

the suit under applicable law." *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Background

This action was brought by Glenn Hansen, the former chief deputy of the Washington County Sheriff's Department, and his wife, Patricia, following Glenn's resignation from the Department on April 29, 1994. Plaintiffs claim that they unlawfully were compelled by Defendant, Sheriff John Crowley, to engage in political activity and speech against their will, and that, when they refused, Glenn was constructively discharged from his employment at the Department. In particular, Plaintiffs contend that during a recent election campaign, Glenn was ordered by Crowley to affix bumper stickers in support of Crowley's re-election to an automobile owned by Glenn's wife, Patricia; that Glenn was ordered by Crowley to obtain a copy of a town voting list for political purposes; that Glenn was directed by Crowley to circulate a nominating petition on his behalf; that, upon Glenn's refusal to engage in such political activities, Crowley retaliated against him by unexpectedly changing his job assignment, abstaining from once customary daily visits to Glenn's office, and constantly bothering him about campaign activities.

Plaintiffs contend that Glenn was constructively discharged from the job he held since August 1, 1992, when, on April 29, 1994, he felt compelled to resign from his duties as a result of the improper political pressures exerted on him by Crowley. Plaintiffs also aver that Glenn resigned in an effort to save his marriage. Plaintiffs allege that Glenn subsequently was unable to obtain new employment as a result of Crowley's efforts to discredit him professionally through conversations

with other Maine sheriffs and by comments Crowley made in a newspaper article. Pursuant to 42 U.S.C. § 1983² and state tort law, Plaintiffs brought this action alleging violations of their First and Fourteenth Amendment rights to free speech, free association, and liberty interests in their marriage and in Glenn's prospective employment. Plaintiffs also allege that Defendants illegally conspired to deprive them of their constitutional rights, intentionally interfered with Glenn's prospective economic employment, and defamed Glenn by comments made in a *Bangor Daily News* article. The complaint demanded compensatory and punitive damages, as well as Glenn's reinstatement. By their answer, Defendants denied the above allegations and asserted a number of affirmative defenses, including qualified and discretionary immunity.

III. Constitutional claims

Plaintiffs contend that Defendants violated their constitutional rights by impermissibly attempting to force Patricia Hansen, a non-employee, to endorse Crowley's re-election bid, and by ordering Glenn Hansen, an employee, to violate his wife's rights by placing bumper stickers on her car. Such actions on the part of Defendants also are alleged to have forced Glenn to resign his position as Chief Deputy in order to avoid violating his wife's constitutional rights and to save the couple's marriage. Plaintiffs also aver that, following Glenn's departure from the Sheriff's Department, Crowley falsely suggested in a newspaper article that Glenn's resignation was due to

² 42 U.S.C. § 1983 provides in relevant part:

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. . . .

improper conduct on his part, and that Crowley also conspired with other sheriffs in Maine to prevent Glenn from obtaining employment elsewhere in law enforcement.

Plaintiffs in effect make two separate section 1983 constitutional claims in Count I of their complaint: (1) that Defendants, acting under color of state law, violated their rights to free speech and association under the First Amendment to the United States Constitution³ and under Article I, § 4 of the Maine Constitution,⁴ and (2) that Defendants, acting under color of state law, violated Plaintiff's "liberty interests" in their marital relationship and in Glenn's prospective employment as

³ The First Amendment to the United States Constitution provides in relevant part:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble,

U.S. Const. amend. I.

⁴ Article I, § 4 of the Maine Constitution provides in relevant part:

Every citizen may freely speak, write and publish sentiments on any subject, being responsible for the abuse of this liberty;

Me. Const. art. I, § 4.

guaranteed by the Fourteenth Amendment to the United States Constitution⁵ and Article I, § 1 of the Maine Constitution.⁶

To assert a cause of action under section 1983, Plaintiffs must demonstrate that (1) the Defendants acted under color of state law (2) and deprived Plaintiffs of rights secured by the Constitution or a federal statute. 42 U.S.C. § 1983. "In a political discrimination case, . . . plaintiffs must bear the threshold burden of producing sufficient direct or circumstantial evidence from which a jury reasonably may infer that plaintiffs' constitutionally protected conduct . . . was a substantial or motivating factor behind their dismissal. . . . Once plaintiffs clear the threshold, the burden shifts to defendants to *articulate* a nondiscriminatory ground for the dismissals, *and prove by a preponderance of the evidence* that plaintiffs would have been dismissed regardless of their political affiliation." *Acevedo-Diaz v. Aponte*, 1 F.3d 62, 66 (1st Cir. 1993) (citations and internal quotations omitted).

⁵ The Fourteenth Amendment to the United States Constitution provides in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

⁶ Article I, § 1 of the Maine Constitution provides:

All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Me. Const. art. I, § 1.

A. The County as a defendant

As an initial matter, the Court dismisses the Washington County Sheriff's Department as a party to all claims raised in Count I of this action, and any constitutional claims raised in this action. It is well settled that the doctrine of *respondeat superior* does not apply to claims pursuant to section 1983. See, e.g., *Gaudreault v. Municipality of Salem, MA*, 923 F.2d 203, 209 (1st Cir. 1990), *cert. denied* 111 S.Ct. 2266 (1991); *Voutour v. Vitale*, 761 F.2d 812, 819 (1st Cir. 1985). "A municipality or its supervisory personnel can be held liable for the constitutional misconduct of its employees only on the basis of an affirmative link between their acts and those of the offending employee. . . . In order to establish municipal liability, the plaintiff must show that the acts or omissions of the municipality's policy makers evidence deliberate indifference to the rights of its inhabitants." *Gaudreault*, 923 F.2d at 209 (citations and internal quotations omitted).

Plaintiffs' fail to satisfy the above standard by showing "deliberate indifference" on the part of the Department itself in the record before the Court. The Court finds that liability may not, as a matter of law, be imposed against the County and, accordingly, dismisses it as a party to this portion of Plaintiffs' action.

B. Patricia Hansen's constitutional claims

The Court also finds that Patricia Hansen's claims with respect to any constitutional violation on the part of the remaining Defendant in this action are without merit. Plaintiffs have failed to produce, nor has the Court itself been able to locate, any relevant authority to support the proposition that Patricia Hansen has standing to assert such a claim, i.e., that a non-employee spouse of a government employee is a proper party, under the present facts, to assert a successful claim for

recovery pursuant to section 1983. Accordingly, Defendant's motion for a summary judgment on Count I of Plaintiffs' complaint is granted as it relates in any way to Patricia Hansen.

C. Free speech and free association

Remaining Plaintiff Glenn Hansen claims that he was "constructively discharged" by Defendant when, in April 1994, he resigned his position with the Department rather than comply with Crowley's orders to engage in political activity on his behalf. With respect to the First Amendment, Glenn contends that he had a protected right not to engage in such political activity, and that he felt forced to resign as a result of the pressure exerted on him by his supervisor, Sheriff Crowley. Crowley claims that he never fired or threatened to fire Glenn, that he spoke about politics with Glenn only because he believed Glenn was a willing supporter of his until March 1994, and that Glenn resigned on his own accord for reasons unrelated to any First Amendment rights.

A constructive discharge involves an "onerous transfer, having the purpose and effect of forcing the [] employee to quit the employment." *Alicea Rosado v. Garcia Santiago*, 562 F.2d 1114, 1119 (1st Cir. 1977) (citation omitted). Whether Glenn engaged in First Amendment protected conduct is a question of law for this Court to decide. *Connick v. Myers*, 461 U.S. 138, 147 & n.7 (1983); *Sykes v. McDowell*, 786 F.2d 1098, 1103 (11th Cir. 1986). Whether Glenn was discharged because of his protected speech is, however, a question of fact for the jury. *Sykes*, 786 F.2d at 1103.

An individual has the right under the First Amendment not to send messages under state coercion. *See, e.g., Wooley v. Maynard*, 430 U.S. 705 (1977) (right to refrain from speaking). Courts previously have concluded that a public employee who asserts a right not to speak when ordered to support the politics of his employer is within the protection of the First Amendment.

Sykes, 786 F.2d at 1104; *Berry v. Bailey*, 726 F.2d 670, 673 (11th Cir. 1984) (recognizing that a firing for refusal to support a sheriff politically implicates protected First Amendment interests).

Defendant has raised the defense of qualified immunity in response to Plaintiff's claims. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred." *Id.* "A public official is protected by qualified immunity if a reasonable officer would have believed that his actions met constitutional standards. Significantly, the question is not whether the law was settled, viewed abstractly, but whether, measured by an objective standard, a reasonable officer would know that his actions were illegal." *Click v. Copeland*, 970 F.2d 106, 109 (5th Cir. 1992) (citations and internal quotations omitted). The Court's analysis in the case at bar thus may be divided into two parts: (1) whether it was, at the time of the alleged underlying incident, clearly established that Glenn had a protected right not to engage in political activity; and (2) whether a reasonable fact finder could conclude that Defendant's conduct was actionable.

Defendant is entitled to a summary judgment based on qualified immunity only if, viewing the facts in the light most favorable to Plaintiffs, the facts as alleged do not support a claim that Defendant violated clearly established law. *Mitchell v. Forsyth*, 472 U.S. 511, 528 n.9 (1985). As discussed above, the Court finds that Glenn's right not to engage in political activity was protected by the First Amendment. The Court also concludes that, viewing the evidence in a light most favorable to Plaintiff, a reasonable jury could find that Glenn was constructively discharged as a

result of the exercise of his protected right. "Whether an employee's protected conduct was a substantial or motivating factor in an employer's decision to take action against the employee is a question of fact, ordinarily rendering summary disposition inappropriate." *Click*, 970 F.2d at 113 (citing *Brawner v. City of Richardson*, 855 F.2d 187, 193 (5th Cir. 1988) (summary judgment inappropriate because defendant's motive a material issue of fact)). Glenn has presented evidence to suggest that Sheriff Crowley considered Glenn's job "in jeopardy" following his refusal to affix bumper stickers to his wife's car. Glenn has presented evidence that he was subjected to numerous orders on the part of Crowley to affix the bumper stickers and that, upon one such refusal, Crowley replied "By Jesus, you will [comply with the order]!" Although Plaintiff may have offered little in the way of direct evidence on this point, nevertheless "circumstantial evidence alone can support a finding of political discrimination." *Acevedo-Diaz*, 1 F.3d at 69 (citation and internal quotations omitted).

Defendant contends that, even if Crowley were found by the fact finder to have "constructively discharged" Glenn, as supervisor to a political appointee, Crowley acted within his discretion, and Glenn had no protected property interest in his job. Such an argument is unpersuasive, however, because "[t]he fact that he had no protected property interest in continued employment was not dispositive because his firing, if retaliatory, effectively deprived him of his constitutionally protected right to free speech." *Sorranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 n.3 (9th Cir. 1989).

Because the Court concludes initially that, as a matter of law, Glenn Hansen engaged in protected First Amendment activity by refusing to comply with his supervisor's directives to engage in political activity, the Court finds that the facts surrounding Glenn's departure from the Department

are appropriately left to a jury's determination. Defendant Crowley's motion for a summary judgment with respect to Plaintiff Glenn Hansen's First Amendment claim in Count I of the complaint accordingly is denied.

D. Liberty interests

Plaintiff also contends that by ordering him to place bumper stickers on his wife's car, Defendant intentionally interfered with the constitutional liberty interests of both Glenn Hansen and Patricia Hansen in their marital relationship. Plaintiff also contends that Defendant violated his liberty and property interests in prospective employment opportunities.

The Court may dispense with the first part of this claim summarily. Plaintiff has failed to state sufficient facts, and generally has failed to sufficiently articulate the nature of any claim, to support an argument that Defendant violated any liberty interest in the institution of marriage by his actions.

As to the second aspect of the claim, the Supreme Court has held that "defamation by a state official in the course of a termination of employment, . . . which either imposes on the defamed individual a stigma or other disability that foreclose[s] his freedom to take advantage of other employment opportunities, . . . or includes a charge that might seriously damage his standing in the community, may be actionable under section 1983." *Scott v. Central Maine Power Co.*, 709 F. Supp. 1176, 1192 (D. Me. 1989) (citations and internal quotations omitted); *see also Paul v. Davis*, 424 U.S. 693 (1976); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). Thus, false accusations of dishonesty and immorality made in the context of a termination from employment could be actionable under section 1983. *See Roth*, 408 U.S. at 573.

As discussed below with respect to Plaintiffs' state law defamation claim, the Court finds that no genuine issue has been raised to support a defamation claim. The Court concludes that no facts have been set forth by Plaintiff with respect to this claim to support a reasonable jury finding in his favor. The Court accordingly grants Defendant's motion for a summary judgment with respect to Plaintiff's claim of any liberty interest violation relating to marriage or prospective employment opportunities.

E. Punitive damages

In view of the above conclusion with respect to Plaintiff's First Amendment claim, the Court denies Defendant's motion for a summary judgment with respect to Plaintiff's claim for punitive damages in conjunction with the above remaining section 1983 claims. The Supreme Court has held that "a jury may be permitted to assess punitive damages in an action under section 1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). The Court concludes that in this case it is more appropriately left to the fact finder to assess whether Defendant Crowley's conduct, if proven to be violative of Plaintiff Glenn Hansen's constitutional rights, was motivated by actual malice or reckless indifference as to warrant punitive damages. Such a holding is limited, however, to Plaintiff's claims for punitive damages relating to his remaining First Amendment claim against Defendant Crowley. In light of the Court's holding regarding the dismissal of all section 1983 claims against the County, and as a matter of law, the Court is satisfied that punitive damages are not available against Defendant Washington County. *City of Newport v. Fact Concerts*, 453 U.S. 247, 271 (Me. 1981).

IV. Tort Claims

Glenn Hansen and Patricia Hansen also seek recovery in tort for illegal conspiracy, intentional interference with a prospective economic relationship, and defamation. For the reasons discussed below, the Court finds that such claims fail as a matter of law, and accordingly grants Defendants' motion for summary judgments with respect to Counts II, III, and IV of Plaintiffs' complaint.

A. Conspiracy

Plaintiffs presented factual evidence to suggest that subsequent to Glenn's resignation from the Department, Crowley admitted to Deputy Fred Moore that he had spoken about Glenn to a sheriff "up north" and that he had been assured that Glenn would never get a job in state law enforcement. Glenn claims that although he applied for numerous positions with the Aroostook County Sheriff's Department and other law enforcement agencies in Maine, he never received an interview for such positions. Plaintiffs aver that Glenn's difficulties in securing employment was due in large part to bad references given by Crowley to Glenn's prospective employers, as well as a conspiracy by Maine's sheriffs to prevent Glenn from obtaining future employment. Glenn contends that such a plot was made in bad faith and with actual malice.

A conspiracy involves an agreement or "meeting of the minds" to violate federally protected rights. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970). In support of their claim, Plaintiffs offer an affidavit of Fred Moore, a deputy sheriff at the Department, and portions of deposition testimony by Sheriff Crowley. In his affidavit, Moore states that he had a conversation with Crowley following Glenn's departure from the office in which Crowley recounted a conversation he had with the Aroostook County Sheriff in which Crowley was assured that Glenn would not find work "up north." Portions of Crowley's deposition verify such a conversation, although they do not

confirm Plaintiffs' assertions that it was Crowley who sought to make certain that Glenn would be unable to find work elsewhere in law enforcement.

Without reaching the hearsay-related question of the admissibility in evidence of the Moore affidavit, the Court notes that no evidence is offered by the Plaintiffs to show that others participated in a conspiracy "by cooperation or request, or lent aide or encouragement to any wrongdoer, or ratified and adopted his acts done for their benefit." *Cohen v. Bowdoin*, 288 A.2d 106, 111-12 (Me. 1972). A summary judgment should be granted when the non-moving party fails to offer evidence from which a reasonable jury could return a verdict in its favor. *Anderson*, 477 U.S. at 252. The mere existence of a scintilla of evidence in support of the non-moving party's position will not suffice. *Anderson*, 477 U.S. at 252. There is no evidence offered that any "meeting of the minds" by which an understanding was reached by Defendants to deny Plaintiffs of their rights ever occurred. Nor has any evidence been generated to suggest that Defendants, as a matter of fact, entered into a conspiracy. Because no evidence in Plaintiffs' complaint or affidavit exists from which a reasonably-minded person might conclude that a conspiracy occurred, the Court concludes that Defendants are entitled to a summary judgment on Count II of Plaintiffs' complaint.

B. Interference with an advantageous relationship

In Count III of their complaint, Plaintiffs contend that Defendants, by means of fraud or intimidation, procured the breach of a contract or the discharge of Glenn from his employment. It has long been settled in Maine that to assert such a claim, a party must show that "a person, by means of fraud or intimidation, procures, either the breach of a contract or the discharge of a plaintiff, from an employment, which but for such wrongful interference would have continued," *Perkins v. Pendleton*, 90 Me. 166, 176 (1897). The Law Court recently has described this tort as "[i]nterference

with an advantageous relationship" and has reemphasized that it "requires the existence of a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference." *Shaw v. Southern Aroostook Community School Dist.*, 683 A.2d 502, 503 (Me. 1996) (citation omitted).

Plaintiffs apparently base their claim on the Moore affidavit as proof that Crowley acted in bad faith and with actual malice to interfere with Glenn's prospective employment elsewhere in the state. No meaningful evidence with respect to causation has been offered, however. Nor are there sufficient factual assertions to support a claim of a valid or prospective contract, or fraud or intimidation on the part of Defendants. Such scant evidence fails to present any genuine issue as to material facts that would lead a reasonable jury to conclude that Defendants tortiously interfered with a prospective economic relationship. The Court thus grants Defendants' motion for a summary judgment on Count III, as well.

C. Defamation

Finally, Plaintiffs contend that Glenn was defamed by comments made by Sheriff Crowley in a May 1994 *Bangor Daily News* article. The elements of the tort of defamation include the following: (1) a false and defamatory statement regarding another person; (2) the unprivileged publication of such a statement to a third party; (3) fault or negligence on the part of the publisher; and (4) actionability of the statement. *Lester v. Powers*, 596 A.2d 65, 69 (Me. 1991). Whether a particular communication taken in context is capable of conveying a defamatory meaning is a question of law for the Court. *Bakal v. Weare*, 583 A.2d 1028, 1030 (Me. 1990).

Plaintiffs' claim fails to satisfy the first prong of the above standard. The Court's review of the alleged defamatory statement by Crowley that "there was a lot more to [] [Glenn's resignation

from the Department] than bumper stickers," causes it to find that the words were offered as one person's opinion, not fact, and accordingly are not actionable. *Lester*, 596 A.2d at 71. A statement may appear to be factual, but may be treated by the Court as opinion because circumstances show that a defendant intended to make observations of facts. *Caron v. Bangor Pub. Co.*, 470 A.2d 782, 784 (Me. 1984). Such is the case here. Even if the statement were offered by Crowley as fact, it seems difficult, if not impossible, for Plaintiffs to prove that it is not true. Were the statement even actionable, Glenn Hansen almost certainly would be considered a "public official" for purposes of defamation analysis at trial, *see, e.g., Roche v. Egan*, 433 A.2d 757, 762 (Me. 1981). Plaintiffs thus would, in order to succeed at trial, be required to prove that Defendants acted with malice, that is, that Crowley offered the statement knowing it was false or with reckless disregard for the truth. *Roche*, 433 A.2d at 764.

Plaintiffs have not, in any event, offered sufficient evidence to raise genuine issues of fact with respect to their claim. The Court concludes as a matter of law that the comments made by Crowley did not convey a defamatory message to a reasonable reader. The Court accordingly grants Defendants' motion for a summary judgment with respect to Count IV of Plaintiffs' complaint.

V. Conclusion

For the foregoing reasons, the Court DENIES Defendant Crowley's motion for a summary judgment with respect to the free speech and free association claims in Plaintiff Glenn Hansen's Count I, but GRANTS Defendant Crowley's motion for summary judgments with respect to the

liberty claim in Plaintiff Glenn Hansen's Count I, and GRANTS both Defendants' motion for summary judgments on all of Counts II, III, and IV of Plaintiffs' complaint.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine on February 4, 1997.