

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 21, 2026

Christopher M. Wolpert
Clerk of Court

MICHELE STIMATZE,

Plaintiff - Appellant,

v.

BOARD OF COMMISSIONERS
FOR GEARY COUNTY, KANSAS,

Defendant – Appellee.

No. 24-3169
(D.C. No. 5:23-CV-04052-EFM-ADM)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Circuit Judge, **HARTZ**, Circuit Judge, and **GARCIA****,
District Judge.

Michele Stimatze alleges the Board of County Commissioners of Geary County, Kansas (“the Board”) constructively discharged her in retaliation for protected speech. The district court granted the Board’s motion to dismiss for failure to state a claim. We conclude that Stimatze plausibly alleged that her speech involved a matter of public concern and that she spoke in her private capacity; accordingly, we reverse.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** The Honorable Matthew L. Garcia, United States District Judge for the District of New Mexico, sitting by designation.

I. BACKGROUND

A. Factual Allegations and Procedural History

The Board hired Stimatze as Director of the Board’s Convention and Visitor’s Bureau (“the CVB”) in January 2017. Doc. 28 at 9 ¶ 13.¹ Through 2020, she “received favorable employment evaluations[,]” with the Board rating her work as “good” and “excellent.” *Id.* ¶ 14. Patricia Giordano² was elected to the Board in January 2021, and in that capacity, held supervisory authority over Stimatze. *Id.* ¶ 15; *id.* at 8 ¶ 2. That relationship quickly became fraught. According to Stimatze, shortly after Giordano assumed office, she observed what she characterized as “troubling behavior” from Giordano. *Id.* at 9 ¶ 16. For example, Stimatze alleges Giordano directed her to allocate funds to certain line items without the Board’s approval—a violation of County policy—while simultaneously interfering with Stimatze’s efforts to improve the CVB. *Id.* ¶¶ 16-17.

In the spring of 2021, Stimatze began communicating her concerns about Giordano’s behavior at the Board’s monthly public forum meetings. *Id.* at 9-10 ¶¶ 18-19, 25; *id.* at 12 ¶ 32. Stimatze contends that, following her comments, Giordano harassed her via email and publicly disparaged both her and the CVB. *Id.* at 10 ¶ 20. Stimatze

¹ The Court cites to the document and page number generated by the CM/ECF system rather than the page numbers assigned by the parties.

² Stimatze also sued Giordano but voluntarily dismissed her without prejudice pursuant to Federal Rule of Civil Procedure 41 prior to the district court’s dismissal of the First Amendment retaliation claim. Doc. 28 at 34-35.

further alleges that the Board constructively discharged her because of her public comments. *Id.* ¶¶ 20-21, 26; *see also id.* at 12 ¶¶ 32-33.

Stimatze subsequently sued the Board and Giordano (“Defendants”) for unlawful retaliation under 42 U.S.C. § 1983 and Kansas tort law. Doc. 28 at 7-15. Defendants moved to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *Id.* at 16-31. They argued that Stimatze’s speech was “not protected by the First Amendment because it was made pursuant to [her] official job duties and did not pertain to a matter of public concern.” *Id.* at 24-27. The district court ruled that Stimatze spoke in her capacity as a private citizen but nevertheless dismissed the matter. *Id.* at 61-64, 69. It reasoned that Stimatze failed to identify specific statements supporting her claim and therefore had not sufficiently pled that her speech addressed a matter of public concern.³ *Id.* at 64-67.

Stimatze timely appealed, claiming that her First Amendment retaliation allegations satisfied the applicable pleading standards and that the district court erred in holding otherwise. Doc. 27 at 13-2. The Board disagrees. It argues that the district court’s decision should be affirmed because the amended complaint lacked sufficient detail regarding the content of Stimatze’s speech. Doc. 30 at 12-13, 17-28. Even if it did, the Board contends that the speech did not address a matter of public concern. *Id.* at 28-31. In the alternative, the Board maintains that dismissal is warranted because the district court erred by concluding that Stimatze spoke in her capacity as a private citizen. *Id.* at 31-37.

³ The district court also dismissed Stimatze’s Kansas tort law claim, Doc. 28 at 67-68, which Stimatze does not challenge on appeal.

B. The *Garcetti/Pickering* Test

“To evaluate whether a public employer violated the First Amendment by retaliating against an employee, we apply a test derived from the Supreme Court’s decisions in *Garcetti* and *Pickering*”⁴ *Timmins v. Plotkin*, 157 F.4th 1275, 1277 (10th Cir. 2025).

Under this framework, a public employee must establish five elements:

- (1) The protected speech was not made pursuant to an employee’s official duties.
- (2) The protected speech addressed a matter of public concern.
- (3) The government’s interests as an employer did not outweigh the employee’s free-speech interests.
- (4) The protected speech was a motivating factor in the adverse employment action.
- (5) The defendant would not have made the same employment decision in the absence of the protected speech.

Id. at 1277 (quoting *Lincoln v. Maketa*, 880 F.3d 533, 538 (10th Cir. 2018)). “The first three elements are typically questions of law to be decided by the court, while the last two are typically factual issues decided by the jury.” *Id.* Because this appeal turns only on the first two elements, we focus our analysis there.

II. DISCUSSION

A. Standard of Review

We review de novo a district court’s dismissal for failure to state a claim. *Timmins*, 157 F.4th at 1280. To survive a Rule 12(b)(6) motion, a complaint must contain

⁴ See *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968).

sufficient factual allegations that, when taken as true, “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This is not a demanding standard, and a plaintiff need not establish a prima facie case at the pleading stage. *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012) (explaining that a plaintiff is “not required to set forth a prima facie case for each element, she is [only] required to set forth plausible claims.”); *Brown v. City of Tulsa*, 124 F.4th 1251, 1264 (10th Cir. 2025) (“We impose a ‘low bar for surviving a motion to dismiss[.]’” (quoting *Quintana v. Santa Fe Cnty. Bd. of Comm’rs*, 973 F.3d 1022, 1034 (10th Cir. 2020))). They need only allege sufficient facts to provide for a reasonable inference of liability. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”) (citation omitted). In assessing whether that burden has been met, we accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the non-movant. *Fuqua v. Santa Fe Cnty. Sheriff’s Off.*, 157 F.4th 1288, 1295 (10th Cir. 2025).

B. Analysis

We first review the district court’s conclusion that Stimatze failed to plead that her speech involved a matter of public concern. We conclude she did and that the district court erred in holding otherwise. Next, we address the Board’s contention that we should nevertheless affirm the district court’s dismissal because Stimatze’s speech was made in connection with her official duties. We reject that argument.

1. Matters of Public Concern

“Speech involves matters of public concern ‘when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.’” *Lane v. Franks*, 573 U.S. 228, 241 (2014) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)). To determine whether speech meets this standard, courts consider “the content, form, and context of a given statement[.]” *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 492 F.3d 1192, 1205 (10th Cir. 2007) (internal quotation marks omitted) (quoting *Connick v. Myers*, 461 U.S. 138, 147-48 (1983)), *abrogated on other grounds by Lane v. Franks*, 573 U.S. 228 (2014), *as recognized by Timmins*, 157 F.4th at 1281. The speaker’s motivation is also relevant. *Lighton v. Univ. of Utah*, 209 F.3d 1213, 1224 (10th Cir. 2000). Thus, “[s]peech concerning potential illegal conduct by government officials is inherently a matter of public concern[.]” while personal grievances are not. *Brammer-Hoelter*, 492 F.3d at 1205-06. And although “what is *actually said* must meet the public concern threshold[.]” *Schalk v. Gallemore*, 906 F.2d 491, 495 (10th Cir. 1990) (citation omitted), a plaintiff need not include exact quotes in the complaint.

Here, the district court concluded that, based on the context surrounding Stimatze’s speech, “her primary motive was to raise matters of public interest” because she made her statements “at meetings open to the public and not within her workplace[.]” Doc. 28 at 66. But the district court also held that Stimatze’s “allegations fail[ed] to reach

the level of particularity needed to analyze the content of her speech.” *Id.* On that latter point, we disagree.

Stimatze’s amended pleading contains several allegations material to the public interest inquiry, including the following:

- (1) “Shortly after Defendant Giordano’s election, Plaintiff began experiencing troubling behavior from Defendant Giordano. For example, Defendant Giordano would request that Plaintiff allocate funds to certain line items without the Board of County Commissioners’ approval, which was required pursuant to County policy.” *Id.* at 9 ¶ 16.
- (2) “In Spring 2021, shortly after the election of Defendant Giordano, Plaintiff began expressing her dissatisfaction at the state of how issues were being handled by the Board of Geary County Commissioners in Plaintiff’s private, individual capacity and raising issues of public concern regarding the behavior of Defendant Giordano.” *Id.* ¶ 18.
- (3) “Plaintiff, in her private and individual capacity, raised her concerns related to the spending allocations and other issues of public concern as it relates to Defendants in Defendant’s monthly public meetings and otherwise to the public.” *Id.* at 12 ¶ 32.

Read together, these contentions plausibly allege that Stimatze publicly expressed her concerns regarding Giordano’s handling of public funds, including her directives to “allocate funds to certain line items without the Board of County Commissioners’ approval, which was required pursuant to County policy.” *Id.* at 9 ¶¶ 16-18, 12 ¶ 32. Not

every disagreement over internal spending decisions implicates a matter of public concern. But statements concerning an elected official’s requests to allocate public funds without the approval required by county policy plausibly address such a matter.

Brammer-Hoelter, 492 F.3d at 1206; *see also Glover v. Mabrey*, 384 F. App’x 763, 769-70 (10th Cir. 2010) (“The use of public funds and the objectives, purposes and mission of a government agency are well within the rubric of matters of public concern.” (citation modified)). The district court therefore erred in concluding that Stimatze’s complaint failed to allege speech regarding a matter of public concern.

The dissent reads Stimatze’s pleading less favorably, concluding it falls short of meeting the requisite pleading standard. But Stimatze alleges that Giordano made funding allocation requests in violation of County policy and that Stimatze raised “concerns related to the spending allocations” at the Board’s public meetings. Doc. 28 at 9 ¶¶ 16, 18; *id.* at 12 ¶ 32. Although Stimatze’s statements are not presented verbatim, it is reasonable to infer that her public comments included concerns regarding Giordano’s alleged policy violation. And at this stage, we must accept those allegations as true and draw all reasonable inferences in her favor. *See Fuqua*, 157 F.4th at 1295. That Stimatze may have also expressed personal grievances during these meetings—a hypothetical proposition raised by the dissent—is an insufficient basis for affirmance. *See Hulen v. Yates*, 322 F.3d 1229, 1238 (10th Cir. 2003) (“[S]peech which touches on matters of

public concern does not lose protection merely because some personal concerns are included.”).⁵

2. Official Capacity or Private Citizen

The Board alternatively seeks affirmance on the ground that the district court erred in concluding that Stimatze spoke in her capacity as a private citizen.⁶ Doc. 30 at 31-37. It contends that, absent factual allegations regarding her job duties, it is unreasonable to infer that Stimatze spoke as a private citizen at Board meetings, particularly given her role as CVB Director, which included overseeing the department’s funding and resource allocation. *Id.* at 37. But the linchpin of the Board’s position—that “a public employee’s speech relating to tasks that fall within their employment responsibilities is not protected[,]” *id.* at 33—was rejected by the Supreme Court in *Lane v. Franks*, 573 U.S. 228 (2014). *See Timmins*, 157 F.4th at 1281 (explaining that our pre-*Lane* opinions “suggesting that there is no protection for statements relating to the employee’s job duties . . . contradict[] *Lane* and [are] no longer good law”); *see also Lane*, 573 U.S. at 240 (recognizing that “speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment”).

⁵ The dissent’s speculation about how the Supreme Court might view Stimatze’s complaint is a rhetorical flourish, but it does not identify any error in our application of the pleading standard.

⁶ The Board was not required to cross-appeal. *See Crow Tribe of Indians v. Repsis*, 74 F.4th 1208, 1217 (10th Cir. 2023) (“An appellee is generally permitted to defend the judgment won below on any ground supported by the record without filing a cross appeal, even if, as here, its argument involves an attack upon the reasoning of the lower court.” (citation modified)).

“The critical question . . . is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Lane*, 573 U.S. at 240; *see also Knopf v. Williams*, 884 F.3d 939, 946 (10th Cir. 2018) (“Ultimately, we ask whether the employee was performing the task they were paid to perform when they spoke.” (citation modified)). That determination is made by examining “the facts and circumstances surrounding the speech and the employment relationship.” *Brammer-Hoelter*, 492 F.3d at 1204 (citing *Garcetti*, 547 U.S. at 424). Material considerations include “the tasks in an employee’s job description, the frequency with which an employee performs a task, the subject matter of the employee’s speech, the recipient of the employee’s speech, [and] the legal obligation for the employee to speak—but no one fact is determinative.” *Knopf*, 884 F.3d at 945. We have also identified two additional indicators that an employee spoke as a private citizen and not in their official capacity: first, the employee’s job responsibilities “did not relate to reporting wrongdoing[,]” and second, the employee reports the wrongdoing outside their chain of command. *Reinhardt v. Albuquerque Pub. Schs. Bd. of Educ.*, 595 F.3d 1126, 1135-36 (10th Cir. 2010).

Applying these principles here, we conclude that the amended complaint plausibly alleges that Stimatze’s comments during public Board hearings fell outside the scope of her employment. Stimatze “went outside the chain of command” by raising these concerns at a public Board meeting rather than reporting them internally. *See id.* at 1136. Nothing in the operative pleading suggests that the Board tasked Stimatze with airing her concerns publicly. *See Knopf*, 884 F.3d at 946 (explaining that if speech is commissioned

by an employer, “it enjoys no First Amendment protection”). Rather, the amended complaint alleges that Stimatze’s actions stemmed from her frustration with Giordano’s behavior and how those “issues were being handled by the Board.” Doc. 28 at 9 ¶ 18. Under such circumstances, a public employee’s speech “cease[s] to be merely ‘pursuant to [their] official duties’ and bec[omes] the speech of a concerned citizen.” *Thomas v. City of Blanchard*, 548 F.3d 1317, 1324-25 (10th Cir. 2008) (footnote omitted); *see also Casey v. W. L.V. Indep. Sch. Dist.*, 473 F.3d 1323, 1332-33 (10th Cir. 2007) (holding that plaintiff’s statements alleging unlawful conduct made directly to her superiors were not made in her private capacity because she had an obligation to report such misconduct to them but concluding that the plaintiff spoke in her private capacity when she raised the same allegations to others).

This Court recently observed that “[f]ew public employees have a duty to inform or sway public opinion; when other employees speak to a public audience, directly or through the press, they are not speaking pursuant to their official duties even if their purpose is ultimately to improve (or punish) the performance of their public employer so that they can work more effectively.” *Timmins*, 157 F.4th at 1282. This is true here. Because “the facts alleged in the complaint do not compel the inference that [Stimatze’s] statements . . . were part of her official duties[.]” *id.*, we reject the Board’s argument that affirmance is appropriate.

III. CONCLUSION

Mindful of the “low bar for surviving a motion to dismiss,” we hold that Stimatze’s amended pleading passes muster. *Quintana v. Santa Fe Cnty. Bd. of Comm’rs*,

973 F.3d 1022, 1034 (10th Cir. 2020). She alleges sufficient facts to allow her First Amendment retaliation claim to move forward. For these reasons, we REVERSE the district court's order granting the Board's motion to dismiss and REMAND to the district court for further proceedings consistent with this opinion.

Entered for the Court

Matthew L. Garcia,
District Judge

24-3169, *Stimatze v. Bd. of Comm'rs for Geary Cnty., Kan.*

HARTZ, J., dissenting

I respectfully dissent. I do not think that a public employee can plausibly state a claim of First Amendment retaliation for her speech without describing what she said with specificity.

The majority opinion accurately sets forth the five elements of a public employee's First Amendment retaliation claim. Although specificity in describing what was said is required for each element, I will focus on the requirement that the speech "address[] a matter of public concern." Maj. Op. at 4. To assess whether that requirement has been satisfied, it is necessary to consider "the content, form, and context of [the] statement." *Id.* at 5 (internal quotation marks omitted). In addition, the motivation of the speaker is relevant because "personal grievances are not" a matter of public concern. *Id.*

Plaintiff's complaint does not come close to the specificity required. One can only speculate about whether she was motivated by personal grievances and whether what she was upset about was a matter of public concern. To determine from this complaint what she said publicly, one must engage in a two-step inquiry: (1) what were Plaintiff's concerns, and (2) what did she say publicly about those concerns? Each step requires a great deal of guesswork.

Regarding the first step, Plaintiff makes two allegations:

Shortly after Defendant Giordano's election, Plaintiff began experiencing troubling behavior from Defendant Giordano. For example, Defendant Giordano would request that Plaintiff allocate funds to certain line items without the Board of County Commissioners' approval, which was required pursuant to County policy,

and

Defendant Giordano would interfere with Plaintiff's efforts to improve Defendant's Convention and Visitor's Bureau, such as refusing to allocate necessary funds to the same.

Joint App. at 7.

One peculiarity of these allegations is their apparent inconsistency. The second allegation is that Giordano refused to allocate funds necessary to improve the Convention and Visitors Bureau. This suggests that Giordano had the authority to allocate such funds. But the first allegation is that Giordano would request Plaintiff to allocate funds without Board approval. Is the problem one of line drawing with respect to internal procedures of the Board—determining precisely when an allocation requires Board approval? If the question is whether Giordano mistakenly failed to follow a procedural requirement when requesting money for a laptop for her office, would a dispute about her authority to do so without prior Board approval be a matter of public concern?

And would it be a matter of public concern that a newly elected Commissioner made an unauthorized request, if, as it turns out, she was later educated about the impropriety and did not pursue it further? The Complaint references a request, but says nothing about what happened afterwards. One can only speculate. Yes, public corruption is a matter of public concern. Failure to comply with internal bureaucratic requirements, a daily occurrence, is not necessarily corruption.

As for the refusal to allocate funds to the Convention and Visitor's Bureau, was this merely a personal grievance of Plaintiff (who was director of the Bureau)? I would

think that the answer would turn on what the specific request was. One can only speculate.

The second step requires even more speculation. The complaint does not set forth the specifics of any public complaint. It alleges only:

Plaintiff began expressing her dissatisfaction at the state of how issues were being handled by the Board of Geary County Commissioners in Plaintiff's private, individual capacity and raising issues of public concern regarding the behavior of Defendant Giordano[,]

and

Plaintiff expressed her dissatisfaction in private, individual capacity at Defendant's monthly public meetings and openly to the public.

Id. at 7–8.

This was not a pro se complaint. The failure of the complaint to even say that her public statements expressed the previously alleged concerns is remarkable. Defendant should not have the burden to litigate such a complaint. To make a plausible claim, Plaintiff needs to set forth the necessary alleged facts. This is not a case in which the plaintiff is handicapped because critical facts are solely in the possession of the defendant. No one would know better than she what she said and why she said it.

In the absence of allegations describing the specific misbehavior that Plaintiff publicly addressed, the pertinent allegations of the complaint are merely “conclusory and not entitled to be assumed true.” *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009).

I would be surprised if the Supreme Court thought that a complaint of this nature could satisfy the *Iqbal* pleading standard.