

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

POLLY CARVER-KIMM,)	CASE NO. LACL148599
)	
Plaintiff,)	
)	PETITION
v.)	
)	
KIM REYNOLDS, PAT GARRETT and)	
STATE OF IOWA,)	
)	
Defendants.)	

COMES NOW the Plaintiff Polly Carver Kimm, by counsel, and for her cause of action against Defendants Kim Reynolds, Pat Garrett and the State of Iowa states as follows:

PARTIES

1. At all times material hereto, Plaintiff Polly Carver-Kimm (“Polly”) was a citizen and resident of Polk County, Iowa. Polly was a non-contract, non-merit employee of the State of Iowa.

2. At all times material hereto, Defendant Kim Reynolds was the Governor of the State of Iowa and a resident of Polk County, Iowa.

3. At all times material hereto, Defendant Pat Garrett was the Communications Director for Governor Kim Reynolds and, upon information and belief, a resident of Polk County, Iowa.

4. At all times material hereto, the State of Iowa was a sovereign state as defined in the Iowa Cde with its principle place of business in Des Moines, Polk County, Iowa.

BACKGROUND FACTS

5. Polly was hired in 2007 by the Iowa Department of Public Health (“IDPH”) as the Public Information Officer. Her title changed to Communications Director during her tenure, but she held the same position with the same duties through March 2020.

6. Until March 2020, Polly was in charge of all IDPH communications, including public information requests and COVID-19 related communications.

7. In early March 2020, the State activated emergency protocols because of the COVID-19 pandemic. Those protocols included activating the Emergency Command Center (“ECC”) and the use of ECC email addresses for COVID-19 related communications instead of the normal State of Iowa email addresses.

8. The normal process for complying with open records requests (Iowa Code Chapter 22) for emails is to contact the Office of the Chief Information Officer and request that they compile the emails responsive to the request. The requested documents are then gathered internally from staff. After the emails and documents are compiled, Polly would forward them to Heather Adams, the Assistant Attorney General assigned to the IDPH, for review and redaction. After Ms. Adams completed her review, Polly would produce the approved emails and documents to the requesting party. During the thirteen years that Polly worked for IDPH, the Governor’s office was never involved in this process.

9. On at least one occasion, Pat Garrett told Polly to “hold” the production of records already approved by Ms. Adams. The record in question was a list of questions to be used as part of the Test Iowa website evaluation of whether someone needed to be tested.

10. In early March 2020, Polly was informed by Sarah Reisetter, the Deputy Director of IDPH, that all press releases should go through the Governor's office.

11. On March 12, 2020, all media inquiries related to COVID-19 were rerouted through Deputy Director Reisetter.

12. On March 13, 2020, Deputy Director Reisetter complained to Polly about the volume of media inquiries related to COVID-19. Polly offered to resume her normal duties. Polly told Reisetter that she had experience with such media inquiries and it was easier for her to reassume this responsibility.

13. Reisetter responded that it may be easy for Polly to handle the inquiries, but it was not easy "for other people." After this, Amy McCoy, Legislative Liaison for IDPH, began handling COVID-19 related media inquiries. Polly was told this change was made because McCoy was working out of the State Emergency Operations Center ("SEOC").

14. On March 17, 2020, Polly was moved to the SEOC but was not asked to resume COVID-19 related media responses.

15. In early April 2020, Polly received a request for emails from specific IDPH email addresses relating to COVID-19. The email addresses specified were the state's normal email addresses, not the ECC email addresses.

16. Polly asked Assistant Attorney General Adams whether the ECC emails should be produced. Ms. Adams eventually confirmed that the ECC emails should be included in response to this specific request. Although similar requests were later made by other news agencies, the ECC emails were never again searched and responsive documents in the ECC emails were never again produced. Polly repeatedly inquired of Ms. Adams via email regarding whether the ECC emails should be produced but never received a response.

17. In April 2020, Pat Garrett complained that Polly was posting the daily new case numbers to the IDPH website prior to the Governor's press conference. On April 19, 2020, Polly emailed Reisetter stating that she had only done this once several weeks before. Polly complained to Reisetter that she was being accused of something she didn't do.

18. On April 20, 2020, Gerd Clabaugh (Director of IDPH) told Polly that she was no longer allowed to update the IDPH website.

19. During the week of April 21, 2020, Polly informed her supervisors that a news reporter had brought to her attention the unsanitary working conditions and lack of social distancing at the SEOC. Multiple persons, including Director Clabaugh, demanded the name of the journalist who made this observation. When Polly refused to give the name of the journalist, more assigned job duties were taken from her including being in charge of social media and working with the counties and local government entities.

20. In May 2020, Polly fulfilled an open records request submitted by Iowa Public Radio. Later that month, the New Yorker and USA Today made a very similar request. Polly informed the New Yorker and USA Today that if they slightly modified their requests, she could immediately produce the emails that had already been approved for release to Iowa Public Radio.

21. The New Yorker and USA Today modified their request and later asked Polly to send them all responses to open records requests submitted by other news agencies. Polly did so because this was a common practice in state government. For example, the Department of Natural Resources posts all public information requests on their website (<https://iowaopenrecords.nextrequest.com/requests>).

22. In late May 2020, the New Yorker began asking questions critical of the State Hygienic Lab referencing the documents produced by Polly. Reisetter sent Polly an email

questioning how the New Yorker received those documents. When Polly responded, Reisetter asked whether producing the documents “was even legal.”

23. On June 4, 2020, Polly was no longer allowed to respond to any open records requests, including those dealing with COVID-19.

24. On June 15, 2020, the New Yorker published an article critical of the company running “Test Iowa” utilizing the previously released emails. On June 17, 2020, Polly was no longer allowed to respond to any media inquiries involving COVID-19 or any other infectious disease.

25. Throughout March, April, May and June of 2020, Polly had regular conversations with Karla Dorman (Human Resources). Polly complained to Ms. Dorman that the ongoing removal of her duties and responsibilities amounted to mismanagement, abuse of authority and a specific danger to public health given the ongoing state-wide pandemic.

26. On July 2 or 3, 2020, Tony Leys with the Des Moines Register asked Polly for the pregnancy termination statistics for the State of Iowa. This is publicly available information routinely produced in the past. Polly gave Mr. Leys the requested information.

27. On July 12, 2020, the Des Moines Register ran a story that showed the number of pregnancy terminations in Iowa had climbed by 25% in 2019 after continuously decreasing for decades. The article attributed the increase to the decision to cease participation in a federally funded family planning program.

28. The Leys article was likely embarrassing to Governor Reynolds who promoted and supported the 2017 plan to expel Planned Parenthood and other abortion providers from family planning programs and replace it with a state financed program

29. On July 15, 2020, Polly was told, in the midst of an ongoing state and nation-wide pandemic, that she could either resign or be terminated due to “restructuring.” Polly initially chose termination, but agreed to an involuntary resignation after being told that she would forfeit her accumulated vacation time if terminated.

COUNT I
WRONGFUL DISCHARGE IN VIOLATION OF
IOWA CODE SECTION 70A.28

30. Polly realleges and incorporates by reference the allegations contained in paragraphs 1 through 29 as if fully set forth herein.

31. Polly was stripped of her duties and later terminated after she made repeated efforts to comply with Iowa’s Open Records law (Chapter 22) by producing documents to local and national media regarding the State of Iowa’s response to the ongoing COVID-19 pandemic.

32. Throughout March, April, May and June of 2020, Polly had regular conversations with Karla Dorman, a person providing human resources management for the State of Iowa, where she reported and disclosed that, among other things, the ongoing removal of her duties and responsibilities amounted to mismanagement, abuse of authority and a specific danger to public health given the ongoing state-wide pandemic.

33. Polly was stripped of her duties and eventually terminated after reporting and disclosing the aforementioned conduct. Any reasons proffered by defendants for stripping her of her duties and terminating her employment are pretextual.

34. The actions and conduct of Reynolds and Garrett in terminating Polly’s employment constitutes a simple misdemeanor under Iowa Code §70A.28(4).

35. As a direct and proximate result of Defendants’ actions, Polly has suffered and will continue to suffer loss of wages, benefits, job security and other emoluments of employment

and has suffered and will continue to suffer mental anguish, emotional distress and damage to her reputation.

WHEREFORE, Plaintiff Polly Carver-Kimm requests judgment against Defendants, and each of them, in such an amount as will fully and fairly compensate her for her injuries and damages, for attorney fees and costs, for interest as allowed by law, for reinstatement, for backpay, and for such other and further relief, including but not limited to front pay, as the court deems equitable on the premises including injunctive and declaratory relief.

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