UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOUIS P. CANNON, *et al.* **Plaintiffs** **v.** **DISTRICT OF COLUMBIA** **Defendant**	**Case Number** **1:12-cv-00133** **Judge Ellen S. Huvelle**

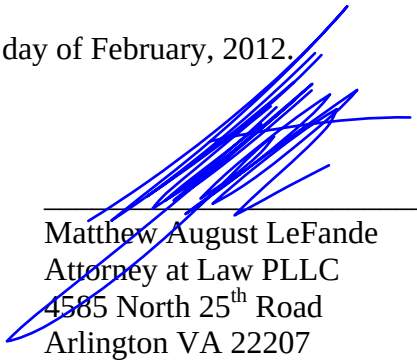
RENEWED MOTION FOR A PRELIMINARY INJUNCTION

HEARING REQUESTED

Pursuant to Federal Rule of Civil Procedure 65(a), the Plaintiffs hereby again move this Court to enter a Preliminary Injunction. The Plaintiffs ask this Court to restrain the Defendant, its officers, agents, servants, employees and/or attorneys from taking any personnel action prohibited by the District of Columbia Whistleblowers Protection Act, D.C. Code § 1-616.11 *et seq.*, or any other action in retaliation for or in interference of, the Plaintiffs' prosecution of this civil action, so as to preserve the *status quo* for the pendency of this litigation.

This Motion is supported by the First Amended Complaint, the First Supplemental Complaint, the supporting exhibits and the attached Memorandum of Law and Authority in Support.

Respectfully submitted, this tenth day of February, 2012.



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FOR THE DISTRICT OF COLUMBIA

LOUIS P. CANNON, *et al.*	
Plaintiffs	**Case Number 1:12-cv-00133**
v.	**Judge Ellen S. Huvelle**
DISTRICT OF COLUMBIA	
Defendant	

MEMORANDUM IN SUPPORT OF
RENEWED MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a), the Plaintiffs have again moved this Court to enter a Preliminary Injunction. The Plaintiffs ask this Court to restrain the Defendant, its officers, agents, servants, employees and/or attorneys from taking any personnel action prohibited by the District of Columbia Whistleblowers Protection Act, D.C. Code § 1-616.11 *et seq.*, or any other action in retaliation for or in interference of, the Plaintiffs' prosecution of this civil action, so as to preserve the *status quo* for the pendency of this litigation.

STATEMENT OF FACTS

1. On January 26, 2012, Plaintiff Louis Cannon, together with the other named Plaintiffs, filed this civil action with the Court. The Plaintiffs together moved for a Temporary Restraining Order and a Preliminary Injunction. ECF Docket # 1-3.

2. The matters complained of within the Plaintiffs' Complaint are indisputably a matter of public concern. *See LeFande v. District of Columbia*, 613 F.3d 1155, 1161 (D.C. Cir. 2010).

3. On that date, this Court set the matter for a hearing and directed the Defendant to respond to the Plaintiffs' Motion for a Temporary Restraining Order.

4. A hearing was held on January 31, 2012 before this Court with appearances by all of the named Plaintiffs and attorneys for the Defendants.

5. These events were reported in the Washington City Paper on February 3, 2012. "Police Chief Sues District Over Double Dipping", WASHINGTON CITY PAPER, February 3, 2012. http://www.washingtoncitypaper.com/blogs/looselips/2012/02/03/police-chief-sues-district-over-douple-dipping/ (accessed February 10, 2012).

6. On February 8, 2012, the Plaintiffs filed their First Amended Complaint in accordance with the Court's Scheduling Order of January 31, 2012. ECF Docket # 10.

7. On that date, nearly simultaneous to the filing of the Amended Complaint, Plaintiff Cannon was summary terminated from his position with the District of Columbia. Pl.s' Ex. 3.

8. Such termination was without any prior notice.

9. Plaintiff Cannon had no history of any disciplinary action during his four years in his position with the District of Columbia as the Chief of Police of the Protective Services Police Department.

10. The stated cause for Plaintiff Cannon's termination was entirely pretextual. The stated cause was patently frivolous, insufficient and solely intended to shield the Defendant from the allegations of retaliation as stated herein.

11. On February 10, 2012, all employees of the Protective Services Police Department, except for the named Plaintiffs, received their direct deposit salary payments for the pay period January 16-28, 2012 from the Defendant.

12. None of the Plaintiffs have received any payment for the same pay period.

ARGUMENT

The legal standard a plaintiff must meet in moving for a Temporary Restraining Order or Preliminary Injunction is "[a] court considering a plaintiff's request for a preliminary injunction must examine whether: (1) there is a substantial likelihood plaintiff will succeed on the merits; (2) plaintiff will be irreparably injured if an injunction is not granted; (3) an injunction will not substantially injure the other party; and (4) the public interest will be furthered by the injunction." *Serono Lab v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998). *See Sea Containers Ltd. v. Stena AB*, 890 F.2d 1205, 1208 (D.C. Cir. 1989); *Washington Metro Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). The court "must balance the strengths of the requesting party's arguments in each of the four required areas." *CityFed Fin. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). An injunction may be issued if the arguments in favor of one particular factor are particularly strong "even if the arguments in other areas are rather weak." *Id*. Therefore, "[a]n injunction may be justified, for example, where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." *Id*.

1. There is more than a substantial likelihood that the Plaintiffs will succeed on the merits.

District of Columbia and federal law clearly prohibit the present actions of the Defendant. The prosecution of a civil action regarding a topic of public concern is speech protected by the First Amendment, even when made by public employees. This civil action is also a disclosure of evidence of an abuse of authority in connection with the administration of a public program, of violations of federal and District of Columbia law, and violations of terms of contracts between the District of Columbia government and the Plaintiffs, by employees of the District of Columbia government to a federal judiciary and is therefore protected under D.C. Code § 1-615.53(a).

a. First Amendment Retaliation Claims.

A public employee "does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment". *Winder v. Erste*, 566 F.3d 209, 214 (D.C. Cir. 2009) (quoting *Connick*, 461 U.S. at 140). "At the same time, the government as employer must be able to prevent employees' speech from interfering with the 'efficient provision of public services.'" *Id.* (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)). "The threshold question for a public employee's First Amendment claim is 'whether the employee spoke as a citizen on a matter of public concern.'" *Id.* (quoting *Garcetti, supra*).

> [T]he Court has recognized that a citizen who works for the government is nonetheless a citizen. The First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972). So long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and

> effectively. *See, e.g.*, *Connick*, *supra*, at 147 ("Our responsibility is to ensure that citizens are not deprived of fundamental rights by virtue of working for the government").

Garcetti, 547 U.S. at 419 (parallel citations omitted). *Cf. San Filippo v. Bongiovanni*, 30 F.3d 424 (3d Cir. 1994) (if a plaintiff files a non-frivolous lawsuit, even without public concern, Petition Clause of First Amendment is implicated) *cert. denied* 513 U.S. 1082 (1995).[1]

This Court conducts "a multifactor inquiry to decide whether a public employee has established a cause of action under the First Amendment." *Koszola v. FDIC*, 393 F.3d 1294, 1302 (D.C. Cir. 2005) (citing *Connick*, 461 U.S. at 142; *Hall v. Ford*, 856 F.2d 255, 258 (D.C. Cir. 1988)). "A public official seeking to make out a claim of retaliation in violation of her First Amendment rights must meet a four-factor test." *Wilburn v. Robinson*, 480 F.3d 1140, 1149 (D.C. Cir. 2007) (quoting *O'Donnell v. Barry*, 148 F.3d 1126, 1133 (D.C. Cir. 1998)).

> First, the public employee must have spoken as a citizen on a matter of public concern. *See Garcetti* []; *Tao v. Freeh*, 27 F.3d 635, 638-39 (D.C. Cir. 1994). "Second, the court must consider whether the governmental interest in 'promoting the efficiency of the public services it performs through its employees' . . . outweighs the employee's interest, 'as a citizen, in commenting upon matters of public concern' . . . ." *O'Donnell*, 148 F.3d at 1133 (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)). Third, the employee must show that her speech was "a substantial or motivating factor in prompting the retaliatory or punitive act." *Id*. Finally, the employee must refute the government employer's showing, if made, that it would have reached the same decision in the absence of the protected speech. *See id*. (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). "The first two factors . . . are questions of law for the court to resolve, while the latter are questions of fact ordinarily for the jury." *Tao*, 27 F.3d at 639.

Wilburn, 480 F.3d at 1149 (parallel citations omitted).

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[1] The D.C. Circuit has not adopted *San Filippo*. *LeFande v. D.C.*, 613 F.3d 1155, 1160 n.4 (D.C. Cir. 2010).

"Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *O'Donnell*, 148 F.3d at 1134 (quoting *Connick*, 461 U.S. at 147-148); *Taylor v. FDIC*, 132 F.3d 753, 769 (D.C. Cir. 1997); *Fox v. District of Columbia*, 83 F.3d 1491, 1493 (D.C. Cir. 1996).

The matters complained of herein fall clearly within the criteria specifically applied by the D.C. Circuit in *LeFande*, 613 F.3d 1155, to find the Plaintiffs' speech to be a matter of public concern.

> We believe LeFande's allegations of procedural irregularities that unquestionably affect an integral component of police service are "relevan[t] to the public's evaluation" of the MPD and its Chief. *Hall*, 856 F.2d at 259 (quoting [*McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983)]). We think them more relevant than intra-office squabbles in *Connick*, 461 U.S. at 148, and [*Barnes v. Small*, 840 F.2d 972, 982 (D.C. Cir. 1988)], and more public than the speech in [*Murray v. Gardner*, 741 F.2d 434, 438 (D.C. Cir. 1984)]. Presumably the public is, and should be, at least as concerned about these alleged defects as it was about, for instance, rule violations by a university athletic department, *see Hall*, 856 F.2d at 259, or teachers' dress and its purported relationship to the market for government debt, *see Connick*, 461 U.S. at 146 (citing *Mt. Healthy*, 429 U.S. 274 (1977)).
>
> Still, the District says LeFande's suit does not address a matter of public concern because its allegations relate to a mere "personnel matter." But we reject the proposition that a personnel matter *per se* cannot be a matter of public concern, even if it may seriously affect the public welfare. For instance, were the Chief of Police to assert the power to fire, without process, all MPD officers, paid and unpaid, that action would "be fairly considered as relating to [a] matter of political, social, or other concern to the community," *Connick*, 461 U.S. at 146, although it relates to a "personnel matter." And, while this case may present a closer question, we conclude that LeFande's speech--alleging the Chief of Police violated District law and the Constitution by significantly altering the framework by which the Reserve Corps was governed, relying in part on an emergency procedure when there was no emergency--also implicates a "matter of political, social, or other concern to the community." *Id*.; *see Hall*, 856 F.2d at 259. It exceeds "individual personnel disputes and grievances" and involves "issues about which information is needed or appropriate to enable the members of society to make informed decisions about the operation of their government." *Hall*, 856 F.2d at 259 (quoting *McKinley*, 705 F.2d at 1114) (internal quotations

> and citations omitted). In short, it relates to a matter of public concern. *See id.*; *see also* Jason Cherkis, Anger in Reserve, WASHINGTON CITY PAPER, Jul. 19, 2006, available at http://www.washingtoncitypaper.com/blogs/citydesk/2006/07/19/anger-in-reserve (elimination of Reserve Corps members' job security led them to "cut back on volunteering," which "hit hard on July 4, when the department fielded only a fraction of its reserve phalanx").

LeFande, 613 F.3d at 1161 (footnote, parallel citations omitted).

Herein, the matters complained of are of equal or greater public concern. The Plaintiffs herein have been publically accused of illegally "double dipping", that is, accepting a full salary from the District of Columbia government after retiring on a full pension from the District of Columbia, albeit a federally funded one. There has been significant public outcry and press coverage regarding these allegations. *See*, *e.g.*, ECF Docket # 1-2 and the comments attached thereto. The Plaintiffs assert that their conduct in this regard is specifically authorized by law, and where their pensions are in fact, federally funded, the District of Columbia government has no interest thereto, or any right or obligation to offset their salaries. The circumstances herein far exceed the necessary *LeFande* criteria for a finding of public concern.

These reasons for the present petition also surpass any "governmental interest in 'promoting the efficiency of the public services it performs through its employees'". The Plaintiffs have been accused in the press of illegally receiving a full salary while receiving a government pension. The Plaintiffs assert such payments were lawful and consistent with D.C. Act 15-489 and Section 807 of the Consolidated Appropriations Act of 2008. The Plaintiffs allege the subsequent offset of their salaries was done by the Defendant in violation of federal law while the offset of the offset of other similarly situated employees denies them equal protection of the law. The manner in which the Plaintiffs brought their petition, through this Court by means of ordinary civil litigation,

cannot be said to interfere with their "work, personnel relationships, or the speaker's job performance [or] detract from the public employer's function". *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). By the letter of termination received by Plaintiff Cannon, the Defendant implicitly denies that such petition was the cause of his termination. Pl.s' Ex. 3. *See Rankin, supra*, ("In fact, Constable Rankin testified that the possibility of interference with the functions of the Constable's office had *not* been a consideration in his discharge of respondent and that he did not even inquire whether the remark had disrupted the work of the office." Footnote omitted, emphasis in original).[2]

Nor can the Defendant claim that the speech "reflected a policy disagreement with his superiors such that they could not expect him to carry out their policy choices vigorously." *O'Donnell*, 148 F.3d at 1136 (*Hall*, 856 F.2d at 265). The Plaintiffs allege that the Defendant violated District of Columbia and federal law in offsetting their pay. The District of Columbia Whistleblower Protection Act specifically affords any employee the right to make these allegations to a federal judiciary without adverse action taken against them. D.C. CODE § 1-615.53(a). Where such conduct is specifically protected, if not encouraged by law, the Defendant cannot claim an overriding government interest which interferes with the Plaintiffs' statutory rights.

> In enacting the DCWPA, the Council found that "the public interest is served when employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal."

Crawford v. District of Columbia, 891 A.2d 216, 218 (D.C. 2006) (citing D.C. CODE § 1-615.51 (2001), footnote omitted).

[2] The Defendant has made no representations as to why it has withheld the entirety of the Plaintiffs' pay since the onset of this litigation while paying other employees on time.

The pretext for Plaintiff Cannon's termination is particularly dubious, undocumented and non-specific. As Chief of Police of the Protective Services Police Department, Plaintiff Cannon has no disciplinary history whatsoever. Prior to the filing this lawsuit, Plaintiff Cannon received no notice of any proposed disciplinary action by his superiors. *See, e.g.*, ECF Docket # 6 and 6-1 (no mention of any proposed or intended disciplinary action against any Plaintiff in Defendant's January 30, 2012 filings). The stated cause for Cannon's termination borders on the bizarre.

> An investigation on October 26, 2011, which resulted in the removal of the DC Government Flag from the flagpole and was replaced with an Occupy DC Flag, revealed that you failed to properly interview the on-scene supervisors (Lieutenant Jackson and Sergeant Weeks) before generating an investigative report which contained false information that was subsequently presented to Brian Hanlon, Interim Director, Department of General Services after the protest at the Wilson Building.

Pl.s' Ex. 3 at 1.

Aside from the twisted sentence structure rendering the statement nearly incomprehensible, there appear to be a distinct lack of allegations of misconduct by any party among a host of innuendos. First, the statement fails to explain why Plaintiff Cannon, as Chief of Police, would have any responsibility for personally investigating any incident involving patrol supervisors five and six levels below him in the chain of command. Certainly this was ordinarily the responsibility of the direct supervisors of Jackson and Weeks, not the Chief of Police. Second, the statement fails to allege that Plaintiff Cannon did not interview Jackson and Weeks whatsoever, it claims that Cannon did not interview them "properly", an entirely subjective term offered with no further explanation whatsoever. Third, the statement fails to allege, but most markedly insinuates, that Plaintiff Cannon falsified any document. Instead, the statement pointedly

asserts that the investigative report "contained false information". In total, the statement offers no specification of any violation of any rule, regulation or law and the conclusion that Cannon's "actions in this matter interfered with the efficiency and integrity of government operations and constituted a breach of trust that render you ineligible to continue in your current position" is a *non sequitur* given the complete absence of substance to the limited factual allegations provided.

Given the Defendant's present burden in demonstrating that Plaintiff Cannon's termination would have taken place regardless of the pending litigation, this flimsy pretext for termination of a Chief of Police with no disciplinary history in his present position and some 39 years of service cannot withstand judicial scrutiny.

> The more valid a reason appears upon evaluation, the less likely a court will be to find that reason pretextual; the converse is also true. Even when the court faces independent evidence of a discriminatory motive, it is still necessary to weigh the validity of the defendant's proffered reasons when deciding if they are pretextual. In short, the merit of such decisions simply cannot be wholly divorced from a determination of whether they are legitimate or pretextual.

Ryan v. Reno, 168 F.3d 520, 524 (D.C. Cir. 1999) (quoting *Brazil v. United States Dep't of the Navy*, 66 F.3d 193, 197 (9th Cir. 1995)).

b. Whistleblower Claims

While Whistleblower Claims are perhaps a subset of First Amendment claims, the District of Columbia Whistleblower Protection Act provides profoundly strong protection to District of Columbia employees who make protected disclosures such as herein. Due to the express language of the Act, the Plaintiffs need reach a lesser threshold than that enumerated above to prevail on these claims.

> In order to establish a *prima facie* case under the DC-WPA, plaintiff must allege facts establishing that she made a protected disclosure, that her supervisor retaliated or took or threatened to take a prohibited personnel action against her, and that her protected disclosure was a contributing factor to the retaliation or prohibited personnel action.

Tabb v. District of Columbia, 605 F. Supp. 2d 89, 98 (D.D.C. 2009) (citing *Crawford v. District of Columbia*, 891 A.2d 216, 218-19 (D.C. 2006)).

It cannot be disputed that the Plaintiffs have satisfied the protected disclosure requirement of the Whistleblower Protection Act. *See, e.g., Williams v. District of Columbia*, 2011 U.S. Dist. LEXIS 119324, 4-10 (D.D.C. Oct. 17, 2011).

> In a civil action . . . once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 1-615.53 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the employing District agency to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

Crawford, 891 A.2d at 218-219 (quoting D.C. CODE § 1-615.54(b), footnote omitted).

The close temporal proximity of the events of this civil litigation, nearly intertwined with Plaintiff Cannon's termination, is particularly compelling. *Compare Johnson v. District of Columbia*, 935 A.2d 1113, 1120 (D.C. 2007) (four month lapse between alleged protected disclosure and the adverse actions); *Payne v. District of Columbia*, 741 F. Supp. 2d 196, 220 (D.D.C. 2010) ("eight-month gap").

> The cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a *prima facie* case uniformly hold that the temporal proximity must be "very close,"

Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273 (2001) (citing *Neal v. Ferguson Constr. Co.*, 237 F.3d 1248, 1253 (10th Cir. 2001); *Richmond v. Oneok, Inc.*, 120 F.3d 205, 209 (10th Cir. 1997); *Hughes v. Derwinski*, 967 F.2d 1168, 1174-1175 (7th Cir.

1992)). If the Plaintiffs cannot demonstrate herein that the adverse actions taken against them are "very close" temporally to the protected disclosures and therefore demonstrate a *prima facie* case of retaliation, no case can.

Given Plaintiff Cannon's complete absence of disciplinary history as Chief of Police of the Protective Services Police Department, and given the bizarre and vague claims made against him, only one week after the TRO hearing in this case and regarding a non-incident some four months earlier, the Defendant cannot overcome its burden that it would have terminated Cannon for "legitimate, independent reasons", even if he had not filed this civil action. *Compare Zirkle v. District of Columbia*, 830 A.2d 1250, 1260-1261 (D.C. 2003) (on five previous occasions the employee had been counseled for behaving in an intimidating and condescending manner toward members of the District of Columbia Board of Real Property Assessments and Appeals and taxpayer representatives; the employee admitted to his supervisor that he had sent out unapproved notices to 19 taxpayers that their assessments were being increased, a knowing violation of the supervisor's directive; and the employee failed to adhere to the code of conduct insofar as it required compliance with the local tax laws).

The circumstances of Plaintiff Cannon's termination and the inexplicable withholding of the entirety of the Plaintiffs' pay in intimately close temporal proximity to this litigation demonstrates a *prima facie* case of retaliation without further inquiry into the Defendant's true motivations.

2. The Plaintiffs will be irreparably harmed if they are not granted injunctive relief.

The blatant infringement upon the Plaintiffs' First Amendment rights, in and of itself, constitutes irreparable harm for the purposes of this Motion, particularly in the context of the Defendant's evident present efforts to undermine and interfere with the prosecution of this litigation.

> Unquestionably plaintiff has alleged a violation of her Fourth Amendment rights and at least a colorable claim of a violation of other rights. We think it clear that the district court had jurisdiction to give a declaratory judgment as to whether constitutional rights were violated and if so to order appropriate injunctive relief. *See Ex Parte Young*, 209 U.S. 123 (1908). *See also Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (upholding injunctive relief barring strip searches of detainees); *Wallace v. King*, 626 F.2d 1157 (4th Cir. 1980) (upholding injunctive relief barring unwritten police department policy allowing use of warrantless searches); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966) (upholding injunctive relief barring searches based on uncorroborated anonymous tips). The authority so vested in the district court transcends its authority under Rule 41(e) and what the district court described as its "equitable or anomalous" jurisdiction. A district court possesses authority to order injunctive relief to remedy constitutional violations which are based on the plaintiff's right to privacy in her home and her person which the Fourth Amendment protects against unreasonable government search and seizure. *See* [*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)]; *Katz v. U.S.*, 389 U.S. 347 (1967). This authority is also supplementary to the power to suppress evidence, for good cause shown, in a criminal case. Moreover, the denial of a constitutional right, if denial is established, constitutes irreparable harm for purposes of equitable jurisdiction. *Supra*.

Ross v. Meese, 818 F.2d 1132, 1134-1135 (4th Cir. 1987) (parallel citations omitted). *See also Zirkle*, 830 A.2d at 1258 n.9 (citing *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 938 (9th Cir. 1987) ("Damages and reinstatement would not remedy the coercive and inhibitory effects upon the employees' organizational rights secured by the [Railway Labor Act]. Such harm is irreparable."); *Holt v. Continental Group, Inc.*, 708 F.2d 87, 91 (2d Cir. 1983) ("A retaliatory discharge carries with it the distinct risk that other employees may be deterred from protecting their rights under the [Civil Rights] Act

. . . . These risks may be found to constitute irreparable injury."); *Bonds v. Heyman*, 950 F. Supp. 1202, 1214-1215 (D.D.C. 1997) ("a plaintiff who demonstrates that an adverse personnel action is likely to have a chilling effect on other employees who . . . would now refuse to file claims for fear of reprisals, would also meet Sampson's barrier"); *Segar v. Civiletti*, 516 F. Supp. 314, 320 (D.D.C. 1981) ("unless Plaintiff is protected now from the adverse action, members of the class will refrain from coming forward with their claims. The injury to them will be irreparable").

3. An injunction against inherently unlawful conduct cannot be said to injure the Defendant.

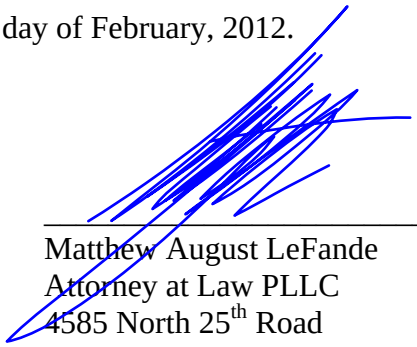
Where a government official "is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are *ultra vires* his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689-690 (1949). *See also Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund*, 500 U.S. 72, 86 (1991); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984).

4. A granting of the injunction is in the public's interest.

"[T]he public interest is served when employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal." *Crawford*, 891 A.2d at 218 (citing D.C. CODE § 1-615.51 (2001), footnote omitted).

WHEREFORE, the Plaintiffs respectfully request the Court not permit the Defendant to cause further irreparable injury to the Plaintiffs, and the proposed Plaintiff Class, and for the Court to serve the public's best interests. The Plaintiffs' Motion for a Preliminary Injunction against the unlawful retaliatory termination of Plaintiff Cannon and the unlawful taking of their earned salaries should be GRANTED.

Respectfully submitted, this tenth day of February, 2012.



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