



Freeman
Mathis & Gary ^{LLP}

100 Galleria Parkway
Suite 1600
Atlanta, GA 30339

Tel: (770) 818-0000

www.fmglaw.com

Michael M. Hill
Partner

D: 770.303.8635
MHill@fmglaw.com

January 26, 2024

VIA EEOC RESPONDENT PORTAL

Serena Curry, EEOC Investigator
U.S. Equal Employment Opportunity Commission
Atlanta District Office
100 Alabama Street, S.W., Suite 4R30
Atlanta, Georgia 30303
serena.curry@EEOC.gov

**Re: Jacqueline Dost v. Carroll County Board of Commissioners
EEOC Charge No. 410-2024-00141**

Dear Ms. Curry:

At your request, we are providing you, on behalf of the Carroll County Board of Commissioners, (“CCBC” or the “Board”), with information relevant to the above-referenced Charge of Discrimination (the “Charge”) filed by Jacqueline Dost (the “Charging Party”).¹ For the reasons below, the CCBC respectfully requests that the Charge be dismissed with a finding of “no cause.”

¹ The information contained in this letter, and the accompanying materials submitted herewith, have been provided to the EEOC upon the condition that all such information and material, as well as the names and identities of any individuals mentioned therein, shall be kept strictly confidential. The following information and material has been prepared for the sole and express purpose of “conference, conciliation, and persuasion” as contemplated by 29 C.F.R. § 1601.26(a) of the EEOC’s Title VII Procedural Guidelines. The information and material contained in this letter is additionally subject to the confidential material disclosure provisions set forth in Section 83.6(b)(1) and (5) of the EEOC’s Compliance Manual, as well as the exception to disclosure requirements of the Freedom of Information Act, codified at 5 U.S.C. § 522(b)(7). The facts and argument contained herein are based upon a preliminary limited review. Nothing contained herein is intended to be used in evidence in the event of litigation. This position statement is not an admission. The Respondent specifically reserves the right to supplement this letter when necessary and as additional information becomes available, and it reserves the right to modify its position in the event more thorough discovery during litigation illuminates matters at issue in this dispute. The word usage and sentence structure is that of the attorney preparing this response and does not purport to be the precise language of any party or person referenced. By submitting this position statement, the Respondent in no way waives its right to present new or additional facts or arguments based upon subsequently acquired information or evidence. Additionally, while the information contained herein is considered to be true and accurate, this position statement does not constitute an affidavit and is not intended to be used as evidence of any kind in any commission or court proceeding in connection with this Charge. Finally, this position statement does not operate as a waiver of the Respondent’s attorney-client privilege.



I. INTRODUCTION

The Charging Party alleges the CCBC discriminated against her and subjected her to a hostile work environment based on her gender and in retaliation for engaging in protected activity.

The Charging Party's claims are entirely without merit. As an initial matter, the CCBC has not subjected the Charging Party to any adverse employment action, which is fatal to her claim for gender-discrimination. Her hostile work environment claim is premised, primarily, upon alleged conduct by a single commissioner, Commissioner Reynolds, with whom she has very limited personal interaction. She thus cannot demonstrate that the alleged "harassment" was severe or pervasive enough to alter the terms and conditions of her employment, and likewise cannot show that Commissioner Reynolds' conduct was based upon discriminatory animus towards women.

For example, the Charging Party's chief complaint is that Commissioner Reynolds (a former state auditor who campaigns on ideals of government transparency and budget controls) "publicly called out the fact that" she, along with two other women, received higher raises than other employees during fiscal year 2023. But there is absolutely no evidence that Commissioner Reynolds' reference to the Charging Party's raise was due to her gender. Instead, Commissioner Reynolds argued that whereas the vast majority of county employees received only a \$1/hour raise, some employees received raises that (in his opinion) were "inequitable," including one employee who received a 39% raise (i.e., the Charging Party), one employee who received a 27% raise, and another employee who received a 16% raise. Of note, Commissioner Reynolds did not reference any of the three employees by name or gender, but argued that these types of raises necessitated greater budgetary controls, such as mandatory Board approval for all raises over 10%.

Although the Charging Party argues Commissioner Reynolds did not refer to three male employees who received higher-than-average raises, two of these employees received substantially lower increases, and the third merely received the same salary as his predecessor, who he replaced. While Commissioner Reynolds acknowledged that the Charging Party's job title changed, he argued that a comparison of the Charging Party's job descriptions showed only very minor additional duties.

In other words, Commissioner Reynolds believed the three raises he referenced were "inequitable" and based upon "favoritism," whereas the other raises were not. And this distinction was demonstrably not based on gender: of note, Commissioner Reynolds did not challenge another female employee who received the same raise (39%) as the Charging Party, because she was promoted to an existing position and took on additional job responsibilities. Ultimately, Commissioner Reynolds moved to amend the 2024 budget to prevent what he considered to be an "inequitable" raise to a male employee within the fire department with a separate clause requiring the Board to receive notice of all raises over 10%. Commissioner Reynolds's motion to amend



passed. Thus, the only employee whose proposed raise was “rejected”² by the Board was a *man*.

The Charging Party’s remaining allegations of disparate treatment by Commissioner Reynolds are equally inconsequential. For example, she complains that “[w]hen E-911 Director Felicia Rowland (female) requested a vehicle for her department, Commissioner Reynolds condescendingly questioned her,” but did not ask male directors who requested vehicles any questions. A review of the video-taped commission meeting during this exchange with Ms. Rowland, however, shows that Commissioner Reynolds asked basic, mundane questions, such as how the car would be used, how many employees would be using it, etc. After another commissioner clarified that the requested vehicle was merely a replacement vehicle, the CCBC voted unanimously to approve the purchase. No evidence suggests Commissioner Reynolds—or the CCBC as a whole—acted with gender-based discriminatory animus, and the Charging Party’s conclusory allegations of “condescending” or “belittling” communications by Commissioner Reynolds are insufficient to state an actionable claim for discrimination or hostile work environment.

Similarly, the Charging Party’s allegations of retaliation and a retaliatory hostile work environment fail because she did not have an objectively reasonable belief that Commissioner Reynolds’s conduct violated Title VII when she complained to HR about his public comments regarding her raise, that he once “put her on the spot” by asking her a question she did not know the answer to, and blamed her department for an excavator fire. Moreover, the Charging Party has not alleged she was subject to any materially adverse employment action after making these complaints, which is fatal to her retaliation claim.

For these reasons and for each of the reasons discussed below, the County respectfully requests that the Charging Party’s Charge be dismissed with a finding of “no cause.”

II. STATEMENT OF FACTS

A. The CCBC

Carroll County is governed by a Board of Commissioners, which is the primary policy-making body of the County. (Exhibit 1, Excerpts from the Carroll County Charter). The Board consists of a full-time chairman and 6 part-time commissioners representing different geographic districts of the county. The chairman is elected countywide every 4 years, and the commissioners are elected to staggered 4-year terms, with 3 commissioners up for election every 2 years. The charter vests the Chairman with the “exclusive power to supervise, direct, and control the administration of the county government.” (*Id.*).

As is common with legislative bodies, the CCBC sometimes has split votes, which may

² Because the Chairman holds the exclusive authority to set employee compensation, the Board can only “approve” or “reject” budgeted salaries for the department as a whole; thus, although the Board voted to reduce the salary budget for the entire fire department, ultimate distribution of that budget is delegated to the Chairman.



involve 4 commissioners voting one way and 3 commissioners voting the other. The Board's voting dynamics changed after the most recent election in 2022, during which District 6 Commissioner George Chambers decided not to run for re-election after serving 4 consecutive terms. As of January 1, 2023, the current Board of Commissioners is comprised of Chairman Michelle Morgan, District 1 Commissioner Montrell McClendon, District 2 Commissioner Clint Chance, District 3 Commissioner Tommy Lee, District 4 Commissioner Steve Fuller District 5 Commissioner Ernest Reynolds, and District 6 Commissioner Danny Bailey.

Pre-2023, split votes of 4-3 tended to occur with Chairman Morgan, Commissioner McClendon, Commissioner Fuller, and Commissioner Chambers voting together. After Commissioner Bailey took office on January 1, 2023, however, the former majority voting block became the minority, with Commissioner Bailey frequently voting alongside Commissioner Chance, Commissioner Lee, and Commissioner Reynolds.

Commissioner Reynolds is the only Commissioner the Charging Party identifies by name in her Charge as purportedly making "disparaging" remarks or "targeting women."³ Of note, Commissioner Reynolds is up for reelection in 2024, as is the new minority voting block consisting of Chairman Morgan, Commissioner McClendon, and Commissioner Lee. If Commissioner Reynolds were to lose his seat, the voting dynamics of CCBC would likely change.

B. Carroll County's Budget Process

Under Section 14 of the county charter, "[t]he chairman shall serve as budget officer for the county [and] shall submit to the board not later than the regular May meeting of each year a revenue estimate for the following year and a proposed budget governing the expenditures of all funds expected to be available to the county for the following calendar year" (*Id.*). Further, "[s]ubject to budgetary limitations and Carroll County merit system regulations, the chairman shall have **exclusive authority to . . . fix the compensation of all employees and officials of the county.**" (*Id.*) (emphasis added).

In practice, however, the Chairman generally works with the Human Resources Director to set the salaries of director- and assistant-director-level employees within the County, and delegates salary decisions for lower-level employees to individual departments. Although the Chairman is responsible for preparing the initial budget, "[t]he commission shall review the proposed budget at [a] public hearing and may adopt the same as submitted by the chairman or make such amendments thereto as the commission may deem necessary to maintain the county in sound financial condition." (*Id.*).

In other words, the CCBC does not have direct oversight over individual employee salaries under the county charter, but has the authority to approve or veto the Chairman's proposed budget

³ The Charging Party makes vague references to "another Commissioner," "one Commissioner" (*see* EEOC Charge, ¶ 6) and a "few Commissioners" (*Id.* ¶ 19) but—aside from a single reference to Commissioner Lee (*Id.* at ¶ 51)—does not reference any other commissioner by name except Commissioner Reynolds.

as a whole, which includes line items for salaries by department. Thus, the Commission may vote to amend a budget by increasing or decreasing a department's salary budget, but cannot control how the salary budget is ultimately distributed. The commission must approve a county budget "no later than June 30." (*Id.*)

C. Commissioner Reynolds's Background as a State Auditor

Because Commissioner Reynolds is singled out in the Charge for his actions as Commissioner, a brief overview of his professional experience is helpful. Prior to running for District 5 Commissioner, Reynolds had 34 years' experience working for the State of Georgia Department of Audits, including 13 years as Deputy Director of the Healthcare Audits Division. Commissioner Reynolds received his Bachelor of Science degree in Management *magna cum laude* from Gardner-Webb University and was a Certified Government Financial Manager and Certified Fraud Examiner.

Commissioner Reynolds has successfully campaigned for re-election based upon the ideals of government transparency, accountability, and budget controls. (Exhibit 2, Reynolds's Campaign Brochures). He views himself as a "government watchdog" and does not shy away from questioning government expenditures.

D. The Charging Party's Employment with Carroll County

On July 2, 2021, the Charging Party began working for Carroll County as the Solid Waste Manager. (*See* Exhibit 3, Excerpts from the Charging Party's Employee File, p.1). According to her offer letter, her starting salary was \$61,240.00, and she was not eligible for an increase after completing her 6-month introductory period. (*Id.*). As Solid Waste Manager, she stated "purpose" of her position included "managing all aspects of the Carroll County Solid Waste Department, which includes the day-to-day operations of the department, Transfer Station, Convenience Center sites and Recycling Program." (Exhibit 4, Solid Waste Manager Job Description). Her job description detailed roughly twenty "Essential Duties and Responsibilities" including:

- Manage, plan, direct, and monitor the day-to-day operations of the Transfer Station, Convenience Center sites, Recycling Program, etc.
- Supervises, directs, and evaluates assigned staff; assigns tasks, handles basic personnel concerns including general disciplinary actions and other personnel actions when necessary.
- Supervise work assignments of assigned personnel and supervise inmates in accordance with Georgia Department of Corrections policies and procedures.
- Coordinate activities of the Solid Waste Department in coordination with private sector haulers and solid waste businesses.
- Keep abreast and implement EPA and EPD regulations, continue to monitor compliance with regulations.
- Oversee and assist with the preparation of daily and monthly reports for invoicing.

- Oversee the preparation and distribution of payroll for the entire Solid Waste Department to the Human Resources Department for processing.

In this position, the Charging Party reported directly to the Director of Public Works/Solid Waste and to the Chairman. (*Id.*). Her position as Solid Waste Manager was considered at-will and was not covered by Carroll County's Civil Service. (*Id.*).

In 2022, Carroll County separated the Public Works/Solid Waste Department into two separate departments, and on July 1, 2022 the Charging Party transitioned to a new position as Director of Solid Waste. (See Exhibit 5, Director of Solid Waste Job Description). The stated "purpose" of this position was similar to the Charging Party's prior role as Solid Waste Manager, plus additional responsibilities including "[r]eviewing all tonnage reports and payments for waste and recycling to ensure accuracy and maximum financial benefit for the [CCBC]," "[c]oordinat[ing] with the Director of Public Works to keep all equipment in good repair," "[c]oordinating with Carroll County Maintenance Department to keep all facilities and compactors in good repair," and "[o]verseeing any renovations or construction projects needed at any convenience center or the transfer station/landfill property." (*Id.*). The "Essential Duties and Responsibilities" of the Director role remained largely the same, with the following additions:

- Coordinates with Human Resources and Director of Public Works to schedule holiday opening/closing schedules for the Carroll County Transfer Station.
- Coordinates with the Director of Public works to add extra equipment to Convenience Center sites to accommodate heavy activity days such as the day after Thanksgiving and the day after Christmas.
- [C]oordinating grant opportunities to increase recycling options for residents of the county and cost avoidance or cost savings to for the county.
- Coordinate with recycling facilities to ensure the maximum return for the value of any recycling collected at Carroll County Convenience Centers.

(*Id.*).

As part of her promotion from Solid Waste Manager to Director of Solid Waste, the Charging Party received a \$1/hour raise (equivalent to \$2,080/year for full-time salary employees) approved by the CCBC for all employees for fiscal year 2023. (Exhibit 6, Excerpts from the Charging Party's Employee File). Chairman Morgan also approved an additional \$21,680 raise for the Charging Party due to her promotion. According to the Chairman, this raise was intended to raise the Charging Party's salary to the range of other director-level employees.

E. Commissioner Reynolds's Objections to Suit Jackets Paid for by Carroll County Taxpayers

It is tradition for the Carroll County Chairman to purchase an item of clothing with the Carroll County logo on it for County Commissioners and department heads to wear when they are

at County events or otherwise representing the County. For example, Chairman Morgan's predecessor, former Chairman Marty Smith, purchased branded polos for County Commissioners and department heads during his term in office.

In keeping with this tradition, in November 2022 Chairman Morgan arranged to purchase County-branded suit jackets from a local menswear manufacturer at a discounted price of approximately \$130 per jacket.⁴ While the County had previously purchased shirts, vests, and athletic jackets, suit jackets were suggested by Commissioner McClendon as an option for more formal County events. Because the purchase of the suit jackets was under \$12,500, Chairman Morgan had discretion to make this purchase without additional approval from the CCBC.⁵

On November 14, 2022 CCBC Administrative Specialist Dianne Roberts emailed the Commissioners to let them know a representative from the clothing company would be at the Historic Courthouse the following Wednesday to get the Commissioners' jacket sizes. (Exhibit 7, Suit Jacket Email). Commissioner Reynolds—true to his platform as a government watchdog—objected to the use of County tax dollars to purchase the jackets. Thus, he responded to Ms. Roberts's email as follows:

Diane – Thanks for letting us know. I know Michelle wants us to get sized/measured for these sport coats and use them for group photos and meetings. . . . I can appreciate Michelle wanting us to all appear uniform in photos, etc., via ordering us all a nice sport coat with the county logo. However, there's just something about using taxpayers' money for this that I cannot support. And I have confirmed these are not free or donated. I don't need any more clothes or sport coats – and I certainly do not think taxpayers should pay for my clothes. Taxpayers have enough to support in their own, personal budgets – including buying clothes for their own families. They just should not have to pay for a sports coat for any of us. That is, in my opinion, beyond what taxpayers' money should be used for. . . .

(*Id.*).

In his reply, Reynolds acknowledged that the Chairman's office had previously purchased items of clothing for the Commissioners before, but objected to what he considered a "fairly expensive sport coat" purchased by the County. (*Id.*). Reynolds went on to lament the focus on "external, outfitted uniformity and cohesiveness" despite what he considered divisive behavior at the most recent CCBC meeting. Reynolds added, "[a]s my grandpa used to say, 'You can put lipstick on a pig, but it's still a pig.' Let's focus on upholding 'government by the people & for the

⁴ The retail price for these jackets was roughly \$350-\$375. (Exhibit 8, Chairman Morgan's 1/17/2023 Email).

⁵ According to the Chairman, however, this purchase was openly discussed without objection during the 2022 budget process.

people’ and not striking down good, open government. To go against this and simultaneously focus on dressing up to look good on the outside – just doesn’t do anyone any good.” (*Id.*).

In response to Commissioner Reynolds’s email, former Commissioner John Wilson wrote: “Ernie in my opinion you all have way bigger fish to fry . . . there’s no need to make a mountain out of a mole hill over a \$100 jacket . . . Just simply tel[I] [Chairman Morgan] I don’t want one and keep it moving.” (Exhibit 9, Suit Jacket Response).

Commissioner Wilson’s comment prompted another response from Commissioner Reynolds:

[A]s you mention, the fiscal perspective of the county chairperson’s office purchasing uniform sport coats with taxpayers’ money is ‘small fish’ and there are certainly much bigger fish to fry. However, when you get time, I try to explain below what makes this a ‘big fish’ deal from a public accountability perspective. This action wrecks of a pompous, pious, prideful, and unaccountable mindset in government. This mindset declares, ‘Take the hard-earned money of the tax-paying peasants, some of whom can barely afford or really cannot afford clothing for their own children or food for their own table – and spend it on clothing for the pious and pompous rulers.’ . . . This is such a blatant action of a ruling aristocracy – with its unmitigated peasantry mindset toward the paying masses. . . . The [State] Department of Audits had polo shirts emblazoned with department logo and some staff chose to occasionally wear these. But staff paid for these – not the taxpaying public. **We (the county BOC) are not a sorority, which some have told me this reminds them of**, where fees collected or one’s own dollars may be used for such purchases. If we are in need of such sport coats, we can pay for them ourselves – not through using the funds of taxpayers. **But – we don’t even need them and we are not a sorority or fraternity.** We are no longer in college . . .

(*Id.*) (emphasis added in bold). Commissioner Reynolds declined to accept a suit jacket purchased by the County, but the County still purchased suit jackets for the remaining Commissioners and Department Heads, including the Charging Party. (*Id.*). The Charging Party was not included or referenced in any of these email exchanges, nor did Commissioner Reynolds prevent her from receiving a suit jacket.

F. **Public Works Requests Authorization to Purchase New Excavator During February 7, 2023 Commission Meeting**

On February 7, 2023, the CCBC met for a regularly scheduled commission meeting.

(Exhibit 10, 02/07/2023 Meeting Minutes). The Director of Public Works (formerly the Director of Public Works/Solid Waste) Danny Yates appeared before the CCBC to request authority to purchase an excavator. (Exhibit 11, Recording of 02/07/2023 Meeting at 16:45). Mr. Yates began by saying that on December 21, 2022, an excavator caught fire in the engine compartment and created significant damage. (*Id.*). According to Mr. Yates, he investigated the cost of repairing the excavator but, after conversations with both the Chairman and Ms. Searcy, determined that the cost of repair “was not fiscally sound.” (*Id.*). Thus, Mr. Yates said the Public Works Department had solicited “RFPs” or requests for proposals from various tractor suppliers and, after reviewing those requests, was seeking permission to purchase a replacement excavator for \$201,318.00. (*Id.*).

There was some discussion amongst the CCBC regarding the excavator warranties and the specifications for the RFPs. Commissioner Reynolds then addressed Mr. Yates as follows:

Commissioner Reynolds: “And the reason we are—in a full mode of transparency and accountability to the public—I don’t like to, as I shared with all of my other commissioners, throw money at new equipment. So I would like to fully disclose that this was not being operated by a Public Works staff and this piece of equipment had not had over heating problems prior to this.”

Mr. Yates: “That’s correct, yes sir.”

Commissioner Reynolds: “And that it was being operated at a location that the landfill or solid waste, in a location where they had been told not to operate or not to put it in that area.”

Mr. Yates: “Yes sir I’d asked them to keep it there at the packing station where they could use it to pack the trailer.”

Commissioner Reynolds: “And having then operated it in an area where they were told not to, subsequently, somehow, trash, paper, whatever, got in an area, and congested the normal air flow, and therefore it overheated?”

Mr. Yates: “We don’t exactly know what happened whether it was an engine overheat or trash started the fire on the top of the engine . . . when I got there the fire department already had it put out and all the damage was done. I can’t tell you 100% what caused the fire.”

Commissioner Reynolds: “The overarching thought here is that I guess as a . . . in the vein of being frugal, and I know Public Works and under Charles’s great leadership . . . and yours as well Danny, I know you are frugal and have been for decades, and you operate and



have spare equipment and make equipment last as long as possible and that is greatly appreciated and the taxpayers greatly appreciate that, and when we have a two-hundred to three-hundred dollar replacement piece of equipment, I would just like to say that the County should not throw money at negligent operations and I would like to encourage the department where this tractor was being operated to operate then such equipment [properly], or encourage you to not feel obligated to let them operate, but instead to operate it with your own staff who do take care of equipment so we're not throwing money at two-hundred or three-hundred thousand dollars a clip. I mean, equipment is expensive and we shouldn't just say, hey let's go out and spend another \$200,000 and we've got the money, this one happened to burn up, what will happen next week? So, I want us to operate like y'all have been operating at Public Works, and where we are kind enough to loan out equipment, I think it's fair to say to take great pause and deliberation before you hand it over to someone else if they are not going to adhere to how the equipment should be operated. We don't want to waste money like this. Thank you.

There was no further discussion, and the CCBC voted unanimously to approve Public Works request to purchase the excavator.

G. CCBC Discussions Regarding the Carroll County Budget and Employee Salaries

Each year, the CCBC has historically discussed and approved across-the-board salary increases for all county employees. In 2022, for instance, the CCBC approved a budget providing for \$1/hour raises for all county employees (or \$2,080 annually for full-time salary employees) for fiscal year 2023 ("FY 2023"), which began July 1, 2022 and ended June 30, 2023.

Some commissioners, including Commissioners Chance and Reynolds, have advocated for a merit-based compensation scheme for the county. Commissioner Reynolds, in particular, favors a more merit-based approach such as the personnel evaluation system used by his former employer, the Georgia State Auditor's Office. Commissioner Reynolds strongly believes a merit-based system rewards and encourages high performers in public service.

In preparation for discussions regarding salary increases for FY 2024, Commissioner Reynolds asked Human Resources Director Anne Lee to provide the salaries for the top two or three highest ranked positions in each county department as of the end of FY 2022 and the beginning of FY 2023 to evaluate the salary increases awarded during FY 2023. True to his campaign promises of "transparency, accountability, and budget controls," Reynolds sought to determine whether any high-ranking employees received a higher raise than others.

On February 17, 2023, Chairman Morgan emailed the information requested by Commissioner Reynolds to each of the Commissioners. (Exhibit 12, 2/17/2023 Email). She also provided a detailed explanation of each employee who received a raise of more than \$1/hour (or \$2,080 annual raise) for additional context. (*Id.*). Of note, a slight majority (approximately 63%) of the 51 employees on the list are female. (*Id.*). Further, of the 20 employees who received a raise greater than the \$1/hour (or \$2,080.00) expressly approved by the CCBC, roughly the same percentage (approximately 60%) are female. Finally, as shown in the table below, of the 10 employees who received a 10% or greater salary increase, 6 (or 60%) are female.

Employee Name	Job Title	Increase	Gender	Rationale
Danny Yates	Public Works Director	\$30,760.00 (50%)	Male	Additional money was given 07/01/2022, Charles Pope announced retirement and Mr. Yates took on additional responsibilities, promoted to Director of Public Works
Jacqueline Dost	Solid Waste Director	\$23,760.00 (39%)	Female	Promotion from Manager to Director, Department became its own entity, effective 07/01/2022, approved by BOC during budget
Felicia Rowland	E911 Director	\$18,920.00 (39%)	Female	Promoted to Training Coordinator on 07/01/22, Approved by BOC during budget, Promoted to E911 Interim Director on 01/27/2023 replacing Clay Patterson
Dianne Roberts	Administrative Specialist	\$12,000.82 (27%)	Female	Promoted to Deputy Clerk, replaced by Kristy McAdams, approved by BOC during budget
Derrick Rainwater	Deputy Warden	\$12,412.40 (24%)	Male	Promoted to Deputy Warden, replaced Otis Wilson
Brittney Jenkins ⁶	Program Case Manager, Drug Court	\$8,747.94 (21%)	Female	Given additional responsibilities and Troup County will reimburse county
Ashley Hulsey	Communications Director	\$10,400.20 (16%)	Female	Approved by BOC during budget
Willis Parson	IT Director	\$11,120.00 (15%)	Male	Promoted from Manager to Department Head, salary was approved by BOC during budget
Christy Owens	Animal Services Director	\$7,800.00 (12%)	Female	Approved by BOC during budget
Robert Hunnicutt ⁷	Assistant Solicitor	\$5,096.08 (10%)	Male	Solicitor General requested and was approved by BOC during budget

H. Commissioner Reynolds Responds to Citizen Complaints

On February 17, 2023, a citizen emailed Commissioner Reynolds with various concerns about the County's plans to build a new Administrative Building, County personnel, and general operations. (Exhibit 13, Citizen Email 02/17/2023). Among other things, the citizen noted he had

⁶ Ms. Jenkins does not report to the Chairman, and the Chairman does not set her salary. Instead, Ms. Jenkins reports directly to Superior Court Judge Dustin Hightower.

⁷ Mr. Hunnicutt likewise does not report to the Chairman, and the Chairman does not set his salary. Instead, he reports directly to Superior Court Judge John Simpson.

requested a report from the county clerk, but she had “never heard of” the report. The citizen complained: “She [the clerk] seems nice but her bio doesn’t really make me feel that she is qualified to be county clerk. Some commissioner’s friend?” (*Id.*).⁸ The citizen went on to ask, “What does the new director of communication do? She does not seem to communicate important info to the voters. The website seems no better than before she was hired.” (*Id.*).

In response, Commissioner Reynolds noted that the current clerk “is a nice person – but a good friend of [Chairman Morgan’s] and a direct hire by [the Chairman].” (*Id.*). Reynolds praised the former county clerk, Ms. Donna Armstrong-Lackey (female), who he noted was a “very astute and recognized icon in regional planning & development and local government issues,” and a “terrific person [with] very widely-recognized roles with the Area Planning & Development Commission, the University of West Georgia, etc.” (*Id.*). According to Reynolds, he believed Ms. Armstrong-Lackey resigned her position due to a personality conflict with the Chairman.⁹ Regarding the Communications Director position, Reynolds noted that Ms. Hulsey “is a friend of [the Chairman’s] and [the Chairman] takes care of her – giving her a 16%+ raise a few months ago (amounting to \$12,000),¹⁰ when the BOC only approved a raise for all county employees of \$1/hour (one dollar per hour – or \$2,080).” (*Id.*). Reynolds added he was “finding plenty of that kind of thing going on via Michelle – and this will soon be brought to light. But it won’t be brought to light by her Communications Director!!” (*Id.*).

In his response email, Commissioner Reynolds also detailed a separate incident involving the Charging Party:

A couple months ago, Michelle's friend [the Charging Party], who Michelle promoted to be Director of Solid Waste (the landfill and all the public convenience centers), requested that the Public Works Department bring one of their excavators out to the landfill for moving some landfill debris... Public Works accommodated [the Charging Party] and told her not to use this excavator in a certain location where paper and easily-blown materials were located. Well - this directive was not adhered to - and [the Charging Party] allowed it to be used by her staff in this location where she had been told NOT to use it. As a consequence, trash and papers... got blown into the engine compartment of the excavator and the engine ran hot and actually caught on fire. The fire department was called, but the excavator was ruined beyond repair!! So - in the next BOC meeting, everyone smiled and listened to the bids for the cost of buying a new

⁸ In fact, County Clerk Lynda Bingham was recommended for her position by the HR Director for the City of Carrollton, and interviewed by Chairman Morgan, Commissioner Chance, and Commissioner Mclendon, none of whom had a prior relationship or friendship with Ms. Bingham at the time of her hire. Thus, the suggestion that the County Clerks’ hire was based on favoritism or nepotism is incorrect.

⁹ Chairman Morgan denies that Ms. Armstrong-Lackey’s departure was attributable to any “personality conflict.”

¹⁰ Ms. Hulsey actually received a \$10,400.20 raise (including the \$2,080 raise expressly authorized by the CCBC), representing a 16% increase.

excavator for Public Works to replace this burnt-up one. The cost was over \$200,000! [The Chairman] said not 1 word about what had happened. That is when I fully disclosed what had happened and said \$200,000 of the taxpayers' money had just been wasted - and further told Public Works that they should not accommodate [the Charging Party] in the future, but to ensure that such equipment is only operated by Public Works staff. Furthermore – [the Chairman's] Communication Director refuted this in the Times Georgian!!

(*Id.*). Commissioner Reynolds was referring to the County's statement in the Times Georgian where Ms. Hulse, on behalf of the County, explained that the 20-year-old excavator in question had been "running hot" prior to the Solid Waste's use of the excavator, and that the service foreman at Public Works expressly approved running the excavator "as long as the fluids were at full level, which they were." (Exhibit 14, Times Georgian Article).

I. The Commissioner's Office Provides Salary Comparisons for County Employees

On February 27, 2023, Finance Director Alecia Searcy emailed the Board additional documentation requested during the budget meeting, including a comparison of the County's proposed FY 2024 salaries by job title to salaries for the same job title in nearby counties. (Exhibit 15, Searcy 2/27/2023 Email). The comparison showed that many of the County's salaries were much lower than the other counties listed. For example, the Carroll County Deputy Clerk's salary was \$56,180, whereas the same position in Fayette County (which has a near-identical population) was \$79,500.¹¹

J. The April 11, 2023 Carroll County Commissioners Meeting

During a regularly scheduled commission meeting on April 11, 2023, Interim E911 Director Felicia Rowland (female) requested spending authority of up to \$60,000 to purchase a training vehicle for E911 telecommunicators to use for travel to and from training, deployment, and in the case of inclement weather. (Exhibit 16, 04/11/2023 CCBC Meeting Minutes; Exhibit 17, Recording of 04/11/2023 Meeting at 43:45). Commissioner Chance was the first to speak, and said he believed the County could find an appropriate vehicle for something substantially less than \$60,000.

Commissioner Reynolds then asked Ms. Rowland how, specifically, the vehicle would be used, and Ms. Rowland responded that E911 employees are expected to complete 24 hours of

¹¹ Dianne Roberts, Administrative Specialist, absorbed the Deputy Clerk position after the former Deputy Clerk resigned to accept another job. The Chairman did not back-fill the Administrative Specialist role, thereby reducing the total number of employees in the Commissioner's Office. The salary listed here (\$56,180) is from FY 2023, after Ms. Roberts received the 27% raise identified in the data shared by the Chairman on February 17, 2023. In other words, after receiving a 27% raise, Ms. Roberts' position was still paid 29% less than a corresponding position in nearby Fayette County.

training per year, so “the vehicle would definitely be used.” (*Id.*). Commissioner Reynolds said that he felt he did not “have the full picture,” and added he did not want to set a precedent of buying each department a designated vehicle for employees to drive to training. Ms. Rowland then explained that the vehicle her department currently was using was approximately 14-15 years old and that the check engine light was on.

The Chairman also added that the E911 department had not purchased a new vehicle in approximately 20 years, and that other departments already had vehicles they could use. (*Id.*). During the discussion, Commissioner Lee noted that when commissioners attended trainings, they used their own vehicles and were reimbursed for mileage. When Commissioner Reynolds asked Ms. Rowland her opinion on employees using their own vehicles, she noted that many of the E911 employees did not have reliable transportation to use for traveling the longer distances to training. (*Id.*). During Commissioner Reynolds’s exchange with Ms. Rowland, neither party raised their voice or was otherwise rude or unprofessional to the other. (*Id.*).

Commissioner Fuller then clarified with Ms. Rowland that she was merely seeking to replace the 14- or 15-year-old Ford Crown Victoria that E911 was currently using, which had approximately 248,000 miles on it. With this clarification, Commissioner Chance moved to approve the purchase up to \$60,000, with the understanding that the department would, in good faith, seek to obtain an appropriate vehicle for less than the authorized amount. (*Id.*).¹² Again, the CCBC—including Commissioner Reynolds—*unanimously* voted to approve Ms. Rowland’s request.

The next item discussed was Ms. Rowland’s request to purchase a commercial HVAC unit and warranty for a unit that had recently quit working at the E911 department’s facilities. During this discussion, Commissioner Chance asked Ms. Rowland whether the replacement would be covered by insurance, but Ms. Rowland was unsure. Ms. Searcy stepped in to respond that the HVAC unit likely was covered by insurance but that the deductible was so high it likely did not make sense to file a claim for the unit. Commissioner Reynolds did not ask any questions. Ms. Rowland’s request again was approved *unanimously*.

K. The Commissioner’s Office Provides Additional Information on Employee Salaries

Later, on April 17, 2023, at Commissioner Reynolds’s request, Chairman Morgan shared a salary comparison for all Carroll County employees between FY 2022 and FY 2023.¹³ The Chairman invited each of the commissioners to contact her directly if they had any questions about employee salaries.

¹² E-911 was ultimately able to purchase the vehicle needed for roughly \$45,000, which was substantially less than the \$60,000 authorized by the CCBC.

¹³ Individual employee salary comparison data is generally not prepared or presented to the CCBC; thus, unless the chairman specifically discloses this information or a commissioner specifically requests it, the commission does not know exactly which individuals are to receive salary increases. Commissioner Reynolds did not request, and thus the Commissioner’s office did not provide, salary information for the Sheriff’s office.

In addition to these emails, the CCBC had multiple work sessions specifically designated to discussing the FY 2024 budget, including on April 19, 2023. (Exhibit 18, 04/19/2023 Budget Work Session Minutes). On April 27, 2023, Finance Director Alecia Searcy emailed the Commission several documents requested during the April 19 budget work session, including a draft budget by line item and the salary comparisons previously provided on February 27, 2023. (Exhibit 10, 02/27/2023 Searcy Email). Finally, on May 4, 2023 Ms. Searcy distributed a list of salaries for fire department personnel for other local municipalities for the CCBC's consideration. (Exhibit 19, 05/04/2023 Searcy Email). Ms. Searcy noted this was the last piece of information she would distribute in advance of the next budget meeting scheduled for May 10, 2023. (*Id.*; see also Exhibit 20, Budget Work Session Minutes 05/10/2023).

L. Commissioner Reynolds Moves to Delay Vote on FY 2024 Budget

On June 6, 2023, at a regularly-scheduled CCBC meeting, Commissioner Reynolds moved to postpone the adoption of the FY 2024 budget for one week. (Exhibit 21, Recording of the 06/06/2023 Meeting at 39:00). Commissioner Reynolds said he “totally support[ed]” giving raises to county employees, but there were “three issues” on which he believed the CCBC needed additional information: (1) the cost of moving the county’s administrative offices; (2) accommodations for the U.S. Department of Agriculture, who formerly leased space in the county’s administrative offices;¹⁴ and (3) what Commissioner Reynolds referred to as “inequities in salary increases” that allegedly occurred during the FY 2023 budget “that were caused by the Chairman’s independent actions outside of the Board’s knowledge that advantaged a select few – a handful or less of county employees – and thereby disadvantaged the remaining 600 employees.” Reynolds added that “by advantaging a few select [employees] in her office, the Chairman single-handedly disadvantaged and took the opportunity away from 600 employees.” Reynolds specified that there were three raises that gave him “angst” for “\$10,000, \$12,000, and \$24,000, equating to 16%, 27%, and nearly 39%,” allegedly given to individuals in the Chairman’s office.

Although Commissioner Reynolds did not identify the individuals who received these raises or otherwise explain why he felt the raises were “inequitable,” a review of the data provided by the Chairman (as shown in the chart above) indicates he was referring to Communications Director Ashley Hulsey (female), Administrative Specialist Dianne Roberts (female), and the Charging Party (female).¹⁵

Commissioner Reynolds did not reference or otherwise allude to Assistant Solicitor Robert Hunnicutt (male), Animal Services Director Christy Owens (female), IT Director Willis Parson (male), Drug Court Program Case Manager Brittney Jenkins (female), Deputy Warden Derrick

¹⁴ Specifically, Commissioner Reynolds noted that he disagreed with the Chairman’s prior decision not to include the USDA in the county’s relocation plans.

¹⁵ Although Commissioner Reynolds referred to these employees as “individuals in the Chairman’s office,” the Charging Party (despite reporting directly to the Chairman, as do all department heads) does not physically work in the Chairman’s office or even building.

Rainwater (male), E911 Director Felicia Rowland (female), or Public Works Director Danny Yates (male), who received similar raises. In Commissioner Reynolds's view, Ms. Rowland's, Mr. Rainwater's, and Mr. Yates' raises were warranted because they each received promotions and took on additional responsibilities, while receiving the same salaries as their predecessors. Similarly, Mr. Parson was also promoted and accepted additional responsibilities. Ms. Jenkins's raise was of less significance because a portion of her salary would be reimbursed by a neighboring county. Finally, Mr. Parson, Ms. Owens and Mr. Hunnicutt received lower percentage raises (15%, 12% and 10%, respectively) and were also not referenced.

The remaining individuals who received a 10% or greater raise—the Charging Party, Ms. Roberts, and Ms. Hulsey—were individuals whom Commissioner Reynolds perceived as being shown favoritism by the Chairman, though this perception is hotly disputed amongst the Commission as a whole.

Commissioner Reynolds specifically questioned the Charging Party's 38.8% raise in particular because, based upon his review of her former job description as Solid Waste Manager compared to her new job description as Director of Solid Waste, he felt that her job duties and essential functions largely remained the same. (*Compare* Exhibit 4, Solid Waste Manager Job Description with Exhibit 5, Director of Solid Waste Job Description). In other words, Commissioner Reynolds questioned why merely “spinning off” the Solid Waste Department from the former combined Public Works/Solid Waste Department warranted such a hefty pay raise. Similarly, Ms. Hulsey's 16% raise was based upon a “re-evaluation” of her job duties, as opposed to increased job responsibilities. Finally, with regards to Ms. Roberts's 27% raise, Commissioner Reynolds was operating under the assumption that her job responsibilities likewise did not change when she absorbed the Deputy Clerk position.¹⁶

During the June 6, 2023 meeting, Commissioner Reynolds also said that Human Resources told him “this type of thing did not happen in other departments” and that other department heads did not hand out special raises. Given what Commissioner Reynolds viewed as “favoritism” during the FY 2023 budget, he requested additional time to review the FY 2024 budget so he could identify any other perceived “favoritism” before the CCBC voted.

Although there was no further substantive discussion regarding Commissioner Reynolds's comments, several commissioners disagreed with his expressed opinion that the raises approved by the Chairman were “inequitable.” The Chairman's office had previously distributed salary comparisons indicating that County employees were largely paid less than employees with similar job titles in neighboring municipalities on multiple occasions, and the Chairman (and some other commissioners) disputed that her attempts to bring Carroll County salaries up to market rate to help prevent employee turnover were somehow “inequitable” or unfair. Some commissioners also

¹⁶ Until mid-June 2023, Ms. Roberts's email signature continued to identify her as an “Administrative Specialist.” Similarly, although the pay data produced by the Chairman on February 17, 2023 indicated her pay raise was due to her promotion to Deputy Clerk, the data otherwise continued to identify Ms. Roberts's job title as “Administrative Specialist.”

felt that Reynolds’s decision to bring up the salary increases right before the vote on the FY 2024 budget—after months of budget meetings—was mere political posturing.

Regardless of the commissioners’ individual opinions, however, Commissioner Chance seconded Reynolds’s motion to postpone the vote on the FY 2024 budget, and the motion passed 5-1.¹⁷

M. The June 13, 2023 Budget Vote

The CCBC then scheduled a special meeting the following week for June 13, 2023. (Exhibit 22, 06/13/2023 Agenda). The Charging Party was not present at this meeting. Chairman Morgan opened the meeting by requesting a motion and a second to begin discussion of the FY 2024 budget. (Exhibit 23, Recording of 06/13/2023 Special Meeting). Commissioner Reynolds immediately moved to approve the FY 2024 budget with two revisions: first, the addition of a clause stating that “the full Board of Commissioners shall be notified and approve or disapprove of any wage or salary increase [excluding constitutional officers] at or above a certain percentage,” which Reynolds suggested should be set at 10%, and second, that a salary line item in the Chairman’s budget providing for a \$15,000 raise to a male employee be reduced by \$7,500.¹⁸

After Commissioner Chance seconded Commissioner Reynolds’s motion, Chairman Morgan called upon the county attorney, Avery Jackson, to provide the county’s legal opinion regarding Reynolds’s requested additions. Mr. Jackson noted that the county charter vests the Chairman with the exclusive authority to appoint, remove, and fix the compensation of all employees and officials of the county. Commissioner Chance then asked Mr. Jackson whether, if the Chairman decided to give a particular employee a raise, the Board had the authority to approve or disapprove a specific raise. Mr. Jackson explained that the Board had the authority to reduce specific lines in the county budget, but did not have the authority to approve or disapprove a specific employee’s salary pursuant to the county charter.

Commissioner Fuller commented that the requested clause requiring Board approval or disapproval of employee raises seemed to put the Board in the day-to-day operations of the County, which was outside the Board’s function under the charter. Commissioner Reynolds disagreed, adding:

It is unfortunate that we are at this point, but this is an effort to set a proper—as the leadership term is used—“tone at the top,” and with the “tone at the top” now showing some blatant favoritism and inequities to a handful of employees, I feel that it is necessary by

¹⁷ Chairman Morgan opposed, and Commissioner McClendon was absent from the June 6, 2023 meeting and therefore did not vote.

¹⁸ Commissioner Reynolds did not initially identify whom this raise was intended for, but further discussion by the commissioners revealed the initial \$15,000 raise requested by the Chairman was for the Lieutenant Fire Chief, David Wade (male), which Reynolds moved to reduce to only \$7,500.

some mechanism to ensure that all six [or] seven hundred county employees are equitably favored and given the same chance, and the “tone at the top” should be one that nullifies favoritism and that promotes total equity and total fairness and total advancement of all employees. I—I want to be fair to all and we need something that ensures that the board can accomplish that.

(*Id.*). Commissioner Reynolds noted that the Chairman’s exclusive authority pursuant to the county charter to set employee compensation was expressly “subject to budgetary limitations.” (Exhibit 1, Excerpts from the County Charter). Thus, he posited that his suggested amendment to the budget was in accordance with the county charter. According to Reynolds, “the only thing we’re attempting to do here is to ensure that 38% and 20% and 27% whatever raises are not given to the handful of employees, while the others have to be satisfied with 1%. And I think the Board in full should have an opportunity to ensure that.” (Exhibit 23, Recording of 06/13/2023 Special Meeting). Reynolds added that his resolution “simply provides for equity and yet gives the Chairman a lot of flexibility” with salary decisions. He also invited discussion regarding the percentage threshold that should trigger the Board’s approval or disapproval, and said he was “just trying to ensure the fairness to all six or seven hundred employees.”

Commissioner Fuller then addressed Commissioner Reynolds, and noted that Reynolds had addressed this issue with him about two to three weeks ago. Fuller asked Reynolds if he had likewise spoken to the Chairman about his concerns. Reynolds replied that the information he referenced “came directly from the Chairman” a few months ago. Commissioner Fuller then pointed out that at least two of the raises Reynolds referenced were due to the employees’ promotion to a department head position, and other raises were the result of the employees’ obtaining additional qualifications for the position they were holding. Commissioner Fuller said he had investigated each of the raises on the Chairman’s list and received a plausible explanation for each one. “So,” Fuller added, “I’m not sure where we’re going here.” Commissioner Reynolds responded:

The—the raises are 16% for no additional duty, 27% for—I don’t want to name names here, so I don’t want to get too specific—27% for a very minor additional responsibility and 38.8% [for] going from manager where the person was doing the same thing. And I have those two job descriptions and we can talk for hours about the details of the 28% raise, [I mean] 38.8% raise going from manager to director or simply a title change rather than a responsibility change meanwhile . . .

(*Id.*). Commissioner Fuller interrupted Reynolds to clarify that he knew who Reynolds was referring to (i.e., the Charging Party, who was promoted from Solid Waste Manager to Director of Solid Waste), and pointed out that as a manager, the Charging Party’s former position reported to someone else, whereas as a director, she was fully responsible for her department. Reynolds

likewise interrupted: “Okay, so you’re fine with 38%. Are you also fine with someone else being promoted to a deputy or that type of position and only getting 5%?” Fuller responded that he was, because he had investigated the raises and knew the reasoning behind it. Reynolds continued: “What I’m saying is that there is that there is inequity. I simply want to address the inequity and ensure that favoritism is not flourishing, but equity is flourishing and there’s proper ‘tone at the top.’” (*Id.*).

There was further discussion of the raises, with Commissioner Chance adding that what he had a problem with was the idea that the CCBC was “approving” individual raises outside of the \$1 or \$2 per hour when in fact, the CCBC only had the authority to approve the budget as a whole. At this point, Chairman Morgan addressed the commissioners, noting that “last year during the budget process, I brought to you the salaries that were going to be changed, same as I did this year. You remember on the very first day the finance director hands you a piece of paper [with the salaries].” The Chairman then addressed Reynolds and said she would like to go over the specific raises he referenced because she believed he had a misunderstanding of the percentages. The Chairman noted that all of this information was subject to the Georgia Open Records Act, and asked Reynolds to identify the three individuals he was referring to.

Commissioner Reynolds did not identify the three employees whose salary increases were at issue; instead, he conceded that the Chairman did provide the proposed salary increase for the Deputy Fire Chief for FY 2024, but denied that the Chairman had provided information related to individual salary increases for FY 2023. Reynolds added:

You know for years, Chairman, that I have sat in work sessions and in meeting after meeting and all of our retreats and so on—all of our retreats in fact—and brought up to the point of embarrassment that I am for getting data-driven budgets and seeing how much employees make in other contiguous counties and bringing our employees up to those levels, and for rewarding top performers and for providing extra incentives and for retaining and maintaining our employees and . . . you are the one who has stuck for only getting a dollar an hour increase across the board because everyone is underpaid, which I understand. So when I see then in real life what happens is not the dollar an hour that you stick up for publicly but the substantial more—I don’t know what the figure is per hour, but 38%, 27%, 16-17%, [it’s] more than a dollar an hour that could possibly be [provided] for all the other employees. That sort of tears at my heartstrings. If I was one of the other employees, I would not feel well right now knowing that some employees can [be] selectively handpicked to get these higher, much higher raises were not available to me.

(*Id.*). In conclusion, Reynolds asked: “What is the process going to be that gives the same

opportunity in an equitable fashion to all six- or seven-hundred county employees?” The Chairman returned to her initial question: “Would you please tell me who the three are that you continually discuss?” Reynolds again refused to identify specific employees, but noted the Chairman had already provided that information via email. Reynolds added that one person received a \$10,400 raise that the Chairman said the Board had approved during budget meetings, but that had “not happened.” Chairman Morgan responded that Reynolds was referring to the Communications Director, and that the CCBC had discussed “during several work sessions . . . that she was not at market value” and was performing multiple roles in her current capacity. Thus, according to the Chairman, the CCBC had discussed “that [Ms. Hulsey] needed to be paid on a higher dollar amount to meet what other communications directors [were] making.”

There was some additional back and forth between the Chairman and Commissioner Reynolds. Reynolds claimed the CCBC was unaware of specific raises for FY 2023, and the Chairman insisted that this information was presented to and approved by the CCBC. Commissioner Reynolds ultimately asked the commissioners whether they recalled that the Communications Director was going to get a \$10,400 raise, that the Administrative Specialist was going to get a \$12,000 raise, and that the Director of Solid Waste was going to get a 38.8% raise, but he did not receive a response. Commissioner Reynolds did not reference any other employee salaries or percentages. In support of the raises, the Chairman noted that the Administrative Specialist was promoted to Deputy Clerk and received the same salary as the prior Deputy Clerk, and that because she did not backfill the Administrative Specialist position as well as two additional positions, the Commissioner’s office had reduced its headcount from five employees to two. The Chairman also reiterated that the Director of Solid Waste received a raise because of her promotion to a director-level position, and that her new salary was in line with other director-level employees.

There was no further discussion of individual employee salaries. No one mentioned the Charging Party by name; nor did anyone discuss the Charging Party’s qualifications, performance, or value to the County. Instead, the conversation focused on the commissioners’ involvement (or lack thereof) in setting individual employee salaries and what process, if any, should apply to individualized raises. Commissioner McClendon asked why the CCBC would require an approval process for raises approved by the Chairman’s office, but not raises approved by constitutional officers such as the county sheriff, to which Commissioner Lee responded that constitutional officers “don’t answer to the Board.”

Ultimately, Commissioner Reynolds amended his motion to approve the FY 2024 budget subject to the Chairman agreeing to notify the CCBC via email of any raise exceeding 10% and that the Assistant Fire Chief’s proposed raise be reduced from \$15,000 to \$7,500. Chairman Morgan specifically asked Commissioner Reynolds why he wanted to reduce the Assistant Fire Chief’s proposed raise for FY 2024, and Reynolds responded, “For equity at that level.” After Commissioner Chance asked whether other assistant department heads would also receive a \$15,000 raise, the Chairman explained that the Assistant Fire Chief’s raise was intended to put his salary in line with other assistant department heads and other assistant fire chiefs in neighboring

counties. The Chairman added that he “could easily leave and go somewhere else for better pay, so this was [an effort] to keep someone employed with us.” Commissioner Chance responded that he thought the assistant fire chief was doing an “outstanding job,” and that the proposed \$7,500 raise was definitely a step forward to obtaining the Chairman’s goal. Commissioner Reynolds’s amended motion to approve the FY 2024 budget passed, with Commissioners Bailey, Reynolds, Lee, and Chance voting in favor and the Chairman, Commissioner Fuller, and Commissioner McClendon opposed.

The CCBC then moved on to amendments to the FY 2023 budget. During this portion of the meeting, Commissioner Reynolds praised Ms. Searcy (the Finance Director) and Commissioner Chance for their work coming up with cost estimates to inform the CCBC’s discussions. After discussion, the CCBC voted unanimously to approve the FY 2023 budget as amended.

N. The Charging Party Emails HR To Complain About Commissioner Reynolds’ Comments During FY2024 Budget Discussions

On July 6, 2023, the Charging Party emailed HR Director Anne Lee, Commissioner Reynolds, and county attorney Avery Jackson¹⁹ to complain about Commissioner Reynolds’ public comments during the June 6 and June 14 commission meetings. (Exhibit 24, Charging Party’s 07/06/2023 email). Specifically, the Charging Party alleged that “Commissioner Reynolds specifically called [her] out as one of the Commission Chair’s ‘favorites’ and erroneously claimed that [she] had received a 38 percent salary increase in the proposed budget for FY24.” (*Id.*). The Charging Party claimed that Commissioner Reynolds had “repeated these false claims” during a recent radio interview, and that “[t]hese are just the most recent instances when Commissioner Reynolds ha[d] publicly singled [her] out.” (*Id.*). According to the Charging Party, previous examples of Commissioner Reynolds singling her out included (1) putting her on the spot during a commission meeting by asking her a question she was not prepared for; and (2) holding her responsible “for a decision that was made by a supervisor at Public Works.” (*Id.*). The Charging Party concluded that she “personally fe[lt] discriminated against on the basis of [her] gender by Commissioner Reynolds.” (*Id.*).

The Charging Party’s email largely mirrored allegations made by Communications Director Ashley Hulsey in an earlier email to Ms. Lee, Commissioner Reynolds, Chairman Morgan, and Mr. Jackson the same day. (Exhibit 25, Hulsey 07/06/2023 email).

Upon receipt of these complaints, Ms. Lee attempted to contact both the Charging Party and Ms. Hulsey via phone, but received no response. On July 10, 2023, Mr. Jackson spoke with Ms. Hulsey over the phone. During this conversation, Ms. Hulsey notified Mr. Jackson that both she and the Charging Party were represented by legal counsel. Accordingly, Mr. Jackson subsequently contacted the Charging Party’s counsel to provide information regarding the

¹⁹ The Charging Party did not include the other county attorney, Stacey Blackman (female), in her email.



County's Civil Service grievance policy. (Exhibit 26, Jackson 7/20/2023 Email).

O. The CCBC Approves the Charging Party's Request New Equipment

On September 28, 2023, the CCBC met for a regularly scheduled work session. (Exhibit 27, 09/28/2023 Work Session Agenda). During the work session, the Charging Party appeared before the CCBC to request authorization to purchase new equipment for the Solid Waste Department. (Exhibit 28, Recording of the 09/28/2023 Meeting). The Charging Party began by explaining that the old excavator that Solid Waste used at the transfer station to pack trash trailers had "broken down once again," and that "due to the importance of this piece of equipment," she had met with Ms. Searcy and released an RFP in August to obtain bids. The Charging Party clarified that "[t]his item was not included in the budget for FY 2024 since there was a great deal of turmoil with the Board during the budget process. I had just completed a grueling medical treatment and did not feel that I had the strength to subject myself to a grueling inquisition at that time." The Charging Party then reviewed each of the bids Solid Waste had received and explained the department's rationale for its selection.

After the Charging Party had finished presenting, Commissioner Chance began the CCBC's discussion by asking a few questions about the warranty, which the Charging Party answered. Commissioner Reynolds then spoke up, saying he had "no problem" with the Charging Party's purchase request, that the equipment was "needed," and her "selection [was] good." Commissioner Reynolds noted, however, that he first heard of this purchase request no later than three weeks after the new fiscal year, and that for purposes of "budget integrity," Solid Waste or perhaps the Finance Director or Chairman should give the CCBC a heads up about major upcoming purchases. (*Id.*). The Charging Party clarified that "the excavator was running at the time the budget was passed." After further discussion, Commissioner Fuller asked whether anything was salvageable on the old excavator, prompting a laugh from the Charging Party, who confirmed that there was likely nothing salvageable due to the equipment's age. As the Charging Party described the excavator's deteriorated state, Commissioner Lee asked, "It's not the one that burned up, right?" and the Chairman responded that it was not.

The CCBC voted unanimously to approve the Charging Party's purchase request at the next regularly scheduled commissioners meeting on October 3, 2023.

III. ARGUMENT AND CITATION OF LEGAL AUTHORITY

The Charging Party alleges the CCBC has subjected her to discrimination and a hostile work environment based on her sex and in retaliation for engaging in protected activity. As outlined below, the Charging Party's claims are factually and legally deficient, and this frivolous charge should be dismissed with a finding of "no cause."

A. The Charging Party Cannot Establish a *Prima Facie* Case of Sex Discrimination

Where, as here, a claimant lacks direct evidence of discrimination,²⁰ her claim for sex discrimination is analyzed using the familiar burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under *McDonnell Douglas*, the Charging Party bears the initial burden of establishing a *prima facie* case of discrimination. *Id.* at 802-804. If she is able to do this, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for its actions. *Id.* Once the employer satisfies this intermediate burden, it is entitled to a determination in its favor unless the Charging Party produces sufficient evidence demonstrating that each of the employer's articulated reasons are false and are mere pretexts for unlawful discrimination. *Id.* The ultimate burden of persuading the trier of fact that the employer intentionally discriminated against her remains, at all times, on the Charging Party. *See Jones v. Bessemer Carraway Med. Ctr.*, 137 F.3d 1306, 1310 (11th Cir. 1998).

Title VII makes it unlawful for an employer to “discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex.” 42 U.S.C. § 2000e-2(a)(1). “To establish a *prima facie* case of disparate treatment in an employment discrimination case, the plaintiff must show that (1) she is a member of a protected class; (2) she was subjected to an adverse employment action; (3) her employer treated similarly situated employees outside of her protected class more favorably than she was treated; and (4) she was qualified to do the job.” *Gooden v. Internal Revenue Serv.*, 679 F. App'x 958, 964 (11th Cir. 2017) (internal citation omitted). “To prevail on a disparate treatment claim, a Title VII plaintiff must demonstrate that an employer intentionally discriminated against her on the basis of a protected characteristic.” *EEOC v. Catastrophe Mgmt. Solutions*, 852 F.3d 1018, 1024 (11th Cir. 2016).

1. *Carroll County did not subject the Charging Party to any adverse action*

In order to establish the second prong of her *prima facie* case, “an employee must show a *serious and material* change in the terms, conditions, or privileges of employment.” *Miller-Goodwin v. City of Panama City Beach, Fla.*, 385 F. App'x 966, 970 (11th Cir. 2010) (emphasis in original). Importantly, “not all conduct by an employer negatively affecting an employee constitutes adverse employment action.” *Wallace v. Georgia Dept. of Transp.*, 212 F. App'x 799, 801 (11th Cir. 2006) (holding written reprimand against employee did not constitute an adverse action); *see also Barnett v. Athens Reg'l Med. Ctr.*, 550 Fed. App'x. 711, 713 (11th Cir. 2013) (finding no adverse action as a matter of law where two written reprimands and negative performance review did not result in termination, demotion, suspension, reduction in pay, or change in job duties). And “the employee's subjective view of the significance and adversity of the employer's action is not controlling; the employment action must be materially adverse as viewed

²⁰ “Direct evidence is evidence that proves the existence of a discriminatory motive to terminate without inference or presumption.” *Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App'x 883, 884 (11th Cir. 2016) (internal citation omitted). “If the alleged statement suggests, but does not prove, a discriminatory motive, then it is circumstantial evidence.” *Id.* at 844-85 (quoting *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1086 (11th Cir. 2004)).

by a reasonable person in the circumstances.” *Davis v. Town of Lake Park, Fla.*, 245 F.3d 1232, 1239 (11th Cir. 2001).

Here, the Charging Party fails to even allege she was subjected to an adverse employment action, and her *prima facie* claim for sex discrimination fails for this reason alone. *Cf. Hyde v. K.B. Home, Inc.*, 355 F. App’x 266, 270 (11th Cir. 2009) (employee’s reduction in job responsibilities did not constitute an adverse employment action where employee’s job title and salary remained the same). Instead, the Charging Party alleges:

- The Solid Waste department she manages “has to use old equipment, while Public Works, which has a male director, gets new equipment (*see* Charge ¶ 23);
- Commissioner Reynolds “berated” her for requesting authorization to purchase new equipment after the budget process concluded (*see id.* at ¶ 35);
- Commissioner Reynolds and “another male Commissioner took the opportunity to attack” her for requesting new equipment (*see id.* at ¶ 37);
- “There has been discussion” by the CCBC of eliminating her position from the budget (*see id.* at ¶ 40);

As an initial matter, even if true, none of these allegations “amount to an adverse employment action because they simply don’t resemble a termination, demotion, suspension without pay, or pay raise or cut.” *Moore v. City of Homewood*, No. 21-11378, 2023 WL 129423, at *4 (11th Cir. Jan. 9, 2023) (affirming dismissal of Title VII discrimination claims where plaintiffs failed to establish they were subject to adverse employment actions). *See also Akins v. Fulton County*, 420 F.3d 1293, 1301-02 (11th Cir. 2005) (holding negative work evaluation, threat of job loss, threat of suspension without pay, removal of job duties, and exclusion from meetings did not constitute adverse employment actions individually or in aggregate for purposes of establishing First Amendment retaliation claim); *Howard v. Walgreen Co.*, 605 F.3d 1239, 1245 (11th Cir. 2010) (employee failed to show serious and material change in the terms, conditions, or privileges of employment in Title VII case where supervisor threatened termination but had not taken any action) (citing *Akins*, 420 F.3d at 1301-02).

The Charging Party’s allegation that her department is forced to use old equipment while Public Works “gets new equipment” is particularly puzzling, because until mid-2022, her department was *part of* Public Works. The Charging Party does not (and cannot) allege she requested new equipment and was denied; instead, as outlined above, when the Charging Party did request new equipment, the CCBC unanimously approved her request. Further, the Charging Party’s allegations that Commissioner Reynolds and “another male Commissioner” berated or “attacked” her for making such a request is simply not credible, as shown by the video recording evidencing their interaction. (*See* Exhibit 28, Video Recording of 9/28/2023 Meeting). Finally, the CCBC denies that it has “discussed” eliminating either the Charging Party’s or Ms. Hulsey’s

positions from the budget.²¹

In sum, because the Charging Party has failed to even allege a cognizable adverse employment action, she cannot establish a *prima facie* claim for gender discrimination. *See also Hooks v. Bank of Am.*, 183 F. App'x 833, 836 (11th Cir. 2006) (affirming summary judgment on employee's discrimination claim where employee failed to establish she suffered an adverse employment action).

2. *The Charging Party fails to identify any similarly situated comparators*

To establish disparate treatment based on sex, the Charging Party must show the CCBC treated similarly situated male employees more favorably than herself. *Wolfe v. Postmaster Gen.*, 488 F. App'x 465, 468 (11th Cir. 2012) (citing *Burke-Fowler v. Orange Cnty., Fla.*, 447 F.3d 1319, 1323 (11th Cir. 2006)). Determining whether other employees were similarly situated to the Charging Party requires an evaluation of “whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways,” *McCann v. Tillman*, 526 F.3d 1370, 1373 (11th Cir. 2008), which typically requires the Charging Party to show that they “engaged in the same basic conduct (or misconduct)”; were “subject to the same employment policy, guideline, or rule”; were “under the jurisdiction of the same supervisor”; or had the same employment or disciplinary history. *Lewis v. City of Union City*, 918 F.3d 1213, 1227-28 (11th Cir. 2019) (*en banc*).

The Charging Party does not even allege the CCBC treated similarly situated male employees more favorably. Instead, she alleges a *single* commissioner made comments during the CCBC's discussion of the FY 2024 budget about raises given to certain female employees without referencing raises to three male employees.

First, it bears noting Commissioner Reynolds never identified—either by name or sex—the employees who received the 16%, 27%, and 39% raises during the June 6 or June 13 commission meetings; and Reynolds credibly maintains his reference to these specific raises was in furtherance of his general objectives of promoting budget transparency and equitable pay increases for *all* employees.

Second, while it is true that the three raises Commissioner Reynolds referenced were received by women, a review of the 10 individuals who received a 10% or greater salary increase (60% of whom were women) fairly demonstrates that he was not “targeting” women. For instance, Commissioner Reynolds did not reference Ms. Rowland's 39% raise, even though she received the same percentage raise as the Charging Party, or Ms. Jenkins 21% raise. Instead, Commissioner Reynolds referenced the raises he believed (rightly or wrongly) were inequitable.

²¹ To the contrary, three days after the June 13 commission meeting referenced in the Charging Party's Charge, Ms. Hulsey received an additional \$250 temporary stipend and was placed under the civil service program, which affords additional benefits and protections for county employees.

Third, the raises to the male employees were objectively different than the Charging Party's raise. Specifically, Mr. Yates, the only employee who received a higher raise than the Charging Party, replaced the outgoing Director of Public Works and merely received his predecessor's salary. Mr. Rainwater's raise was significantly less than the Charging Party's, and he too replaced a former Deputy Warden and merely received his predecessor's salary. Finally, Mr. Parson's raise was less than half the raise received by the Charging Party, and he was likewise promoted to a department head position.

Finally, setting aside the CCBC's discussion over salary transparency (during which some commissioners voiced their opinion in support of the Charging Party's raise), it should not be overlooked that the *only* employee whose proposed salary the CCBC reduced was a *man*: Lieutenant Fire Chief Wade. Commissioner Reynolds was the one who moved for this alteration to the FY 2024 budget, which received a majority vote by the commission. Thus, there is absolutely no evidence that the CCBC (or Commissioner Reynolds) treated the Charging Party "less favorably" than male employees.

Because the male employees who received raises were not "similarly situated" to the Charging Party, she cannot establish a *prima facie* claim for sex discrimination for this additional reason.

B. The Charging Party's Allegations Do Not Establish a Hostile Work Environment

To establish a claim of hostile work environment, the Charging Party must show: (1) she belongs to a protected group; (2) she has been subjected to unwelcome harassment; (3) the harassment was based on her protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of her employment and create a discriminatorily abusive working environment; and (5) a basis for holding the employer liable. *Williams v. Motorola, Inc.*, 303 F.3d 1284, 1292-93 (11th Cir. 2002).

Although the Charging Party does not specify which purported acts she believes constitute an actionable hostile work environment, her Charge includes the following allegations:

- In November 2022, Commissioner Reynolds referred to the CCBC as a "sorority" and said "you can put lipstick on a pig, but it's still a pig" in reference to suit jackets; (*Id.* at ¶16-17); and
- At a February 2023 commission meeting, Commissioner Reynolds blamed Solid Waste for catching an excavator on fire (*Id.* at ¶24);
- During commission meetings in June 2023, Commissioner Reynolds referenced the Charging Party's FY 2023 raise, as well as the raise of two other female employees, and said the raises were the result of "favoritism" by the Chairman (*see* Charge, ¶ 7-9);
- After the June 13 commission meeting, she has "been ostracized, glared at, and whispered about by other County employees" (*Id.* at ¶15);
- Commissioner Reynolds "criticizes" and sends "condescending and belittling" emails

- to women. (*Id.* at ¶19);
- In September 2023 Commissioner Reynolds “berated” her for requesting authorization to purchase new equipment after the budget process concluded (*see id.* at ¶ 35);
 - At the same September 2023 meeting, Commissioner Reynolds and “another male Commissioner took the opportunity to attack” her for requesting new equipment (*see id.* at ¶ 37);

1. There is no evidence the complained-of actions were motivated by gender

As an initial matter, the conduct the Charging Party complains of in her Charge “lacks ‘the necessary sexual or other gender-related connotations to be actionable sex discrimination’” for purposes of establishing a gender-based hostile work environment. *See Tonkyro v. Sec’y, Dep’t of Veterans Affs.*, 995 F.3d 828, 838 (11th Cir. 2021) (quoting *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1247 (11th Cir. 1999)). In other words, gender-neutral conduct such as “angry looks, harsh words, and [the] silent treatment” cannot form the basis of a hostile work environment. (*Id.*).

The allegations in *Wheatfall v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 1:12-CV-0922-TCB-JSA, 2014 WL 12798127, at *18 (N.D. Ga. Feb. 3, 2014), *report and recommendation adopted*, 9 F. Supp. 3d 1342 (N.D. Ga. 2014) are analogous. In *Wheatfall*, a female employee alleged her supervisor “treated women in particular with disrespect, that he often spoke in a condescending and demeaning way to her and her female coworkers, and that he seemed to have a need to assert himself over female employees in a way that he did not with male employees.” *Id.* at *3. The employee further alleged her supervisor “‘routinely’ treated her in a ‘disparaging manner, saying something disrespectful, condescending, demeaning, or downright nasty to her on a weekly basis’” for nearly a year.” *Id.* Specifically, she alleged her supervisor “stated in front of colleagues and customers that Plaintiff didn’t know what she was doing,” “spoke to a customer in her presence as if she were not present, and he snatched documents out of her hand ‘in a rude and disrespectful manner.’” *Id.* In sum, she alleged—as the Charging Party does here—that the individual she was complaining about “seemed to have a problem with women.” *Id.*; *see also* EEOC Charge, ¶ 5.

The *Wheatfall* court correctly found that the allegations of “disrespectful treatment” could not give rise to an objectively reasonable belief that her supervisor’s actions constituted an actionable hostile work environment. *Id.* at *19. This is because “Title VII is neither a general civility code nor a statute making actionable the ordinary tribulations of the working place.” *Cotton v. Cracker Barrel Old Country Store, Inc.*, 434 F.3d 1227, 1234 (11th Cir. 2006) (cleaned up); *Vaughn v. Ret. Sys. of Ala.*, 856 F. App’x 787, 790 (11th Cir. 2021) (employer entitled to summary judgment on hostile work environment claim where plaintiff’s allegations “show[ed] nothing more than a bitter ‘personal feud,’ which is not enough to make out a Title VII claim”). Or, as stated by the *Wheatfall* court, the plaintiff’s supervisor “could be a disrespectful, poor, and boorish supervisor, but Title VII is only implicated if this conduct were focused on Plaintiff *because of her gender.*” *Wheatfall*, 2014 WL 12798127 at *19. Here, of course, Commissioner Reynolds is *not* the Charging Party’s supervisor, but an elected official with whom the Charging Party interacts on

occasion.

Because the Charging Party's allegations of unwarranted criticism and "condescending and belittling emails" directed towards others are devoid of any gender-based animus, she cannot demonstrate sex-based harassment for purposes of establishing the third element of her hostile work environment claim.

2. *The Charging Party cannot show harassment sufficiently severe or pervasive to constitute a hostile work environment*

Second, in order to establish that the purported "harassing behavior" was sufficiently severe or pervasive to alter the terms and conditions of her employment and created a discriminatorily abusive working environment, the Charging Party must demonstrate that the environment was one that **a reasonable person would find hostile or abusive considering "all the circumstances."** See *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81, 118 S. Ct. 998, 1003, 140 L. Ed. 2d 201 (1998) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993)) (emphasis added). The Charging Party must show she not only subjectively (that is, in good faith) perceived the environment to be abusive, but also that her belief was *objectively reasonable* in light of all of the facts. *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1153 (11th Cir. 2020). The alleged harassment must be persistent and routine rather than isolated or sporadic in nature in order to be sufficiently severe or pervasive to alter the conditions of employment. *Faragher v. Boca Raton*, 524 U.S. 775, 788 (1998). In asserting such a claim, the employee must present concrete evidence in the form of specific facts, not just conclusory allegations and assertions. See *Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990).

To determine whether harassment objectively altered an employee's terms or conditions of employment, courts consider: (1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interfered with the employee's job performance. *Id.*

As an initial matter, because the Charging Party reports directly to Chairman Morgan pursuant to the county charter, she has very little reason to interact with Commissioner Reynolds (or the CCBC as a whole) on a daily or even weekly basis. Although the Charging Party does appear before the board to seek authorization or make a presentation from time to time, she certainly does not appear at every commission meeting, and the CCBC only meets twice per month.

The Charging Party's own allegations—which include complaints regarding Commissioner Reynolds' November 2022 email and comments made at commission meetings in February, June, and September 2023—amount to no more than 4 incidents over the course of 11 months.

In sum, the Charging Party has failed to allege "harassment" that is so frequent as to create

a workplace “permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive” to “create an abusive working environment.” *Smithers v. Wynne*, 319 F. App’x 755, 757 (11th Cir. 2008); *see also Zarza v. Tallahassee Hous. Auth.*, 686 F. App’x 747, 752 (11th Cir. 2017) (no hostile work environment based on race where “Plaintiff was not subjected to racially pejorative remarks multiple times a day, every day”); *Garrett v. Tyco Fire Prods., LP*, 301 F. Supp. 3d 1099, 1119 (N.D. Ala. 2018) (four unwelcome comments and two instances of graffiti in three-month period not sufficiently pervasive to establish hostile work environment); *Fortson v. Columbia Farms Feed Mill*, 34 F. Supp. 3d 1302, 1305-08 (M.D. Ga. 2014) (twelve unwelcome comments in seven months insufficiently frequent to show hostile work environment claim).

Second, the conduct complained of in the Charging Party’s charge is neither severe nor physically threatening or humiliating. Instead, when considering “all the circumstances,” the facts fairly demonstrate that Commissioner Reynolds’s conduct towards the Charging Party and women in general was innocuous. For instance, during the commission meetings where Commissioner Reynolds referenced the Charging Party and two other employees’ raises, he never identified them by name or gender, and only reluctantly referred to their job titles after others did so. During the same meetings Reynolds *repeatedly* said he sought “equitable” and “fair” raises for *all* county employees, and used the Charging Party’s raise as an example to advocate for a formal review process for employee raises over a certain percentage. There was healthy disagreement amongst the CCBC as to whether Commissioner Reynolds’s critique of the salary process was warranted, but the context of his comments was completely devoid of any discriminatory animus towards women.

It is a touch ironic that Commissioners Reynolds’s lengthy public comments in support of “total equity and total fairness and total advancement of all employees” are now being used as purported evidence of discrimination by the Commissioner.

3. The Charging Party has not alleged the purportedly harassing conduct unreasonably interfered with her job performance

Third, the Charging Party has not alleged any facts demonstrating that the purportedly harassing conduct has unreasonably interfered with her job performance. Instead, the Charging Party has merely alleged in a conclusory manner that her “colleagues have retaliatorily ostracized me, isolated me, and cast me out.” *See* EEOC Charge, ¶ 39.

In sum, because the Charging Party cannot establish the third or fourth elements, her claim for hostile work environment fails as a matter of law.

C. The Charging Party Cannot Show She Was Retaliated Against

The Charging Party’s claim that the CCBC retaliated against her is equally baseless. “To establish a *prima facie* claim of retaliation under Title VII, a plaintiff must prove that she



“(1) engaged in statutorily protected activity; (2) suffered a materially adverse employment action; and (3) there was some causal relation between the two events.” *Tebo v. City of DeBary, Fla.*, 784 F. App’x 727, 731 (11th Cir. 2019) (citing *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1277 (11th Cir. 2008)). Importantly, the Charging Party must show the adverse action would not have occurred **but for** the protected activity. See *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013).

1. The Charging Party’s internal complaints were not statutorily protected activity

In order to demonstrate protected activity, the Charging Party “must show that she had a good faith, reasonable belief the employer was engaged in unlawful employment practices.” *Saffold v. Special Couns., Inc.*, 147 F. App’x 949, 951 (11th Cir. 2005) (citing *Weeks v. Harden Mfg. Corp.*, 291 F.3d 1307, 1311 (11th Cir.2002)). “It is insufficient for a plaintiff to allege that [her] belief in this regard was honest and bona fide; the record must also indicate that the belief, though perhaps mistaken, was “objectively reasonable.” *Harris v. Corr. Corp. of Am.*, 139 F. App’x 156, 159 (11th Cir. 2005) (citing *Harper v. Blockbuster Entertainment Corp.*, 139 F.3d 1385, 1388 (11th Cir.1998)).

Importantly, “not every informal complaint made by an employee automatically qualifies as a protected expression that shields the employee from subsequent retaliation.” *Wheatfall*, 2014 WL 12798127, at *17. “[F]or example, a plaintiff cannot bring a retaliation claim based on a belief that conduct that violates Title VII when long-standing binding precedent holds that it does not.” *Alkins v. Sheriff of Gwinnett Cnty.*, No. 21-13746, 2022 WL 3582128, at *2 (11th Cir. Aug. 22, 2022).

Here, the Charging Party sent an email on July 6, 2023 complaining about Commissioner Reynolds’s reference to her raise at the June 2023 commission meetings, as well as two prior occasions when Commissioner Reynolds “put her on the spot” by asking her a question she was not prepared for during a commission meeting and blaming her department for the 2022 excavator fire. The Charging Party’s complaints about the perceived unfairness of Commissioner Reynolds’s actions cannot reasonably be considered an objection to an unlawful employment practice prohibited by Title VII in light of controlling case law, as discussed at length in Parts III.A and III.B above. Specifically, none of these complaints involve any adverse employment action or similarly situated comparators, as required to state a claim for gender discrimination, and the conduct complained of (i.e., gender-neutral comments by a single commissioner) cannot reasonably be considered severe, pervasive, or motivated by gender as required to state a claim for hostile work environment. See *Gooden*, 679 at 964; *Williams*, 303 F.3d at 1292-93.

In short, while the Charging Party may have had an honest belief that Commissioner Reynolds’ conduct towards her was discriminatory, her belief was not objectively reasonable in light of existing case law. See, e.g., *Jones v. Intravis Vision Sys.*, No. 1:18-CV-03490-CMS, 2019 WL 13268566, at *3 (N.D. Ga. May 29, 2019) (plaintiff’s underlying complaints must demonstrate more than a “personal dislike” or “personal bias stemming from a frustration with Plaintiff’s job

performance, rather than gender-based bias” for purposes of establishing retaliation claim); *Wheatfall*, 2014 WL 12798127, at *17 (“[I]t is not enough for a plaintiff to show that she opposed garden-variety unfairness in the workplace; she is only protected from retaliation if the practice she opposed or complained about is specifically prohibited by Title VII.”).

Because the Charging Party’s internal complaints regarding Commissioner Reynolds were not based upon an objectively reasonable belief that his conduct somehow constituted an unlawful employment practice, the Charging Party’s retaliation claim fails as a matter of law.

2. *The CCBC did not subject the Charging Party to a “materially adverse employment action”*

In order to establish a retaliation claim, the Charging Party “must show that a reasonable employee would have found the challenged action materially adverse, which in [the retaliation] context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68, 126 S. Ct. 2405, 2415, 165 L. Ed. 2d 345 (2006) (internal citation omitted). In evaluating whether specific conduct is “materially adverse,” the Supreme Court emphasized that “it is important to separate significant from trivial harms. Title VII, we have said, does not set forth ‘a general civility code for the American workplace.’” *Id.* (citing *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 80 (1998)). Further, “[a]n employee’s decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience.” *Id.*

Although the Charging Party does not specify which purported acts she believes constitute actionable retaliation, her Charge includes the following allegations:

- Commissioner Reynolds “berated” her for requesting authorization to purchase new equipment after the budget process concluded (*see id.* at ¶ 35);
- Commissioner Reynolds and “another male Commissioner took the opportunity to attack” her for requesting new equipment (*see id.* at ¶ 37);
- “There has been discussion” by the CCBC of eliminating her position from the budget (*see id.* at ¶ 40);
- “Since [she] spoke up about the gender disparities, [her] colleagues have retaliatorily ostracized [her], isolated [her], and cast [her] out (*Id.* at ¶39);

The above allegations are textbook examples of the “trivial harms,” “petty slights [and] minor annoyances” that the Supreme Court expressly excluded from its definition of “materially adverse employment actions” in *Burlington*. 548 U.S. at 68.

Specifically, where, as here, there is “no evidence of a reduction in pay, benefits, or responsibilities that would demonstrate an adverse effect,” the Eleventh Circuit has repeatedly held complaints of retaliatory behavior fail to rise to the “materially adverse” standard articulated in

Burlington. *See, e.g., Debe v. State Farm Mut. Auto. Ins. Co.*, 860 F. App'x 637, 640 (11th Cir. 2021) (no materially adverse employment action where plaintiff alleged she was subjected to “unjustified coaching, increased scrutiny, unfounded discipline, file padding . . . [and] and unwanted schedule change”); *McQueen v. Alabama Dep't of Transportation*, 769 F. App'x 816, 824 (11th Cir. 2019) (plaintiff failed to allege materially adverse employment action where he was “subjected to a suspicious drug screen” which he passed, and therefore suffered no tangible harm); *Henderson v. City of Birmingham, Alabama*, 826 F. App'x 736, 742 (11th Cir. 2020) (employee failed to demonstrate he was subjected to materially adverse action where employee was subjected to written counseling and an internal investigation after engaging in protected activity); *compare Crawford v. Carroll*, 529 F.3d 961, 974 (11th Cir. 2008) (employee suffered materially adverse action in the form of an unfavorable performance review that impacted her eligibility for a merit pay increase).

Further, the Charging Party’s vague and conclusory allegations that she has been retaliatory ostracized, isolated, cast out, and that there have been “discussions” of eliminating her position are not entitled to deference and have no probative effect. *See James v. City of Montgomery*, 823 F. App'x 728, 731 (11th Cir. 2020).

3. The Charging Party cannot demonstrate the requisite causal connection

Finally, the Charging Party cannot demonstrate that “but for” her purported protected activity, she would not have been subjected to the complained-of conduct. *See Tolar v. Bradley Arant Boult Commings, LLP*, 997 F.3d 1280, 1294 (11th Cir. 2021) (acknowledging “but for” causation is required to establish a Title VII retaliation claim). First, the evidence as outlined above fairly demonstrates that Commissioner Reynolds frequently questions county expenditures, and the Charging Party’s September 2023 request to purchase an excavator on the heels of the CCBC’s vote to approve the final FY2024 budget almost certainly would have prompted questions by him. Moreover, as noted above, the Charging Party’s allegations that she was “berated” or “attacked” during this meeting are simply not credible in light of the video evidence. Finally, the Charging Party offers no factual basis to establish a “but for” causal connection between the alleged “discussion” of eliminating her position from the budget or her conclusory allegation that she has been “ostracized,” “isolated,” or “cast out.”

In sum, because the Charging Party cannot establish any of the three elements required to state a *prima facie* claim of retaliation, this claim should be dismissed.

D. The Charging Party Cannot Establish a Claim for Retaliatory Hostile Work Environment

To establish a retaliatory hostile work environment claim, the Charging Party must show (1) she engaged in protected activity; (2) after doing so, she was subjected to unwelcome harassment; (3) her protected activity was a “but for” cause of the harassment; and (4) the harassment “well might have dissuaded a reasonable worker” from engaging in the protected



January 26, 2024

Page 33

activity. *See Bosarge v. Mobile Area Water & Sewer Serv.*, No. 20-14298, 2022 WL 203020, at *13 (11th Cir. Jan. 24, 2022); *Baroudi v. Sec’y, U.S. Dep’t of Veterans Affs.*, 616 F. App’x 899, 904 (11th Cir. 2015).

As discussed in part III.C.1, the Charging Party failed to allege that she engaged in protected activity, which is fatal to her claim for retaliatory hostile work environment. *See Kelly v. Dun & Bradstreet, Inc.*, 641 F. App’x 922, 924 (11th Cir. 2016). Moreover, for the reasons articulated in part III.C.2 above, the Charging Party has not shown that she was subjected to any materially adverse employment actions which—taken individually or collectively—would have dissuaded a reasonable employee from engaging in protected activity. *See Fortner v. Brennan*, No. 22-13688, 2023 WL 8813574, at *2 (11th Cir. Dec. 20, 2023) (plaintiff could not establish a retaliatory hostile work environment where she was subject to “a stern talking-to,” including “several ‘official discussions’” regarding her performance, and “was assigned to a task she did not like but which had no effect on her title or salary.”). Finally, as discussed in part III.C.3 above, the Charging Party likewise has established no causal connection between her purported activity and alleged retaliatory hostile work environment. Instead, many of Charging Party’s allegations appear to be a mere continuation of the same conduct that was the basis of her initial complaint. *See Lopez v. Hendrick Auto. Grp.*, No. 118CV05920JPBJSA, 2021 WL 11718614, at *8 (N.D. Ga. Oct. 25, 2021), *report and recommendation adopted*, No. 1:18-CV-05920-JPB, 2022 WL 20667667 (N.D. Ga. Feb. 10, 2022) (plaintiff failed to establish causal connection for purposes of establishing retaliatory hostile work environment where “he simply alleged a continuation of the harassment to which he had already been subjected”).

Because the Charging Party cannot establish the first, second, or third elements of her claim for retaliatory hostile work environment, her claim fails as a matter of law and should be dismissed.

IV. CONCLUSION

For each of the foregoing reasons, CCBC respectfully requests that a no-cause determination be issued and the instant Charge be dismissed.

Very truly yours,

FREEMAN MATHIS & GARY, LLP

Michael M. Hill

MMH/kns

Enclosures

cc (via email w/o encls.): Kelli N. Spearman, Esq.



Freeman
Mathis & Gary LLP

January 26, 2024
Page 34