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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

JOSH DOGGRELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.: 1:16-CV-0239-VEH**
	)	
CITY OF ANNISTON, ALABAMA, a Municipality, and BRIAN JOHNSON, Individually and in His Official Capacity as City Manager of the City of Anniston, Alabama,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 8, 2016, Plaintiff Josh Doggrell ("Mr. Doggrell") initiated this lawsuit in the Circuit Court of Calhoun County against the City of Anniston (the "City") and Brian Johnson, individually and in his official capacity as the City Manager ("City Manager Johnson").[1] (Doc. 1-3). Mr. Doggrell's complaint contains

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[1] Because Mr. Doggrell has separately sued the City, his official capacity claims against City Manager Johnson are redundant. *See Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1060 (11th Cir. 1992). ("Official-capacity suits, in contrast, 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" (quoting *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S. Ct. 3099, 3105, 87 L. Ed. 2d 114 (1985)) (citing *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55, 98 S. Ct. 2018, 2035, n.55, 56 L. Ed. 2d 611 (1978))).

two counts. (Doc. 1-3 at 8-10 ¶¶ 31-37).[2] Count I asserts violations of Mr. Doggrell's state and federal constitutional rights of freedom of speech, association, assembly and religion. (Doc. 1-3 at 8-9 ¶¶ 31-35) against both Defendants. Count II asserts a violation of the Alabama Religious Freedom Amendment ("ARFA") against both Defendants. (Doc. 1-3 at 9-10 ¶¶ 36-37).

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Defendants removed the action to federal court on February 11, 2016, on the basis of federal question over Count I and supplemental jurisdiction over Count II. (Doc. 1 at 2-3 ¶¶ 3-4). On December 2, 2016, Defendants moved for summary judgment (doc. 11) (the "Motion"). The parties have supported and opposed the Motion. (Docs. 12-15, 22-23, 26). For the reasons set out below, the Motion is due to be granted.

II. FACTUAL BACKGROUND[3,]

Mr. Doggrell was first employed by the City Ö •

(“APD”) i

primary spokesperson. AF No. 3.2. He has actual authority from the League of the South's Board of Directors to utilize the organization's website to communicate ideas, beliefs and principles on its behalf. AF No. 3.3. He also has "carte blanche" authority to link from his Facebook page and Twitter account to the League of the South's website. AF No. 3.4.

The League of the South's stated purpose is "to advance the cultural, social, economic, and political well-being and independence of the southern people by all honorable me[a]n[s]." AF No. 4.1. According to its President, the League of the South considers the "southern people" to be white people of southern heritage. AF No. 4.2. Black southerners are not eligible to be included within its concept of the "southern people." AF No. 4.3.

For most of his adult life, Mr. Doggrell was a firmly committed member of the League of the South. AF No. 5.1. In March 2009, Mr. Doggrell started a local chapter of the League of the South in Calhoun County, Alabama. AF No. 5.2. The Anniston Star published an article about his formation of the local chapter. AF No. 5.3. Mr. Doggrell asked the Anniston Star's reporter not to identify him as an Anniston police officer. AF No. 5.4. Mr. Doggrell made this request to the reporter because he wanted to minimize any controversy for APD. AF No. 5.5. Shortly thereafter, the City received a citizen's complaint criticizing Mr. Doggrell's involvement in the League

of the South and requesting an investigation into the matter. AF No. 6.

Former Anniston Police Chief John Dryden ("Former Police Chief Dryden"), who was interim City Manager at the time, issued a memorandum in response to the citizen's request. AF No. 7.1. In the memorandum, Former Police Chief Dryden acknowledged that a member of APD was also a member of the League of the South and was [illegible] investigation "revealed no violations of any kind that action could be taken on." AF No. 7.2. In reaching this conclusion, Former Police Chief Dryden specifically noted that the APD officer–Mr. Doggrell–"in no way affiliated his employment with the City to his membership with this organization." AF No. 7.3.

After the City's 2009 investigation into Mr. Doggrell's involvement with the League of the South, the APD warned Mr. Doggrell to be very careful. AF No. 8.1. Mr. Doggrell confirmed that he was careful not to mix his association in the League of the South with the APD. AF No. 8.2.

In 2013, Mr. Hill invited Mr. Doggrell to speak at the League of the South's Annual National Conference that was being held in [illegible]

Mr. Doggrell accepted the invitation and gave a speech at the League of the South's 2013 National Conference entitled "Cultivating the Good Will of Peace Officers." AF No. 11.1. Mr. Doggrell believed that he had to identify himself as a police officer in order to have credibility to speak on the subject. AF No. 11.2.

Prior to beginning his speech, Mr. Doggrell was introduced as living in the community of Saks in Anniston, Alabama. (Doc. 12-31 at 2).[5] Mr. Doggrell submitted a biography in connection with his speech indicating that he had been a peace officer in his home city/county for sixteen years. AF No. 12.2; (*see also* Doc. 12-23 at 1 (attaching flyer detailing speakers scheduled for 2013 Annual League of the South National Conference)).

Mr. Doggrell's speech included the following statements:

- "[I]t was wonderful to go by there and show my bosses all the radicals that I was cavorting with on the weekends." (Doc. 12-31 at 5);

- "It's wonderful to be around sanity . . . it's good to be among people who think like I do for a change, even if it's just for a weekend. We are working on getting more of those people around our way of thinking." (*Id.* at 7);

- "Now, it is not easy being a League of the South member either . . . It can be hard. And let me tell you, we had a city council

[5] Doc. 12-31 is a transcription of "THE DIGITAL AUDIO/VIDEO RECORDED CONFERENCE 'CULTIVATING THE GOOD WILL OF PEACE OFFICERS,' LS National Conference 2013, Wetumpka, Alabama held on July 21, 2013." (*Id.* at 1).

member who could be best described as a small-town Jessie Jackson. We began our chapter in 2009. And there was an internal investigation [launched] against this cop who had founded a local hate group. And I was cleared for that, and hopefully won't have to put up with that again. And that city councilman, by the way, has been voted out of office as well. So there are – In my department, they have been very supportive of me. I have somehow, been promoted twice since I have been there. So these folks are not necessarily always against us. I want to leave you with that impression. (Doc. 12-31 at 8-9, 9-10);

! "Calhoun County has several police agencies. I work at Anniston, which I'll go ahead and go on record. Nothing I say here today is necessarily the views of the Anniston Police Department. I speak only as an individual and not an employee of that agency." (*Id.* at 13);[6]

! "The vast majority of men in uniform are aware that they are Southerners and kith and kin comes before illegal national mandates." (*Id.* at 23);

! "You may ask how many police officers I have recruited to the League. Well, not many . . . But continuously, like Dr. Hill said last night in our state meeting, it is a grind . . . Some of those same people who said ten years ago were telling me how crazy I was, this week are telling me, 'I am this close to where you are at.' Okay? We have got to keep working on that and stay the course." (*Id.* at 23, 24);

! "[Police officers] are the kind of people we will need in this kind of g[illegible]

on to be a warrior in the battles to come." (*Id.* at 33);

! "[B]y the way, Wayne. But Wayne Brown is here, a lieutenant at the Anniston Police Department. He accompanied me to a meeting in Cullman; and on the way there, he was asking me, he said, 'What is the magic bean,' as he put it, 'that would arouse our people to see exactly what was happening to them and how necessary the step of secession is?' And I told him I considered that, not only a good question but perhaps the million dollar one: What will it take? We see all this, and we still see the zombies walking around accepting it. What – What would it take?" (Doc. 12-31 at 39);

! "By and large, our lawmen of Southern justice are good people with good intentions. They are just as susceptible to being swayed to our side and our views as any other southerner, and I would say even more so." (*Id.* at 41);

! "I went through that internal investigation and was cleared. The department I work at has been very supportive about that. They are not all on board, now, but they have been very supportive. They are just – They are like other sowre portive.

contact with that's not here today. They are just not quite ready to take that step. But like I said earlier, they are much closer than they were ten or 15 years ago." sdearlier, th t(1)(k)eyl

the matter internally. AF No. 15.4.

City Manager Johnson spoke to the Police Chief to ask for background on the League of the South, Mr. Doggrell's membership in the organization, and Mr. Doggrell's personnel record. A

in his advancement in his career with APD because of his association with the League of the South. AF No. 18.3. Mr. Doggrell suffered no adverse employment action in the time period between when Defendants first received notice of his speech and the SPLC's June 17th publication. AF No. 18.1. Mr. Doggrell does not dispute that Defendants' initial response after receiving notice of his speech was measured. AF No. 18.2.

The SPLC's article and the posting of a related YouTube video had a tremendous impact in the community. AF No. 19.1 Concerning the video, more particularly, it depicted the current APD, Mr. Doggrell, and Lt. Wayne Brown ("Lt. Brown") as being connected with the KKK's actions in the 1960s in burning buses of Freedom Riders. AAF No. 11.1. Police Chief Denham testified that he believed that the SPLC edited the video footage in this manner to inflame racial tensions. AAF No. 11.1; (*see* Doc. 12-2 at 27 at 108 ("It was very obvious to me that the SPLC was trying to inflame the situation.")).

Police Chief Denham also testified that it "was not like anything I had ever seen before . . . ." AF No. 19.2. "Very angry and very disgusted" people started showing up in APD's lobby, and APD started receiving phone calls and emails about it. AF No. 19.3. A large portion of the complaints were directed at the APD as a whole, "as in you have a racist department, you follow the beliefs of this organization,

League of the South, and you are in line with them, as evidenced by the speech that one of your lieutenants gave." AF No. 19.4.

City Manager Johnson's first response to the public outcry was to place both Mr. Doggrell and Lt. Brown, who Mr. Doggrell had identified during the 2013 speech as a fellow ADP officer who supported the League of the South, on paid administrative leave. AF No. 20.1. He did so for their own safety, the safety of their fellow officers, and to allow time for an internal investigation. AF No. 20.2. Tensions in the community were pretty high, and the Police Chief believed that there were "absolutely" real safety concerns. AF No. 20.3.

Following the SPLC's publication, the City looked into the League of the South by reference to its readily available web page and social media presence, which revealed troublesome materials. AF No. 21.1. For instance, the organization was promoting a return to segregation, overtly disparaging black Americans, promoting white supremacy and the inferiority of black Americans (in the context of a threatened race war), and espousing plainly racist and inflammatory rhetoric. AF No. 21.2. For example, in a social media posting by "Michael Hill @MichaelHill51[,]" it states: "Let's see, who's killed more white Americans today, ISIS or feral negroes? First things first, people! leagueofthesouth.com." (Doc. 12-11). Accompanying this post made by Mr. Hill is a copy of the League of the South's logo. *Id.*

Lt. Brown was in fact present during Mr. Doggrell's speech at the League of the South's 2013 National Conference. AF No. 22.1. In actually though, he had very limited involvement with the organization in 2013 and was not a member in 2015. AF No. 22.2. Lt. Brown attended a meeting at Mr. Doggrell's invitation in Cullman, Alabama in 2013. AF No. 22.3. He purchased an annual membership to attend the 2013 National Conference, which he never renewed. AF No. 22.4. Lt. Brown then attended an event with Mr. Doggrell in Vidalia, Georgia in August 2013. He withdrew from the organization after being exposed to some of the views espoused by its members. AF No. 22.5. Lt. Brown perceived a radical element within the organization. AF No. 22.6.

On June 18, 2015, Police Chief Denham held a meeting at the Justice Center to address the public outcry. AF No. 25.1. He communicated with community leaders, civil rights activists, and concerned citizens who expressed that they had lost confidence in the police department. AF No. 25.2. He tried to get people to understand that the SPLC's publication did not expose a department-wide issue, but rather a more limited issue. AF No. 25.3.

In Police Chief Denham's assessment, Mr. Doggrell's 2013 speech was very damaging to the APD because Mr. Doggrell gave the false impression that the APD supported the League of the South and condoned his activities in furtherance of the

organization. AF No. 26.1. Ultimat

received press inquiries from NBC News in New York and CNN in Atlanta, as well as WIAT 42 in Birmingham, WVTM 13 in Birmingham, Alabama Heritage Communications, and the Anniston Star, among others. AF No. 28.2.

On June 18, 2015, "Anniston, Alabama: City's Police Department Places 2 Officers on Leave After Hate-Group Allegations" was the number one trending topic on Facebook. AF No. 28.6. The APD's Facebook account had to be shut down because of the extraordinary social media response, including many vitriolic and salacious postings. AF No. 28.3. The APD's Facebook account had 27,000 followers at the time and served as a lifeline between the department and the community. AF No. 28.4. APD's Facebook also served as a useful tool in the department's efforts to solve crimes. AF No. 28.5.

During his tenure as Police Chief, Chief McGrady promoted Mr. Doggrell to sergeant and then lieutenant. AF No. 30.1. Former Police Chief McGrady did not consider Mr. Doggrell's association with the League of the South in relation to those promotions because it did not affect his job performance or the APD. AF No. 30.2. At the time of those promotions, Former Police Chief McGrady had no reason to believe that Mr. Doggrell had associated his membership in the League of the South with his position as a police officer. AF No. 30.3.

After the SPLC's publication, the City also looked at Mr. Doggrell's public

Manager Johnson determined that the revelation of Mr. Doggrell's 2013 speech and his conduct had "unequivocally" damaged the public's perception, confidence and trust in the City's police department and, "without a doubt", interfered with Mr. Doggrell's ability to carry out the duties of his job and the APD's ability to carry out its mission and operations. (Doc. 12-2 at 51 at 204; *id.* at 52 at 207-08). In an effort to remedy the damage to APD's reputation, its officers underwent training by the Department of Justice's Community Relations Service on policing and relationships with the minority community. (Doc. 12-2 at 52 at 211-12). The controversy surrounding the situation also served as a catalyst for the United States Attorney for the Northern District of Alabama and her office to become involved in the affairs and operations of APD. (Doc. 12-2 at 52 at 212).

City Manager Johnson decided on June 19, 2015, to terminate Mr. Doggrell's employment with the City. AF No. 34.1. Ultimately, like Police Chief Denham, City Manager Johnson

implicated and associated [the] APD and the City with divisive, offensive and prejudicial beliefs and objectives; and (5) caused and exacerbated racial tensions and distrust in [the] APD and the City. [Mr.] Doggett alleged that [the] APD

Doggett alleged that [the] APD

violated the following policies and procedures of [the] APD and the City:

1. Engaging in conduct unbecoming of a sworn officer of the Anniston Police Department and of an employee of the City of Anniston in

(Doc. 12-51 at 2-3).[8]

City Manager Johnson held a press conference on June 19, 2015, to announce his decision to end Mr. Doggrell's employment because he feared that the turmoil in the community could worsen significantly and that hostile actions could develop over the weekend if the message was not clearly communicated. AF No. 35.1. For example, Councilman Seyram Selase reported to City Manager Johnson that the minority community was a powder keg that could blow up at any moment. AF No. 35.2. Councilman David Reddick also testified: "It was like another Ferguson in Anniston. It had that feeling that it could break out at any moment." AF No. 35.3.

Mr. Doggrell concedes that there was at least some potential for race riots in Anniston similar to what occurred in Ferguson and Baltimore. AF No. 35.4. Mr. Doggrell also acknowledges that there were factors in play that were beyond his and the City's control. AF No. 35.5.

After announcing his decision to terminate Mr. Doggrell's employment, City

[8] This summary is taken from the City's Formal Charge of Termination dated July 9, 2015, that was provided by City Manager Johnson to the Civil Service Board in connection with Mr. Doggrell's administrative appeal. (Doc. 12-51 at 1). Defendants have indicated in their Exhibit Index that Exhibit 6 is a Notice of Disciplinary Action giving Mr. Doggrell written notification of the City's decision to discharge him. (Doc. 12-1 at 6). The Court has reviewed Exhibit 6 (doc. 12-49) on CM/ECF and determines that the attached evidence is instead a memo from City Manager Johnson to Mr. Doggrell placing him on administrative leave while the City "evalua[tes] [the] allegations made on the Southern Poverty Law Center's Hatewatch Blog dated June 17, 2015." (Doc. 12-49 at 1). Further, the Court has been unable to locate the City's written Notice of Disciplinary Action elsewhere in the record.

Mr. Doggrell appealed this adverse Civil Service Board decision to the Circuit

is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 2265 (1986) ("[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.") (internal quotation marks omitted). The party requesting summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings or filings that it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2553. Once the moving party has met its burden, Rule 56(c) requires the non-mau[illegible]at

2510, 91 L. Ed. 2d. 202 (1986). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the non-movant. *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510. A dispute is genuine "if the evidence is such that a reasonable jury could return juxbd re`ßCt

Id. (emphasis added).

For issues on which the movant does not bear the burden of proof at trial, it can satisfy its initial burden on summary judgment in either of two ways. *Id.* at 1115-16. First, the movant may simply show that there is an absence of evidence to support the non-movant's case on the particular issue at hand. *Id.* at 1116. In such an instance, the non-movant must rebut by either (1) showing that the record in fact contains supporting evidence sufficient to withstand a directed verdict motion, or (2) proffering evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency. *Id.* at 1116-17. When responding, the non-movant may no longer rest on mere allegations; instead, it must set forth evidence of specific facts. *Lewis v. Casey*, 518 U.S. 343, 358, 116 S. Ct. 2174, 2183, 135 L. Ed. 2d 606 (1996). The second method a movant in this position may use to discharge its burden is to provide affirmative *evidence* demonstrating that the non-moving party will be unable to prove its case at trial. *Fitzpatrick*, 2 F.3d at 1116. When this occurs, the non-movant must rebut by offering *evidence* sufficient to withstand a directed verdict at trial on the material fact sought to be negated. *Id.*

B. Qualified Immunity

City Manager Johnson asserts that qualified immunity bars Mr. Doggrell's federal claims brought against him in his individual capacity. "The defense of

Until 2009, the Supreme Court•0

1093 (11th Cir. 1996) ("We know of no [preexisting] case which might have clearly told Clifton that he could not take the disciplinary action indicated by an investigation which was initiated before he even knew about the allegedly protected speech, and in circumstances where the public concern implication was doubtful.").

However, the *Saucier* framework was made non-mandatory by the Supreme Court in *Pearson*, 555 U.S. at 236, 129 S. Ct. at 818, in which the Court concluded that, "while the sequence set forth [in *Saucier*] is often appropriate, it should no longer be regarded as mandatory." Thus, "judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Id.*

Despite the Supreme Court's modification of *Saucier*'s analytical process, the substantive analysis remains unchanged; an officer is entitled to qualified immunity protection as long as he "could have believed" his conduct was lawful. *Hunter v. Bryan*, 502 U.S. 224, 227, 112 S. Ct. 534, 536, 116 L. Ed. 2d 589 (1991). Therefore, to deny immunity, a plaintiff must affirmatively demonstrate that "no reasonably competent officer would have" acted as the public official did. *Malley*, 475 U.S. at 341, 106 S. Ct. at 1096.

IV. ANALYSI

to show that Count I must arise (only) under federal law.[14] Therefore, to the extent that Mr. Doggrell has attempted to assert any state constitutional claims in Count I, a dismissal on the grounds of abandonment is appropriate because he has omitted any reference to them in his opposition brief. *See, e.g.*, *Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1322 (11th Cir. 2001) (finding claim abandoned when argument not presented in initial response to motion for summary judgment); *Bute v. Schuller International, Inc.*, 998 F. Supp. 1473, 1477 (N.D. Ga. 1998) (finding unaddressed claim abandoned); *see also Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1326 (11th Cir. 2000) (failure to brief and argue issue at the district court is sufficient to find the issue has been abandoned); *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) ("[T]he onus is upon the parties to formulate arguments; grounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned."); *Hudson v. Norfolk Southern Ry. Co.*, 209 F. Supp. 2d 1301, 1324 (N.D. Ga. 2001) ("When a party fails to respond to an argument or otherwise address a claim, the Court deems such argument or claim abandoned." (citing *Dunmar*, 43 F.3d at 599)); *cf. McMaster v. United States*, 177

[14] When Defendants put him on notice of these pleading inadequacies in their removal petition, Mr. Doggrell never sought leave to amend his complaint to provide a more definite statement of his claims and/or to replead Count I in a manner that comports with FED. R. CIV. P. 8(a)(2) (indicating that "a pleading that states a claim for relief must contain: . . . a short and plain statement of the claim showing that the pleader is entitled to relief[.]").

F.3d 936, 940-41 (11th Ci

the image having any racial meaning),[15] such a factor was not a substantial one for his discharge "and the Defendants would have taken the same action in its absence." *Id.*

In his opposition, Mr. Doggrell does not address any of these issues raised by Defendants or resist the dismissal of any federal claims except for retaliation based upon free speech and association under the First Amendment. (*See generally* Doc. 14 at 22–32 (omitting any discussion of Defendants' violating a federal religious and/or assembly right)).[16] Therefore, the Court concludes that Mr. Doggrell has abandoned any federal claim in Count I that is premised upon religion or assembly.

B. Mr. Doggrell's Free Speech Retaliation Claim Is Legally Deficient.

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retaliation for speech protected under the first amendment, a public employee's right to freedom of speech is not absolute." *Bryson v. City of Waycross*, 888 F.2d 1562, 1565 (11th Cir. 1989) (citing *Rankin v. McPherson*, 483 U.S. 378 (1987)).

At the same time, "[t]he Court has made clear that public employees do not surrender all their First Amendment rights by reason of their employment." *Garcetti*, 547 U.S. at 417, 126 S. Ct. at 1957. In certain instances, a public employee may speak, not as a public official during the course of his or her duty, but as a private citizen on matters of public concern. *Id.*

In *Battle v. Bd. of Regents for Georgia*, 468 F.3d 755 (11th Cir. 2006), the Eleventh Circuit set out the *prima facie* elements that a public employee must show to support a protected speech-based retaliation claim under the First Amendment:

> (1) the employee's speech is on a matter of public concern; (2) the employee's First Amendment interes[illegible]

preceding factors, the burden then shifts to the employer to show, by a preponderance of the evidence, that 'it would have reached the same decision . . . even in the absence of the protected conduct.'" *Battle*, 468 F.3d at 760 (quoting *Anderson v. Burke County*, 239 F.3d 1216, 1219 (11th Cir. 2001) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 286, 97 S. Ct. 568, 576, 50 L. Ed. 2d 471 (1977))).

The Supreme Court, in *Pickering*, *supra*, and more recently in *Garcetti*, *supra*, has articulated a two-step inquiry regarding whether the speech of a public employee is constitutionally protected. "Both steps are questions of law for the court to resolve." *Alves v. Bd. of Regents of the Univ. Sys. of Georgia*, 804 F.3d 1149, 1159 (11th Cir. 2015) (citing *Moss v. City of Pembroke Pines*, 782 F.3d 613, 618 (11th Cir. 2015)), *cert. denied*, 136 S. Ct. 1838, 194 L. Ed. 2d 829 (2016). "If the employee spoke as a citizen and on a matter of public concern, 'the possibility of a First Amendment claim arises,' and the inquiry becomes one of balance, *see Garcetti*, 547 U.S. at 418, 126 S. Ct. at 1958; on the other hand, if the employee spoke as an employee and on matters of personal interest, the First Amendment is not implicated, and 'the constitutional inquiry ends with no consideration of the *Pickering* test[.]'" *Alves*, 804 F.3d at 1160 (quoting *Boyce v. Andrew*, 510 F.3d 1333, 1343 (11th Cir. 2007)).

Here, Defendants have foregone a discussion of whether Mr. Doggrell's Leag

of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 563, 88 S. Ct. at 1735.

The Eleventh Circuit has articulated several factors to inform the Court's analysis of the second step: "(1) whether the speech at issue impedes the government's ability to perform its duties efficiently, (2) the manner, time and place of the speech, and (3) the context within which the speech was made." *Oladeinde v. City of Birmingham*, 230 F.3d 1275, 1293 (11th Cir. 2000). As Defendants correctly observe with respect to the first factor, "it is well settled that a law enforcement agency has a 'heightened need for order, loyalty, morale and harmony, which affords a police department more latitude in responding to the speech of its officers than other government employers.'" (Doc. 12 at 24 (emphasis added) (quoting *Oladeinde*, 230 F.3d at 1293)); *see Hansen v. Soldenwagner*, 19 F.3d 573, 577 (11th Cir. 1994) ("[T]he *Pickering* balance is also affected . . . by the special concerns of quasi-military organizations such as police departments."); *see also Busby v. City of Orlando*, 931 F.2d 764, 774 (11th Cir. 1991) ("In quasi-military organizations such as law enforcement agencies, common police depr. cies, [illegible] to perform

original) (quoting *Egger v. Phillips*, 710 F.2d 292, 327 (7th Cir. 1983) (*en banc*) (Coffey, J. concurring in part), *receded from on other grounds as stated in Feit v. Ward*, 886 F.2d 848, 855-56 (7th Cir. 1989))); *cf. also McMullen v. Carson*, 754 F.2d 936, 939 (11th Cir. 1985) (holding that a sheriff acted lawfully in protecting the interests of his office when he fired a clerical employee who was interviewed on a locally televised news broadcast as a recruiter for the Ku Klux Klan and recognizing that "law enforcement requires mutual respect, trust, and support").

Given the significant latitude afforded to law enforcement agencies under *Pickering* and considering the undisputed facts under the foregoing factors (particularly the governmental functioning and speech context factors) there is no room for doubt that Defendants acted with adequate justification when they fired Mr. Doggrell for the impediment his League of the South speech caused to the APD. The League of the South is a controversial organization that purportedly seeks to advance the cultural, social, economic, and political well al

South became an issue in 2009, he was warned to be careful and to avoid affiliating his employment as a police officer with the APD to his membership with the organization.

Completely disregarding this warning, Mr. Doggrell accepted an invitation to give a speech during the 2013 National Conference with the stated purpose of addressing the relationship between local police and the League of the South and the recruiting of police officers to the organization. Additionally, when Mr. Doggrell gave his 2013 speech, he openly shared his and a fellow officer's employment as APD Lieutenants and indicated that the APD supported his association with the League of the South. Mr. Doggrell more specifically attributed several statements to the APD Police Chief that reflected a positive view of the League of the South.

Further, when the SPLC's article was published and Mr. Doggrell's speech was posted on YouTube, it disrupted the operations of the APD and caused a public outcry.[17] The APD received numerous complaints and its Facebook account–used to

[17] Although Mr. Doggrell points out that Lt. Nicholas Bowles ("Lt. Bowles") testified that he and Police Chief Denham "were looking for something major and egregious in the video

communicate with the community and to assist law enforcement in investigations–had to be shut down. Defendants were very concerned about violence breaking out within the City. Prior to his termination, Mr. Doggrell was given an opportunity to denounce the League of the South to hopefully reduce some of the community-wide tension caused by his speech and he declined to do so.

Therefore, under these facts, this Court concludes that Mr. Doggrell's "speech was not protected because [his] interest in speaking out was outweighed by the [A]PD's interests in maintaining order, loyalty, morale, and harmony [within the APD and throughout the community]." *Oladeinde*, 230 F.3d at 1294. Further, "[b]ecause [Mr. Doggrell] ha[s] not demonstrated a violation of a right protected by the First Amendment, [the Court] need not consider whether . . . [the termination of his employment] w[as] retaliatory." *Id.*; *see also Carney v. City of Dothan*, 158 F. Supp. 3d 1263, 1272, 1286 (M.D. Ala. 2016) (applying *Pickering* balancing principles and finding that "the scale tips in favor of the City" as the police officer's "Facebook statements [to comment on various topics] impaired the confidence of her fellow officers, garnering seventeen internal complaints"); *id.* at 1286 ("It is clear that the interests of the City of Dothan in ensuring efficient operation of the Department

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Mr. Doggrell's opposing evidence fails to create a material factual dispute as to the perceived and actual disruption experienced by the APD in 2015 that were sparked by Mr. Doggrell's free speech activities in 2013.

outweigh the interests of [the police officer] in exercising her limited First Amendment rights.").

C. Mr. Doggrell's Association Retaliation Claim Is Legally Deficient.

Mr. Doggrell also contends that his firing violated his freedom to associate under the First Amendment. (Doc. 14 at 22-25). Relying upon *Battle v. Mulholland*, 439 F.2d 321 (5th Cir. 1971),[18] Mr. Doggrell suggests that this Court should apply the *Pickering* balancing test to his association claim.[19] (*See* Doc. 14 at 24 ("The Court

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[18] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

[19] In *McCabe v. Sharrett*, 12 F

held that Battle did have a 42 U.S.C. § 1983 claim which would be subject to the *Pickering* balancing test . . . .")).[20]

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[20] Much later in his brief, Mr. Doggrell states that "[f]reedom of association is subject to the closest of scrutiny . . . ." (Doc. 14 at 29). Mr. Doggrell cites to *Battle* and *Hatcher v. Bd. of Pub. Educ. & Orphanage for Bibb Cty*., 809 F

In *Battle*, the plaintiff police officer (who was black) claimed that he was unconstitutionally fired because he and his wife "had been allowing two white women who were working on an anti-poverty program to board at their home." 439 F.2d at 322. The *Battle* court did not explicitly describe the plaintiff's right as one of association but, instead, likened the plaintiff's claim to one regarding freedom of expression. *See Battle*, 439 F.2d at 324 ("Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.") (internal quotation marks omitted); *id.* at 325 n.6 ("But, in our system, undifferentiated fear or apprehension of disturbance is not enough t overco

The district court in

police officer and (2) was outweighed by the City's right to dismiss him for that impairing affiliation. *Cf. Cole v. Choctaw Cty. Bd. of Ed.*, 471 F.2d 777, 779 (5th Cir. 1973) ("The school board cannot discharge public employees as a penalty for exercising their First Amendment rights when such exercise is completely unrelated to and in no way conflicts with the performance of his job." (emphasis added)). Thus, Mr. Doggrell's right to continued association with the League of the South was unprotected by the First Amendment.

Finally, akin to Mr. Doggrell's free speech claim, because his right to associate was not protected by the First Amendment under these circumstances, the Court does not need to address whether Defendants' motive for firing him was in retaliation for his association with the League of the South. *Oladeinde*, 230 F.3d at 1294.

Alternatively, the Court finds that to the extent Mr. Doggrell has adduced sufficient evidence to support a First Amendment violation of his right to associate, no reasonable jury could conclude, on these facts, that Mr. Doggrell's mere association with the League of the South (as opposed to the contents of his 2013 speech that disrupted the APD's operations when they became public) was a motivating or substantial factor in the decision to fire him. As the Second Circuit explained in a comparable teacher-firing case when the public employer had prior knowledge of the plaintiff's membership in the North American Man/Boy Love

Association (“NAMBLA”):

Finally, Melzer insists that the Board's decision to t

action dismissing him." *Melzer*, 336 F.3d at 200.

Likewise, even if a reasonable jury could conclude that Mr. Doggrell's association with the League of the South was a motiving or substantial factor in the decision to fire him, the Court finds that Defendants, nonetheless, prevail as a matter of law on their *Mt. Healthy* defense–no reasonable jury could conclude anything but that Defendants would have fired Mr. Doggrell even in the absence of his protected associational activity. *Mt. Healthy*, 429 U.S. at 287, 97 S. Ct. at 576 ("Respondent having carried that burden [of showing constitutionally-protected conduct that played a substantial role in the adverse decision], . . . the District Court should have gone on to determine whether the Board had shown by a preponderance of the evidence that it would have reached the same decision as to [the adverse action] even in the absence of the protected conduct."). More specifically, the record shows that Defendants would have fired Mr. Doggrell for the disruption caused by contents of the speech that he gave in 2013 even if Mr. Doggrell had not been formally affiliated with the League of the South.

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any unconstitutional conduct on his part. Alternatively, City Manager Johnson is entitled to qualified immunity because Mr. Doggrell has not carried his burden of showing that the unlawfulness of terminating his employment as a police officer under these circumstances was clearly established by preexisting binding precedent.

Moreover, "[b]ecause *Pickering* requires a balancing of competing interests on a case-by-case basis, . . . only in the rarest of cases will reasonable government officials truly know that the termination or discipline of a public employee violated 'clearly established' federal rights." *Hansen*, 19 F.3d at 576 (emphasis added). "[T]he employer is entitled to immunity except in the extraordinary case where *Pickering* balancing would lead to the inevitable conclusion that the [act taken against] the employee was unlawful." *Id.* (alteration in original); *see also Lawrenz v. James*, 852 F. Supp. 986, 991 (M.D. Fla. 1994) ("Immunity is especially appropriate in cases where the employer's government agency is involved in quasi-military organizations such as law enforcement agencies . . . because law enforcement employees are entitled to less First Amendment protection than other government employees[.]" (citing *McMullen*, 754 F.2d at 938)), *aff'd*, 46 F.3d 70 (11th Cir. 1995); *cf. Gaines v. Wardynski*, __ F.3d __, No. 16-15583, 2017 WL 4173625, at *7 (11th Cir. Sept. 21, 2017) ("Because the case law that Gaines has relied upon was not particularized to the facts of the case, but rather it merely set out First Amendment principles at a high

level of generality, it was not 'apparent' that passing her over for promotion based on things her father said would violate her constitutional rights.") (emphasis added); *Gaines*, 2017 WL 4173625, at *7-8 (reversing district court's decision denying qualified immunity on freedom of speech and freedom of intimate association claims).

This situation is far from one that–in the words of *Hansen*, [illegible] the "compulsion" that any unlawful activity occurred. No cases cited by Mr. Dugg[illegible] that City Manager Johnson violated cit[illegible]

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that there is no authority that ‘recognizes a private right of action for monetary damages bas

Presley, 2014 WL 7146837, at *24 (quoting Ala. Const. Art. I, § 3.01, § V(b)).

The *Presley* court further observed:

> Paragraph 3 of Section IV defines "Government," in part, as '[a]ny branch ... instrumentality, [or] official ... of the State of Alabama." Except for a single-judge dissent in *Ex parte Snider*, 929 So. 2d 447, 466 (Ala. 2005), a child-custody dispute, there is no other authoritative judicial interpretation of this broad language. There is no judicial construction of terms such as "compelling governmental interest." There is no explanation of how rigidly the term "burden" is to be used. Does the provision prohibit any burden on religion, regardless of how minor or trivial? There is no explanation of what "appropriate remedies" are available. Does this provision allow for monetary damages directly from the State coffers? Beyond very little, there is no Alabama case law providing guidance on what this constitutional provision really means.

Presley, 2014 WL 7146837, at *24;[22] *cf. Ex parte Snider*, 929 So. 2d at 466 (opining that "[t]he Alabama Constitution provides clear recognition of the inal n

interference.").[23]

In the absence of any state law precedent as to the meaning of ARFA, the *Presley* court decided to apply the standards used under the Religious Land use and Institutional Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc–1. RLUIPA requires that "governments that receive federal funding are prohibited from substantially burdening a prisoner's exercise of religion unless it has a compelling interest and employs the least restrictive means possible for protecting that interest" and "provides a private cause of action on behalf of any aggrieved prisoner[.]" 2014 WL 7146837, at *20. Applying the RLUIPA standards to the plaintiff's ARFA claim, the *Presley* court determined that the allegations of "wrongfully confiscating and destroying his religious items" were sufficient to require the defendants to respond to the claim. 2014 WL 7146837, at *24.

In response, Mr. Doggrell does not address any of the decisions cited by

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Defendants, much less explain why his case is analogous to (or different from) those authorities. Instead, he contends that his ARFA claim is valid against the City because the ARFA provides that it is "to be liberally construed to effectuate its remedial and deterrent purposes" and it expressly gives a private party the right to assert a claim "in a judicial, or other proceeding and obtain appropriate relief against a government" to include a municipality.[24] (Doc. 14 at 32); Ala. Const. Art. I, § 3.01, § VII(a); *id.* § V(c).

He then vaguely ends this section of his brief by stating that "[b]ecause the Amendment specifically allows claims, the Plaintiff will be entitled to either an equitable or monetary claim as the Supreme Court of Alabama eventually rules." (Doc. 14 at 32). Because Mr. Doggrell has made no effort to address the cases cited by Defendants, suggest a *prima facie* and/or burden-shifting model for t

claims, will be limited to non-monetary relief),[25] the Court finds that he has essentially abandoned his ARFA claim.

Alternatively, the Court finds that a plain reading of ARFA's provisions clarifies that Mr. Doggrell's challenge of the City's employment decision is beyond ARFA's reach. The City's primary reason for discharging Mr. Doggrell is the community uproar resulting from the SPLC's making publicly known from his League of the South speech in 2013 that implicated the APD as a law enforcement agency with a sympathetic, if not a supportive, view of the League of the South's controversial mission and purpose. However, the City additionally terminated Mr. Doggrell's employment due to his violation of the ADP's anti-harassment policy in the form of a white "not-equal sign" with a black background posted on his public Facebook page which (as noted above) Mr. Doggrell has alleged symbolizes his opposition to homosex

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