to do business with a debtor. See *Brown v. Pennsylvania State Employees Credit Union*, 851 F.2d 81, 81 (3rd Cir. 1988). The Credit Union's policy in furtherance of this proposition is enforceable, however, only when applied without regard to a member's bankruptcy filing.

Patterson, 967 F.2d at 514. The facts are not so clear cut in most *Section 525* cases, particularly at the summary judgment stage. See also *Everett v. Lake Martin Area United Way, et al.*, 46 F.Supp.2d 1233 (M.D. Ala. 1999) (plaintiff lost on summary judgment because she failed to make *prima facie* case that bankruptcy was the only reason for her termination).

In the more usual *Section 525(a)* action, it is unlikely that the defendants [**19] would admit that the only reason for their [**310] action was that a plaintiff had filed bankruptcy. The trier of fact "must look to the objective evidence presented and draw reasonable inferences from that evidence as to the subjective intent of the parties involved." See *McKibben v. Titus County Appraisal District, et al.*, 233 B.R. 378, 381 (E.D. Tex. 1999).

While *Section 525(a)* makes hiring discrimination solely because of bankruptcy a violation of federal law, the statute itself provides no specific remedy for the violation or procedure for private lawsuits. Consequently, some courts have fashioned remedies based on the general equitable powers granted bankruptcy courts under *11 U.S.C. § 105(a)*.² See *Exquisito*, 823 F.2d at 155. Others have considered *Section 525(a)* violation in the *Section 1983* context.

[**20] **B. Application of the *Section 525* elements to each of the defendants' motions for summary judgment.**

The court has reviewed the seven depositions and 14 exhibits filed in support of, and in opposition to, the motions for summary judgment. The summary of facts as they relate to each defendant below, is not, and does not attempt to be, a complete recitation of facts in the record. Under the admonition and guidance of the United States Supreme Court as noted above, the court views these facts in the light most favorable to the nonmoving party, the plaintiff in this action.

1. Councilman Wayne Armstrong:

Councilman Wayne Armstrong's motion for summary judgment is found at AP Doc. 60; and AP Doc. 71, as amended by AP Doc. 85, is the brief in support, of the motion filed on Armstrong's behalf. Potter's response in opposition to summary judgment is found at AP Doc. 136.

AP Docs. 101 and 102 comprise a copy of Armstrong's deposition. Armstrong testified that he had heard the rumor that the plaintiff had filed bankruptcy and had discussed the fact with fellow councilman Hubert Jones, but that bankruptcy was no big deal to him. (Armstrong deposition, at pp. 21, and [**21] 35) Exhibit 5 to AP Doc. 137 is a copy of Armstrong's response to the plaintiff's request for admissions. In answer to Question 1, he stated that he did not know that the plaintiff had filed bankruptcy prior to October 4, 2004, the date he took office as city councilman. In response to Question 4, he denied that he had discussed plaintiff's bankruptcy with any other defendants in this action prior to October 4, 2004. He testified that when he was campaigning prior to the election people wanted a clean sweep of City Hall (Armstrong deposition at pp. 22-23). Although he stated that probably 90% of the people he talked to wanted a change, he said could not remember the names of anyone who stated this. (Armstrong deposition at p. 24)

Plaintiff's Exhibit 7, included in AP Doc. 137, is the affidavit of Steven Conner, a former police officer with the City of Hanceville. In paragraph 3, Conner's affidavit states:

On two occasions prior to Chief Potter being replaced, I was approached by councilman, Wayne Armstrong, offering me the Chief of Police job. I turned [**311] him down on both occasions. On the first occasion in which he offered me the job, I asked Mr. Arm-

² *11 U.S.C. 105(a)* provides the following:

HN6 The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

strong why he was letting [**22] Chief Potter go, because I believed Chief Potter was doing a good job. He replied, he filed bankruptcy. I said, that is not a crime, to which Mr. Armstrong did not respond. Wayne Armstrong never offered any other reason for replacing Potter.

However, during Armstrong's deposition, when asked if he mentioned to Steve Conner that Potter had filed bankruptcy, his answer was "no sir". (Armstrong deposition at p. 29)

In the court's view, reasonable jurors, weighing the evidence and judging credibility, could accept the testimony of Steve Conner and reject Armstrong's testimony. Assuming they believed Conner's testimony, a reasonable jury could find that Armstrong opposed Potter's appointment "solely because" he had filed bankruptcy.

2. Councilwoman Selma Barnett:

AP Doc. 61 is Councilwoman Selma Barnett's motion for summary judgment; and AP Doc. 72, as amended by AP Doc. 83, is the brief in support of Barnett's motion for summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment.

AP Docs. 103-105 comprise Barnett's deposition. Barnett testified in deposition that she had not decided whether or not she would support the plaintiff's [**23] reappointment until October 3, 2004, the day before the council meeting. She testified that she made up her mind as a result of an incident involving the plaintiff's wife at a local restaurant (Barnett deposition at pp. 44-46). She further stated that one of the campaign issues was replacement of the chief and city clerk. (Barnett deposition at p. 62). It was her testimony that the Potter's bankruptcy filing was not a problem with her since her daughter had also filed bankruptcy. (Barnett deposition at p. 36, pp. 66-67). She further testified that when she met with Craig Richie, who was subsequently hired as chief, along with Jones, Katie Whitley, and Whitley's husband, the subject of plaintiff's bankruptcy did not come up during the conversation. (Barnett deposition at p. 48).

However, Exhibit 6 to plaintiff's evidence submitted in opposition to motion for summary judgment (AP Doc. 137) is the affidavit of Betty Dover, Potter's sister-in-law. In part, Dover's affidavit stated:

On September 29, 2004. I called Selma Barnett and asked her if she was supporting Chief Potter? She said no. I asked her why, is it because he had a bankruptcy? She said, yes. I said, "Selma, have you [**24] never known anyone to bankrupt?" She said, yes, her daughter, due to health bills. I asked her if she knew why Chief Potter had bankrupted and she said, no. I said, "Selma,

you know Chief Potter is good for the city and community." She said, it was a done deal and it wasn't going to be changed, a man named Richie had the job.

That date was prior to October 3, 2004, when Barnett testified in deposition that she made up her mind not to support the plaintiff's reappointment. Additionally, both Jones and Armstrong stated in their depositions that they had talked with Barnett prior to their meeting with the plaintiff on September 29, 2004; and that she had indicated that she was not going to support his reappointment (Jones deposition at pp. 78-80, Armstrong deposition at pp. 45-48)

Craig Richie in his deposition (AP Docs. 131-133) also described a meeting where Barnett was present and plaintiff's bankruptcy was discussed. He stated:

[*312] Selma Barnett had spoken with me in the presence of Mayor Whitley a few times. Selma wasn't in agreeance [sic] with Mayor Whitley's statements on that because I believe through the line one of Selma's family members may have filed bankruptcy. [**25] Whenever Katie Whitley would bring it up, Selma would get a little bit perturbed at her over it. So it wasn't brought up after that again.

(Richie deposition at p.50)

In summary, Barnett testified that the plaintiff's bankruptcy did not bother her, and that it was not discussed in the meeting she had with the person who was ultimately appointed as police chief. Dover's affidavit contradicts this assertion by stating Barnett said "yes" when asked if her failure to support Potter was due to his bankruptcy. Richie, in his deposition, also contradicted Barnett's statement that plaintiff's bankruptcy was not discussed during the conversation. The Dover affidavit, and deposition testimony from Armstrong and Jones contradict Barnett's testimony that she had not decided whether or not to support the plaintiff's reappointment until October 3, 2004.

Again, it is for the trier of fact to decide which witnesses are most credible and to draw the appropriate factual inferences.

3. Councilman Larry Cornett:

AP Doc. 62 is Councilman Larry Cornett's motion for summary judgment, and AP Doc. 73, as amended by AP Doc. 82, is the brief in support of Cornett's motion for summary [**26] judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 116-117 comprise the deposition of Larry Cornett.

In deposition, Cornett stated that he was aware that Potter had filed bankruptcy, and that Mayor Whitley had given him a copy of the bankruptcy petition. (Cornett deposition at pp. 21-22) He stated that he never told anyone that he was not supporting the plaintiff's reappointment because he had filed bankruptcy. (Cornett deposition at pp. 30, 40, 44, 49) Cornett testified that he only discussed the Potter bankruptcy with Mayor Whitley, Selma Barnett, and his wife. (Cornett deposition at p. 30) He also stated that there were reasons other than bankruptcy for not reappointing Potter, including the fact that the plaintiff was supporting a mayoral candidate Armstrong did not like; and his belief that some of the police officers were not qualified. (Cornett deposition at pp. 31-33)

Dover's affidavit (Exhibit 6 to AP Doc.137) described a conversation with Cornett in which she stated that he said he could not support the Potter "because he had bankrupt". She stated that he further stated that "No, I can't stand the fact he bankrupt and he had all [**27] those credit cards."

Exhibit 9 to AP Doc. 137 is a statement signed by Joann Walls, the council member who voted against Richie and who is not named as a defendant in this lawsuit. Walls' statement described a conversation with Cornett in which "he said he couldn't hire Chief Potter because Potter had declared bankruptcy... Mr. Cornett said in his opinion he couldn't vote on Chief Potter because of the bankruptcy but gave no other reason."

In Walls' deposition (AP Docs. 107-111), she also described a conversation she had with Cornett. She stated, "he said very sternly that he couldn't support him because he had been in bankruptcy. And that is exactly how he expressed it." She further stated that he did not give any other reason. (Walls deposition at p. 39). Cornett testified in his deposition that a person who owed him money had filed bankruptcy in the past and that he had not [**313] received his money. (Cornett deposition at pp.26-29)

The conflicting testimony in the record so far must be judged at trial before a fact-finder.

5. Councilman Hubert Jones:

AP Doc. 63 is Councilman Hubert Jones' motion for summary judgment; and AP Doc. 74, as amended by AP Doc. 81, is his [**28] brief in support of summary judgment. AP Doc. 136 is the plaintiff's response in opposition to summary judgment. AP Docs. 112-114 comprise the deposition of Hubert Jones.

Jones, in his deposition, stated that he had heard the rumors that Potter had filed bankruptcy, but that he ignored them because he had already made up his mind to replace the plaintiff, if elected. (Jones deposition at pp. 25-26) He stated it was his opinion that the police depart-

ment was not operating efficiently, describing problems he felt existed in the department. (Jones deposition at pp. 26-35)

Exhibit 2 to AP Doc. 137 is a copy of Jones' response to plaintiff's request for admissions. In answer to question I, he denied that he knew the plaintiff had filed bankruptcy prior to October. 4, 2004, the date he took office as a newly elected city councilman. Under question 4, he denied that he had discussed the fact that the plaintiff had filed bankruptcy prior to the council's meeting to appoint a new police chief. On page 45 of his deposition, Jones again stated that he had not discussed plaintiff's bankruptcy prior to the council's vote. Jones further stated that he had never talked to Katie Whitley about the [**29] fact that Potter had filed bankruptcy. (Jones deposition at p. 45)

However, Armstrong's deposition (AP Docs. 101-102), Armstrong stated that he and Jones may have talked about plaintiff's bankruptcy "a little bit, but not a whole lot." (Armstrong deposition at pp. 21-22) In Richie's deposition (AP Docs. 131-133), Richie described a conversation in a meeting including Mayor Whitley and Jones. Richie stated that the mayor was not happy with the chief of police's bankruptcy filing; and that Jones agreed with her, and did not feel it was in the best interest of the city. (Richie deposition at p. 51)

There is a fact dispute on the face of this record which cannot be resolved on summary judgment.

6. Mayor Katie Whitley:

AP Doc. 64 is Mayor Katie Whitley's motion for summary judgment, and AP Doc. 75, as amended by AP Doc. 84, is Whitley's brief in support of summary judgment. AP Doc. 136 is the plaintiff's response.

Whitley's deposition is AP Docs. 89-92. Whitley testified that she went to the bankruptcy court in Decatur and obtained copied of part of the plaintiff's bankruptcy petition after she heard that he had filed bankruptcy. She stated that she did not vote to retain [**30] the plaintiff as police chief because he was not doing a satisfactory job. (Whitley deposition at pp. 100-113)

However, Richie, in his deposition (AP Docs. 131-133), described multiple conversations with Mayor Whitley in which he recalled "just her talking about that she wasn't going to have a police chief employed under her that had filed bankruptcy." (Richie deposition at p. 49) Richie further stated that he spoke with Whitley nightly on the phone prior to his appointment as police chief, and that "She spoke of Potter on every one of them, about his bankruptcy. It just enraged her." (Richie deposition at pp. 17-19) Richie described two meetings he had with Mayor Whitley at the Hartselle Dairy Queen and [**314] stated that both times she brought up the plaintiff's prior bankruptcy. (Richie deposition at pp. 12-17) She

also asked him if he or a member of his family had ever filed bankruptcy. (Richie deposition at pp. 16-17)

The week prior to October 4, 2004, Mayor Whitley called Richie while he was in Morgan County and had him look up Potter's bankruptcy file at the Bankruptcy Court Clerk's Office, walking him through the process step-by-step. She instructed him to copy some documents that **[**31]** she had forgotten to copy and became angry when he refused. (Richie deposition at pp. 23-26)

It is for the trier of fact to determine the credibility of the witnesses and draw inferences from the facts they determine to be true. Considering the facts in the light most favorable to the nonmoving party, it is possible the trier of fact could find that Katie Whitley voted not to reappoint the plaintiff solely because of his bankruptcy.

The record shows a dispute over facts material to the ultimate legal conclusion of this question as to all defendants. Consequently, the court cannot grant summary judgment in their favor on the issue of Potter's claim under [Section 525\(a\)](#) claim, fact issues remaining to be resolved.

II.

To state a claim under [42 U.S.C. § 1983](#), a plaintiff must show that a state actor has denied him or her a right created by the Constitution or laws of the United States.

Plaintiff Potter has alleged in his complaint that the City of Hanceville and members of its City Council discriminated against him solely because of his prior Chapter 7 filing when they appointed another person as Hanceville police chief. Potter seeks damages **[**32]** pursuant to [42 U.S.C. § 1983](#), a statutory cause of action that can provide a remedy at law or in equity for public actors' denial of rights created by the Constitution or laws of the United States.

[Section 1983](#) originated in the Civil Rights Act of 1871 which was designed to enforce the rights of citizens under the U.S. Constitution, and certain other federal laws in the post-Civil-War Reconstruction period. The modern statute itself is only one paragraph, and its language is relatively simple:

Civil action for deprivation of rights

HN7 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall

[33]** not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The statute formerly appeared as [42 U.S.C. § 1983](#). It was derived from the Act of April 20, 1871, codified at ch 22, § 1, 17 Stat. 13. Congress was attempting to override state laws deemed to deny equal protection of law under the new 14th Amendment and other constitutional/federal statutory guarantees; and to provide a remedy where state law was either facially **[**315]** inadequate, or inadequate as applied. In 1980, in [Maine v. Thiboutot](#), 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555, the Supreme Court held that [Section 1983](#) redress encompassed complaints based solely on rights created by federal statutes, and that the Civil Rights Attorney's Fees Awards Act of 1976 ([42 U.S.C. § 1988](#)) authorized an award of attorney's fees in appropriate cases.

Over the years, **HN8** the Supreme Court has further refined analysis for determining whether the plaintiff may litigate a [Section 1983](#) claim for denial of a federal **[**34]** statutory right. Justice Stevens, writing for the majority in [Golden State Transit Corp. v. City of Los Angeles](#), 493 U.S. 103, 106-07, 110 S. Ct. 444, 107 L. Ed. 2d 420 (1989), outlined a two-step inquiry:

... First, the plaintiff must assert the violation of a federal right. See [Middlesex County Sewerage Authority v. National Sea Clammers Assn.](#), 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435 ... (1981). [Section 1983](#) speaks in terms of "rights, privileges, or immunities", not violations of federal law. In deciding whether a federal right has been violated, we have considered whether the provision in question creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694, ... (1981). We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. *Id.*, at 43 Second, even when the plaintiff has asserted a federal right, the defendant may show that Congress "specifically foreclosed a remedy under [§ 1983](#)," [Smith v. Robinson](#), 468 U.S. 992, 1005, n. 9, 104 S. Ct. 3457,

82 L. Ed. 2d 746, ... (1984), by providing [**35] a "comprehensive enforcement mechanis[m] for protection of a federal right," *id.* at 1003, ...; see also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 101 S. Ct. 2615, 69 L. Ed. 2d 435, ... (1981); *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439, ... (1973). The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy. ... The burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant. ...

See also *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

Justice Scalia, writing for the majority in *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005) also pointed out, "Our subsequent cases have made clear, however, that *HN9* § 1983 does not provide an avenue for relief every time a state actor violates a federal law." The court indicated that further analysis was needed to determine if the law in question actually created a "right":

... Accordingly, to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates [**36] an individually enforceable right in the class of beneficiaries to which he belongs. ... Even after this showing, "there is only a rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 ... (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d [**316] 746. ... (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing, supra*, at 341, "The crucial consideration is what Congress intended." *Smith, supra*, at 1012 The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983. ...

See *Abrams*, 544 U.S. at 120-21.

In *Abrams*, the court held that the injunctive relief provided [**37] an amateur radio operator against a city zoning authority under 47 U.S.C. § 332(c)(7) of the Telecommunications Act of 1996 (TCA) was such "an express private means of redress," and the operator's sole remedy. Therefore, the operator could not pursue money damages for the violation under *Section 1983*.

Even earlier, the court in *Smith v. Robinson*, 468 U.S. 992, 1005, n.9, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984) had stated that "Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983." The Supreme Court has also noted that the Federal Water Pollution Control Act and the Education of the Handicapped Act contained the type of comprehensive administrative remedies required to displace *Section 1983* claims. See *Blessing v. Freestone*, 520 U.S. 329, 347, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

It appears to this court that *HN10 Section 525(a)* does create a "right" in a debtor or former debtor, a right not to be discriminated against by public actors in employment and other economic transactions "solely because" of the bankruptcy. The plain language and legislative history of *Section 525(a)*, and [**38] its subsequent interpretive jurisprudence lead inevitably to that conclusion.

Further, there is no specific remedy or procedural requirements for enforcement set out in *Section 525* itself that foreclose use of the *Section 1983* remedy. (In contrast, *Section 362(k) of the Bankruptcy Code* creates a specific remedy for certain violations of the automatic stay, including the possibility of compensatory damages, punitive damages, and/or the award of attorney's fees. The *362(k)* (formerly *362(h)*) remedies show Congress' intent to create a private cause of action and state the elements needed to prove the cause of action.)

U.S. District Judge Guin in *Taylor v. U.S. (In re Taylor)*, 263 B.R. 139 (N.D. Ala. 2001) pointed out that there is no remedy included in *Section 525(c)(1)* specifically; and that *Section 105(a)* has not traditionally been interpreted to create any private cause of action either. On appeal, the District Court decision was reversing a bankruptcy court's award of damages under *Section 105(a)* for a violation of *Section 525(c)(1)*. The District Court stated:

The bankruptcy court relied on § 105(a) of the *Bankruptcy Code* as authority to award plaintiff [**39] damages, citing *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) and *In re Exquisito Services, Inc.*, 823 F.2d 151, 155 (5th Cir. 1987) ("[C]ourt has broad power to ensure debtor is not unduly denied benefits which inure to him under the Bankruptcy Code") as additional authority. Neither court, however, addressed

the [*317] issue of whether a private right of action exists under [§ 525\(a\)](#). There is no justification for relying on *Exquisito Services* to award damages in the case at bar. *Exquisito Services* awarded no damages. It simply required the Air Force to exercise its option with plaintiff. It is error for the court to rely on [§ 105\(a\)](#) to confer a private right of action to collect damages. [Bessette, 240 B.R. 147, 156](#), ([Section 105](#) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of title 11.) See [Walls v. Wells Fargo Bank, N.A. 255 B.R. 38, at 45 \(E.D. Cal. 2000\)](#) ("As the Supreme Court has repeatedly emphasized, the fact that a federal statute has been violated and some person harmed does not automatically give rise [**40] to a private cause of action in favor of that person.").

[Taylor, 263 B.R. at 151-52](#).

That suit had alleged only the [Section 525](#) violation, and made no additional claim under [Section 1983](#).

HNI This strict construction of [Section 105\(a\)](#), and of the equitable powers of the bankruptcy court generally, is a longstanding interpretation applied by the majority of courts. [Section 105\(a\)](#) does empower the court in very non-specific terms to enforce its own orders, most normally using civil contempt sanctions as coercive remedies for offenses against the court itself.

Consequently, this Bankruptcy Court cannot interpret the very general language of [Section 105\(a\)](#) as the sort of "comprehensive enforcement scheme" that, under Supreme Court precedent, would bar access to a [Section 1983](#) claim.

Further, courts in other fora have allowed violations of rights created by the Bankruptcy Code to be considered in [Section 1983](#) litigation. See [Higgins v. Philadelphia Gas Works, 54 B.R. 928, 934 \(E.D. Pa. 1985\)](#); [Gibbs v. Housing Authority of the City of New Haven, 76 B.R. 257, 261 \(D. Conn. 1983\)](#); [McKibben v. Titus County Appraisal District \(In re McKibben\), 233 B.R. 378, 385 \(Bankr. E.D. Tex. 1999\)](#); [**41] and [Maya v. Philadelphia Gas Works \(In re Maya\), 8 B.R. 202, 205 \(Bankr. E.D. Pa. 1981\)](#). However, there is also some other non-precedential authority to the contrary. See [Lesniewski v. Kamin \(In re Lesniewski\), 246 B.R. 202, 217 \(Bankr. E.D. Pa. 2000\)](#); [Coats v. Vawter \(In re Coats\), 168 B.R. 159, 167 \(Bankr. S.D. Tex. 1993\)](#); and [Begley v. Philadelphia Electric Company \(In re Begley\), 41 B.R. 402, 408 \(E.D. Pa. 1984\)](#), *aff'd* by [760 F.2d 46 \(3rd Cir. 1985\)](#). The Eleventh Circuit Court of Appeals does not appear to have ruled on this particular issue.

Given the legal requirements of both [Section 525\(a\)](#) and

[Section 1983](#), the court cannot find that Potter is barred from bringing a [Section 1983](#) claim based on a 525(a) violation. Consequently, the court must deny the defendants' summary judgment on their [Section 1983](#) contention as well. Disputed facts require trial on Potter's [Section 525\(a\)](#) claim to determine if there is a violation, and there is no legal reason a violation, if proven, cannot be a predicate for [Section 1983](#) damages.

III.

*At this stage, "qualified immunity" cannot be applied [**42] to shield the defendants from litigation of this Section 1983 suit.*

The court has already found that summary judgment cannot be granted to the defendants on their [Section 525\(a\)](#) claim, and that they cannot be granted summary judgment on their second claim [**318] since proof of the violation could trigger [Section 1983](#) damages.

In their third claim for summary judgment, defendants contended that, even if the action violated [Section 525\(a\)](#) and triggered the [Section 1983](#) remedy, they are protected from suit as individuals by the doctrine of "qualified immunity." The court must also deny summary judgment on this ground as well.

A review of case law in this area suggests that the availability of qualified immunity to the defendant council persons turns on the issue of whether they were on notice that terminating Potter because of his bankruptcy violated federally created rights. If the fact-finder does determine that a majority of the council ended Potter's appointment "solely because" of his bankruptcy, "qualified immunity" cannot apply if the members had constructive or actual notice that such conduct violated a federal right.

The determining factor is whether the conduct complained [**43] of is a violation of a right "clearly established" by either the Constitution, a federal statute, and/or court interpretations of either in similar cases. If the illegality is clearly established by any of these three means, ignorance of the law will not immunize the council persons from suit under [Section 1983](#). The standard is an objective one, not a subjective one.

In one of the seminal cases on the issue, [Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#), the Supreme Court majority distinguished between the "absolute immunity," which protects certain public officials from all litigation; and the more limited "qualified immunity" which can shield officials from suit as individuals for participation in an unconstitutional or illegal "public" action. (The Hanceville defendants have not claimed to be protected by absolute immunity, only qualified immunity.) As stated in the Watergate-era [Harlow, 457 U.S. at 807](#):

Our decisions have recognized *HNI2* immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity [**44] of legislators in their legislative functions, see e.g. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324, ... (1975), and of judges in their judicial functions, see e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, ... (1978), is now well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, ... executive officers engaged in adjudicative functions, ... and the President of the United States, see *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349, For executive officials in general, however, our cases make plain that qualified immunity represents the norm. ...

As Justice Scalia, writing for the majority, pointed out in the later *Anderson v. Creighton*, 483 U.S. 635, 638-39, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), *HNI3* public officials performing discretionary functions maybe immune "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. ... (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law")...." The protection, the court stated, "turns on the [**45] 'objective legal reasonableness' of the action."

Generally, if conduct is plainly a violation of such a "clearly established" [**319] right, ignorance of the law will not immunize officials from suit for *Section 1983* claims. See also *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004); and *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1550 (11th Cir. 1986).

In some later opinions, the Supreme Court drew a line between the question of whether "qualified immunity" applied to the defendant, and the subsequent question of whether the action complained of actually violated rights created by the Constitution or federal statute. The Court refined the concept as an entitlement not to stand trial at all; not a mere defense to personal liability at trial. See *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); and *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Justice Kennedy, writing for the majority in *Saucier*, urged that the "qualified immunity question" be resolved early in a case, stating that the constitutionality/legality of the public action does not alone determine the individual's immunity. In *Saucier*, a military [**46] police officer asserted qualified immunity in a suit charging him

with using excessive force against an animal rights activist who had advanced on Vice President Gore at a rally. The MP argued that he had not thought that the action he took was unlawful in the circumstances. The Ninth Circuit Court of Appeals denied him summary judgment as to qualified immunity because material issues of fact remained to be tried on the constitutional violation itself.

On appeal, the Supreme Court reversed the Ninth Circuit's denial of the MP's motion for summary judgment, finding that the officer could not be sued for his actions because no law put him on specific notice that his conduct might be unlawful:

The matter we address is whether the requisite analysis to determine qualified immunity is so intertwined with the question whether the officer used excessive force in making the arrest that qualified immunity and constitutional violation issues should be treated as one question, to be decided by the trier of fact. The Court of Appeals held the inquiries do merge into a single question. We now reverse and hold that the ruling on qualified immunity requires an analysis not susceptible of [**47] fusion with the question whether unreasonable force was used in making the arrest.

Saucier, 533 U.S. at 197.

At times, a trial court must address the possibility of a constitutional/statutory violation. The Supreme Court also stated in *Saucier*, 533 U.S. at 201:

HNI4 A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. ... In the course of determining whether a constitutional right was violated on the premises alleged, a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case, and it is one reason for our insisting upon turning to the existence or non-existence of a constitutional right as the first inquiry. The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was [**48] unlawful in the circumstances of the case.

HNI5 If no constitutional right would have

been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. [*320] *On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. (emphasis added)*

Justice Stevens wrote for the majority in [Hope v. Pelzer](#), 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), a [Section 1983](#) suit against three Alabama prison guards, holding that their participation in the state's use of a hitching post to discipline prisoners was a violation of the [Eighth Amendment](#). The Eleventh Circuit Court of Appeals had also found that use of the hitching post was constitutionally impermissible "cruel and unusual punishment;" but that, nevertheless, under circuit precedent, the guards were still [**49] entitled to qualified immunity from [Section 1983](#) suit. The Supreme Court reversed the Eleventh Circuit on the immunity issue, stating:

... [T]he [Eighth Amendment](#) violation here is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed, to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to prison. ... Despite the clear lack of emergency situation, respondents knowingly subjected him to a substantial risk of physical harm; to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. ... Despite their participation in this constitutionally impermissible conduct, respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." [Harlow v. Fitzgerald](#), 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396, ... (1982) ... [T]he [**50] Court of Appeals required that the facts of previous cases be "materially similar" to Hope's situation." [240 F.3d 975, 981](#). This rigid gloss on the qualified immunity standard, though supported by

Circuit precedent, is not consistent with our cases, (emphasis added)

[Hope](#), 536 U.S. at 738-739.

HN16 Generally, defendants asserting qualified immunity at the summary judgment stage must make an initial showing that they are public officials performing discretionary acts in the course of their duties and within the scope of their authority. If a court, viewing evidence in the light most favorable to the plaintiff, determines that defendants did perform the challenged action as part of discretionary official duties within their authority, the burden then shifts to the plaintiff to overcome the defense of qualified immunity. See [Holloman v. Harland](#), 370 F.3d 1252, 1264 (11th Cir. 2004).

In the Potter case, the undisputed record shows that members of the Hanceville City Council were public officials who took a discretionary action within the scope of their authority. That authority, by virtue of [Ala. Code § 11-43-4](#), includes the power [**51] to make administrative decisions about personnel such as appointing Potter's successor. Further, there is no doubt that a voting majority of the council, under both law and custom, was the final decision [**321] maker on this and other issues of municipal administration.

Consequently, the burden shifted to Potter to come forward with evidence to show council members were not entitled to "qualified immunity." **HN17** A plaintiff can overcome qualified immunity by a showing that (1) the defendant violated a statutory or constitutional right, and (2) this right was clearly established at the time of the alleged violation." See [Harlow v. Fitzgerald](#), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); [Holloman](#), 370 F.3d 1252, 1264; [Crosby v. Monroe County](#), 394 F.3d 1328, 1332 (11th Cir. 2004); and [Smith v. Siegelman](#), 322 F.3d 1290, 1295 (11th Cir. 2003).

Interpreting all of the evidence in the light most favorable to Potter, the court has already concluded that it is conceivable that the trier of fact could find that the council's action did violate a federal right created by [Section 525\(a\)](#). Consequently, the record so far does not foreclose the possibility that Potter [**52] can prove the first part of the two-step test to overcome qualified immunity.

The second element is the notice factor. While there may have been a violation of a constitutional or statutory right of the plaintiff, the defendants would still be entitled to summary judgment as to qualified immunity if this right were not clearly established. Again, the burden is on the plaintiff to show that the right was clearly established. **HN18** A right can be clearly established in one of three ways: (1) the words of the statute or constitutional provision can be specific enough to clearly establish the applicable law, (2) some broad statements of principle in case law can be sufficient, and (3) there can

be a case with indistinguishable material facts. [Williams v. Consolidated City of Jacksonville](#), 341 F.3d 1261, 1270 (11th Cir. 2003), cert. denied 543 U.S. 1187, 125 S. Ct. 1399, 161 L. Ed. 2d 190 (2005). See also [Vinyard v. Wilson](#), 311 F.3d 1340, 1350 (11th Cir. 2002).

[11 U.S.C. § 525\(a\)](#) was on the books and interpreted by case law long before the council member defendants took office in 2004. [Section 525\(a\)](#) provides specifically that a governmental unit may not **[**53]** "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title...". This city council on October 4, 2004 voted to appoint another person as chief of police in the city of Hanceville. This action ended Potter's employment with the city. AP Doc. 137 is Potter's evidence submitted in opposition to defendants' motion for summary judgment. The document includes copies of each individual defendant's response to the plaintiff's request for admissions. Each individual defendant admitted to Question 5 which stated "Defendant knew that it was a violation of law to terminate the employee's employment solely because that person participated as a debtor under chapter 7 of Bankruptcy Act."

The defendants characterize Potter's position as a political appointment which ended when the new council took office, but the only submission in support of the motions for summary judgment related to his term of office is Title 11-43-4 which provides that he shall serve until his "successor or successors are elected and qualified".

The court has not been able to locate a case substantially similar to this dispute between **[**54]** Potter and Hanceville. The court does find that the language of [Section 525\(a\)](#) clearly established Potter's right not to be terminated solely due to his having filed a bankruptcy petition. The defendants characterizing the council's vote as making a political appointment of a new police chief or as filling a vacancy does not **[*322]** change the fact that it ended Potter's employment with the city.

Considering the facts in the light most favorable to the non-moving party Potter, the court finds that the statutory right not to be discriminated against as a result of his bankruptcy was clearly established. Consequently, the defendants' motions for summary judgment declaring them to be immune from [Section 1983](#) suit on the theory of "qualified immunity" must also be denied at this point in the case.

Further, as stated in [Johnson v. Breeden](#), 280 F.3d 1308, 1318 (11th Cir. 2002), **HNI9** defendants who are unsuccessful with their qualified immunity defense before trial can reassert it at the end of the plaintiff's case in a Fed. R. Bankr. Rule 50(a) motion:

It is important to recognize, however, that a defendant is entitled to have any evidentiary disputes upon which the qualified **[**55]**

immunity defense turns decided by the jury so that the court can apply the jury's factual determinations to the law and enter a post-trial decision on the defense. When the case goes to trial, the jury itself decides the issues of historical fact that are determinative of the qualified immunity defense, but the jury does not apply the law relating to qualified immunity to those historical facts it finds; that is the court's duty. [Stone v. Peacock](#), 968 F.2d 1163, 1166 (11th Cir. 1992) ... ("[O]nce the defense of qualified immunity has been denied pretrial due to disputed issues of material facts, the jury should determine the factual issues without any mention of qualified immunity.")

CONCLUSION

For the reasons discussed above, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and council members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc. 62); Hubert Jones, (AP Doc.63); and Mayor Katie Whitley, (AP Doc. 64) are due to be **DENIED** on all three claims. The objection to summary judgment filed by plaintiff Edward Lee Potter (AP Doc. 136) is due to be **SUSTAINED**.

DONE and ORDERED [56]** this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on the defendants' motions for summary judgment in their favor on former Hanceville Police Chief Edward Lee Potter's complaint accusing them of illegally discriminating against him because of his bankruptcy in violation of [11 U.S.C. § 525\(a\)](#) and [42 U.S.C. § 1983](#). The court has reviewed the record of the hearing and the submissions of the parties in the context of applicable law. It finds the defendants' motions, filed under [Fed. R. Civ. P. 56](#), are due to be **DENIED**; and the plaintiff's objections to the summary judgments, **SUSTAINED**. It is hereby

ORDERED, DECREED, and ADJUDGED:

1. For the reasons discussed in the accompanying **MEMORANDUM OF DECISION**, the summary judgment motions of defendants City of Hanceville (AP Doc. 65); and Council Members Wayne Armstrong, (AP Doc. 60); Selma Barnett, (AP Doc. 61); Larry Cornett, (AP Doc.

62); Hubert Jones, (AP Doc. 63); and Mayor Katie Whitley, (AP Doc. 64) are hereby **DENIED** as to all claims.

[**57] 2. The objection to the summary judgments filed by plaintiff Edward Lee Potter, (AP Doc. 136), is hereby **SUSTAINED**. *See also* accompanying **MEMORANDUM OF DECISION**.

DONE and ORDERED this November 6, 2006.

/s/ C. Michael Stilson

United States Bankruptcy Judge

From: [Smith, Susan](mailto:Smith_Susan)
To: [Sams, Savannah](mailto:Sams_Savannah)
Subject: FW: Extradition of Curtis Wayne Wright Sr.
Date: Friday, October 16, 2015 1:35:08 PM
Attachments: [SKM_454e15101610360.pdf](#)
Importance: High

Attached is the agent's appointment, requisition to the Governor of Missouri and the Application from the state attorney's office.

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
Fax: 850.488.9810



www.KeepFloridaWorking.com

From: Bryant, Linda C. [<mailto:Linda.Bryant@DOS.MyFlorida.com>]
Sent: Friday, October 16, 2015 11:38 AM
To: Smith, Susan
Subject: RE: Extradition of Curtis Wayne Wright Sr.
Importance: High

Susan,

Here you go, as requested.

Have a good day,

Linda

Linda Bryant

Accountant I

Department of State

Administrative Code and Register

500 South Bronough Street

Tallahassee, Florida 32399-0250

(850) 245-6275

From: Smith, Susan [<mailto:Susan.Smith@eog.MyFlorida.com>]

Sent: Friday, October 16, 2015 11:27 AM

To: Bryant, Linda C.

Subject: Extradition of Curtis Wayne Wright Sr.

Linda,

Please send me a copy of the agent's appointment and requisition signed by Governor Scott for the extradition of Curtis Wayne Wright, Sr. It was issued on September 8th and was

coming from Lee County and went to Missouri.

Susan L. Smith

Criminal Justice Liaison &
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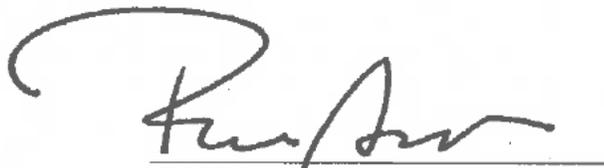
STATE OF FLORIDA

EXECUTIVE DEPARTMENT

**TO ALL SHERIFFS TO WHOM THESE PRESENTS SHALL COME,
GREETINGS:**

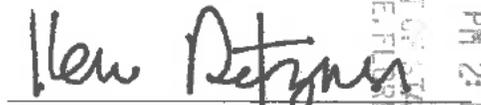
I, **RICK SCOTT, GOVERNOR**, hereby appoint **SHERIFF MIKE SCOTT** and/or authorized agent(s), of the State of Florida to receive **CURTIS WAYNE WRIGHT JR**, fugitive from justice, who is in the custody/jurisdiction of **JEFFERSON COUNTY JAIL HILLSBORO, MISSOURI**, from the appropriate authorities of the State of **MISSOURI**, and convey said fugitive to the State of Florida, to be dealt with according to law.

IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.


GOVERNOR



BY THE GOVERNOR


SECRETARY OF STATE

2015 SEP - 8 PM 2:15
JEFFERSON COUNTY
TALLAHASSEE, FLORIDA

FILED

STATE OF FLORIDA

EXECUTIVE DEPARTMENT

THE GOVERNOR OF THE STATE OF FLORIDA, TO HIS EXCELLENCY THE GOVERNOR OF THE STATE OF MISSOURI:

WHEREAS, it appears by the annexed application for requisition and copies of **WARRANT, AFFIDAVIT MADE BEFORE A MAGISTRATE OF THE STATE OF FLORIDA** and allied papers, which I certify are authentic and duly authenticated in accordance with the laws of the State of Florida, that under the laws of this State **CURTIS WAYNE WRIGHT JR** stands **CHARGED** with the crime of **SECOND DEGREE MURDER**, committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State, and is now to be found in the State of **MISSOURI**;

NOW, THEREFORE I, Rick Scott, Governor of Florida, pursuant to the provisions of the Constitution and the laws of the United States and laws of the State of Florida, I do hereby respectfully demand that the above-named fugitive from justice be arrested, secured and delivered to **SHERIFF MIKE SCOTT** and/or authorized agent(s) hereby authorized to receive, convey, and transport this fugitive to this State, to be dealt with according to law.

IN WITNESS WHEREOF, I have hereunto signed my name and caused to be affixed the Great Seal of State, at Tallahassee, Florida this 8th day of September A.D., 2015.




GOVERNOR

BY THE GOVERNOR


SECRETARY OF STATE

DEPT. OF THE STATE
TALLAHASSEE, FLORIDA

2015 SEP -8 PM 2: 15

FILED

NAME OF FUGITIVE: Curtis Wayne Wright, Jr.
STATE OF REFUGE: Missouri
AGENCY MAKING APPLICATION: Office of the State Attorney Twentieth Judicial Circuit
OFFICIAL MAKING APPLICATION: Hamid N. Hunter, Assistant State Attorney
PHONE NUMBER: (239) 533-1330

COPY

APPLICATION FOR REQUISITION

TO HIS EXCELLENCY, THE HONORABLE RICK SCOTT, GOVERNOR OF FLORIDA:

Pursuant to F.S. §941.02, I have the honor to make application for your requisition upon the governor of the STATE OF MISSOURI for the arrest and rendition of Curtis Wayne Wright, Jr., who is charged in this county and state with the commission of the following crime(s) Second Degree Murder, and who on or about Sunday, June 28, 2015, is a fugitive from the justice of the State, and has taken refuge in the STATE OF MISSOURI.

I respectfully certify:

1. THAT I have carefully examined the case, and believe that the facts stated in the accompanying proof are true and that the fugitive is guilty of the crime(s) charged; that ends of public justice require that the fugitive be brought back to this State at the public expense; that I have as I believe sufficient evidence to secure the fugitive's conviction; that the charge was and this application is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the fugitive is returned to this State the criminal proceedings will not be used for any of these purposes, but that it is my intention to diligently prosecute the fugitive for the crime(s) charged.
2. THAT no other application has been made for a requisition for the fugitive growing out of the transaction from which the charge(s) herein originated.
3. THAT the fugitive is properly charged, in due form, in accordance with the laws of this State; that to the best of my belief the fugitive was personally and physically present in this State at the time of the commission of the crime(s), and to avoid arrest and prosecution, fled from the justice of this State and is under arrest in the City of Hillsboro, STATE OF MISSOURI and has refused to waive extradition.
4. THAT in support of this application, I enclose true and correct copies of the Warrant To Arrest, Probable Cause Affidavit, which allege the facts required to be established, and the following additional documents FINGERPRINTS and PHOTOGRAPH of the defendant, all of which are authentic and properly authenticated in accordance with the laws of this State; and that the papers submitted have been compared with each other and are in all respects exact counterparts; and that this application together with all accompanying documents have been prepared in quadruplicate, and the additional copies are exact counterparts of this application and accompanying documents.

NAME OF FUGITIVE: Curtis Wayne Wright, Jr.

STATE OF REFUGE: Missouri

AGENCY MAKING APPLICATION: Office of the State Attorney Twentieth Judicial Circuit

OFFICIAL MAKING APPLICATION: Hamid N. Hunter, Assistant State Attorney

PHONE NUMBER: (239) 533-1330

COPY

I nominate Sheriff Mike Scott, Sheriff of Lee County and/or his designated authorized agent(s) as a proper person(s) to be designated by you as agent(s) to return the fugitive back to this State, and I certify that the nominated agent(s) is a public officer and has no private interest whatsoever in the arrest of the fugitive.

Respectfully submitted this 1 day of September , 2015.

STEPHEN B. RUSSELL
STATE ATTORNEY

BY:



Hamid N. Hunter
Assistant State Attorney
Florida Bar Number 0194468
Post Office Box 399
Fort Myers, Florida 33902-0399
(239) 533-1000

I, Hamid N. Hunter, Assistant State Attorney in and for the Twentieth Judicial Circuit, hereby certify that I have read the foregoing application and know the contents thereof and attest the same as true and correct to the best of my knowledge and belief.



Hamid N. Hunter
Assistant State Attorney

Sworn to and subscribed before me,

this 1st day of September, 2015.



Notary Public



ERIN L. LEE
Commission # FF 158195
Expires October 18, 2018
Bonded thru Troy Felt Insurance 200-385-7019

From: [Bryant, Linda C.](#)
To: [Smith, Susan](#)
Subject: RE: Extradition of Curtis Wayne Wright Sr.
Date: Friday, October 16, 2015 1:54:46 PM

You're welcome ☺

From: Smith, Susan [<mailto:Susan.Smith@eog.MyFlorida.com>]
Sent: Friday, October 16, 2015 1:35 PM
To: Bryant, Linda C.
Subject: RE: Extradition of Curtis Wayne Wright Sr.

Thanks Linda.

Susan L. Smith

Criminal Justice Liaison &
Victims' Rights Coordinator
Executive Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, FL 32399-0001
Phone: 850.717.9310
Direct: 850.717.9311
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Sent: Friday, October 16, 2015 11:38 AM
To: Smith, Susan <Susan.Smith@eog.MyFlorida.com>
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Importance: High

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Linda
Linda Bryant
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Administrative Code and Register
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Tallahassee, Florida 32399-0250
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