

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

DAVID L. BLACKBURN,

[REDACTED]

Riverside, MO 64150

*Plaintiff,*

v.

CITY OF RIVERSIDE, MISSOURI,

Serve:

Robin Littrell

City Clerk

[REDACTED]

Riverside, MO 64150

and

KATHLEEN ROSE, in her individual capacity,

Serve:

Kathleen Rose

Mayor

[REDACTED]

Riverside, MO 64150

*Defendants.*

Case No. \_\_\_\_\_

Division \_\_\_\_\_

Principal Case Type:  
Employment Discrimination

**PETITION**

Plaintiff David L. Blackburn states the following on personal knowledge as to his own acts, and on information and belief as to all other matters.

## **PARTIES**

1. Plaintiff David L. Blackburn resides in Riverside, Missouri, and is a citizen of Missouri.

2. Defendant City of Riverside, Missouri, is a municipal corporation organized and existing under the laws of Missouri, and is located in Platte County, Missouri.

3. Defendant Kathleen Rose currently is Mayor of the City of Riverside. She resides in Riverside, Missouri, and is a citizen of Missouri. Mayor Rose is sued in her individual capacity.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction under Mo. Const. art. V, § 14, and RSMo § 478.070. No federal court has subject matter jurisdiction, as this case presents no issues arising under federal law, and all parties are citizens of Missouri.

5. This Court has personal jurisdiction because the defendants are citizens of Missouri, and in connection with the matters alleged here, transacted business within this state, made contracts within this state, and committed tortious acts within this state.

6. Venue is proper in Platte County, Missouri, as one or more acts of discrimination occurred in Platte County, and the City of Riverside is located in Platte County.

## **FACTS**

7. David Blackburn has spent decades as a public servant in Missouri state and local government.

8. Approximately 12 years ago, the City of Riverside, Missouri, hired him as its City Administrator.

9. Mr. Blackburn displayed strong performance and built on his already stellar career.

10. As defendant Mayor Kathleen Rose admitted in an August 2012 official City newsletter, Mr. Blackburn exhibited “leadership” during his tenure, and the City “made great strides during this time, including roadway, parks and public works improvements and the launch of the Horizons office and industrial innovation project.”

11. In about 2005, while Mr. Blackburn was serving as City Administrator, then-Mayor Betty Burch had entered into a secret agreement with the Westbrook Company for services to the city.

12. The agreement would have spent several hundred thousand taxpayer dollars.

13. Though required to do so by law, Mayor Burch had not secured the approval of the Board of Aldermen before entering the agreement. She unilaterally committed taxpayer funds.

14. Later, an email was received by a City staff member leaking the agreement.

15. Mr. Blackburn turned over the email to the Board of Aldermen, which in turn determined not to honor the under-the-table deal. The email also became public.

16. Later, Mayor Burch’s husband Mitch Burch and her daughter, defendant Kathleen Rose, visited Mr. Blackburn at his office.

17. They were furious at Mr. Blackburn for informing the Board of Aldermen about Mayor Burch's actions, and vocally expressed their anger to him.

18. On information and belief, defendant Rose later told other individuals that, if elected Mayor, she would ensure that Mr. Blackburn was fired.

19. Banking on the political clout of her family, Ms. Rose defeated her mother's successor in the 2006 mayoral election, and became Mayor of Riverside.

20. From the beginning of Mayor Rose's tenure, she was cold toward Mr. Blackburn, and refused to confer with him in the same way that she did other city officials.

21. At the end of 2010 and beginning of 2011, the City of Riverside undertook a project known as "Hoover-JCI." This project was aimed at building a manufacturing facility that would supply automobile seats to both the General Motors Fairfax plant and the Ford Claycomo plant.

22. Part of the project involved clearing bottom land to make it "pad-ready" for the Hoover-JCI manufacturing facility.

23. The City contracted with a company called Greenfield Investments to perform dirt moving. Greenfield was politically well-connected and carried significant clout in the Northland, and one of its affiliates developed a prominent subdivision in Riverside named Montebella.

24. Greenfield began operating under the contract, but significantly over-billed the City.

25. The City's Finance Officer, Donna Resz, approached Mr. Blackburn and informed him that Greenfield was demanding payment above the contract price. Mr. Blackburn looked into the matter.

26. Ms. Resz also informed Mr. Blackburn that she had just noticed that the contract with Greenfield was unsigned.

27. Mr. Blackburn took the matter to the City Attorney, full-time city employee Nancy Thompson, since legal matters were at issue. Ms. Thompson told Mr. Blackburn that the matter was being handled by Director of Community Development Mike Duffy. She also assured Mr. Blackburn that she had performed her duties because she had signed the ordinance approving the contract.

28. It was clear to all involved that Mr. Duffy was in charge of handling project logistics. In a Board of Aldermen meeting a year before, on March 15, 2011, meeting minutes state: "Alderman Super raised concerns of the line item Greenfield Investments. Community Development Director Duffy explained the pricing, projects, and work done for the billing." On Duffy's advice and explanations, the Board adopted a resolution to pay Greenfield's bills. However, the contract was not signed at that point either.

29. Mr. Blackburn later discovered that Ms. Thompson had also not signed off on the contractor's required performance bonds.

30. In addition, Ms. Thompson neglected to inform the Board of Aldermen that she had not signed off on these bonds before the contractors began the work.

31. Mr. Duffy and Ms. Thompson were the persons directly responsible for the handling of the contract and for its legal aspects.

32. In their initial meeting on the topic, Ms. Thompson urged Mr. Blackburn not to inform Mayor Rose about the issue, and advocated for paying the Greenfield bills immediately and dealing with the repercussions later.

33. Ms. Thompson had trouble performing her duties to the City. On information and belief, when Greenfield provided the City with deficient payroll certifications, instead of taking decisive action, she simply allowed the contractor to re-do the shoddy payroll records. Mr. Blackburn vocally opposed this failure to hold Greenfield accountable.

34. Mr. Blackburn advocated taking action to recover the overpayments from the politically-connected contractor. He hired an engineering firm to audit the situation, and spoke to the Mayor in detail about the overpayments, pressing his view that the contractor should be held responsible for overbilling the taxpayers.

35. Despite this, the Board of Aldermen was informed by Mayor Rose and City Attorney Nancy Thompson that there would be nothing that would be gained in trying to recover the payments because the contract had not been signed.

36. The Mayor and the City Attorney convinced four of the six Board members not to pursue recovery of overpayments, but to pay the subcontractor, Hill Brothers, what it was owed by Greenfield.

37. The Mayor and City Attorney's assertions were untrue: the developer performed knowing about the terms of the contract, and it was demonstrable that at least one of the bills was fraudulent.

38. The City hired outside counsel to conduct an internal investigation.

39. Outside counsel produced a report that held four people accountable for the unsigned contract – David Blackburn, City Attorney Nancy Thompson, Community Development Director Mike Duffy, and Finance Officer Donna Resz.

40. Mr. Blackburn is at least 10 years older than Ms. Thompson (52 years old), Mr. Duffy (46 years old), and Ms. Resz (46 years old).

41. In a Board of Aldermen meeting in March 2012, the Board voted twice not to fire or discipline Mr. Blackburn. The Board had considered two options. The first would have involved firing Mr. Blackburn and Mr. Duffy. The second would have given Mr. Blackburn a suspension, fired Mr. Duffy, and renegotiated Ms. Thompson's contract to report directly to Mr. Blackburn to ensure that mistakes like this would not happen in the future. Both measures failed and no one was disciplined.

42. The City later did an about-face. In June 2012, a new Board of Aldermen – under the encouragement of Mayor Rose – determined to fire Mr. Blackburn. But it retained Mr. Duffy and Ms. Thompson.

43. On Friday, July 13, 2012, Mayor Rose called Mr. Blackburn on his cell phone around 4:30 pm, and ordered him back to the office. Mr. Blackburn was surprised by her tone, but complied with the Mayor's directions and returned to the office. Upon his return, Mayor Rose held a meeting with him alone and told him that he could "retire or resign" but that the Board was determined to remove him on July 17, 2012. For all intents and purposes, this was a termination effective immediately.

44. When Mayor Rose thrust a severance agreement at him, Mr. Blackburn protested. At that point, Mayor Rose told him to “get a lawyer” and called in the Human Resources manager from Omni who was in another office in the building.

45. The firing of Mr. Blackburn served several purposes. For one, it satisfied persons angry about the overbilling on the Hoover-JCI project.

46. But it also allowed Mayor Rose and the City to pass off the termination of an employee in this small town as a retirement, which would result in fewer questions being raised for the Mayor.

47. Mr. Blackburn was selected for termination in part because he was near retirement age. In the termination meeting with him, Mayor Rose referred to the termination as a “retirement.”

48. The City’s Director of Public Safety, Police Chief Greg Mills, was installed as interim City Administrator. The City stated in its newsletter that it was conducting a “nationwide” search for a permanent replacement.

49. Chief Mills is approximately 60 years of age. While his elevation on the surface helped the City resist a charge of age discrimination, in reality Mr. Blackburn’s functions were transferred to much younger people.

50. Following Mr. Blackburn’s formal charge of discrimination (below), the City hired Jackie Carlson, who is believed to be 34 years old, to be City Planner.

51. The City also recently elevated Meredith Hauck, who is believed to be 29 years old, to be Director of Administration.



52. Based on the City's meeting minutes, Ms. Hauck performs at least a significant portion of the work that Mr. Blackburn previously performed.

53. The City never apparently announced her change in title in a newsletter. By formally announcing the change, the City would have tipped off Mr. Blackburn that his job functions had been delegated to someone less than half his age.

54. Many recent meeting minutes refer to Ms. Hauck with two titles, both "Director of Community Relations" and "Director of Administration." The City's website refers to her as "Director of Administration." This change was believed to have been made in either December 2012 or January 2013.

55. Mr. Blackburn presented a Charge of Discrimination to the Missouri Commission on Human Rights in October 2012, and recently received a right to sue letter.

56. Having exhausted his administrative remedies, Mr. Blackburn now brings this lawsuit.

### **COUNT I**

#### **VIOLATION OF THE MISSOURI HUMAN RIGHTS ACT AGE DISCRIMINATION (against both defendants)**

1. Mr. Blackburn incorporates each and every other paragraph of this Petition as if fully set forth here.

2. The City of Riverside was an employer, and Mr. Blackburn was an employee.

3. The City of Riverside terminated Mr. Blackburn's employment.

4. Mr. Blackburn's age – 63 at the time – was a contributing factor in the termination.

5. Mayor Rose aided and abetted in the unlawful termination.

6. As a direct and proximate result, Mr. Blackburn has sustained economic and non-economic damages due to loss of his employment, loss of future employment prospects, incidental damages, and consequential damages – including severe emotional distress – that were foreseeable to the defendants.

7. Mr. Blackburn respectfully prays that this Court adjudge defendants jointly and severally liable for violation of the Missouri Human Rights Act through age discrimination, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

## COUNT II

### **DECLARATORY AND INJUNCTIVE RELIEF** (against both defendants)

1. Mr. Blackburn incorporates each and every other paragraph of this Petition as if fully set forth here.

2. The Missouri Constitution protects Mr. Blackburn's right to free speech and to petition the government on matters of public concern.

3. Malfeasance, fraudulent billing, and misuse of government funds violate clearly-established commands of public policy.

4. Mr. Blackburn engaged in activity protected and encouraged by Missouri law: he reported malfeasance by Mayor Betty Burch to the Board of Alderman of the

City of Riverside. He also protested the overbilling of the City on the Hoover-JCI project and fraudulent and improper billing practices that seriously impacted taxpayer funds.

5. All of these issues are matters of public concern.

6. Mr. Blackburn is a citizen of Riverside, and as a taxpaying citizen was concerned about these issues and was motivated to speak out about them.

7. Later, Mayor Rose led the termination of Mr. Blackburn.

8. Mr. Blackburn's protected activity was a contributing factor, or alternately was a substantial or motivating factor, in the termination.

9. The actions of the City and of Mayor Rose were arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.

10. The Missouri Administrative Procedure Act, RSMo 536.150, and the Missouri Declaratory Judgment Act, RSMo 527.010 and 527.080, empower this Court to enter declaratory judgments and supplemental equitable relief.

11. Mr. Blackburn respectfully prays that this Court declare his rights, grant him corresponding equitable relief, and grant all other relief allowed under the law, as set forth in the Prayer in this Petition.

### **COUNT III**

#### **VIOLATION OF RSMo 130.028.4 POLITICAL DISCRIMINATION (against both defendants)**

1. Mr. Blackburn incorporates each and every other paragraph of this Petition as if fully set forth here.

2. The City of Riverside is a corporation or person, and Mr. Blackburn was an employee, within the meaning of RSMo 130.028.

3. Mr. Blackburn reported malfeasance by Mayor Betty Burch to the Board of Alderman of the City of Riverside. He also protested the overbilling of the City on the Hoover-JCI project and fraudulent and improper billing practices that seriously impacted taxpayer funds.

4. Mr. Blackburn's opposition to malfeasance and misuse of taxpayer funds constitute a political belief or opinion within the meaning of RSMo 130.028.

5. The City of Riverside terminated Mr. Blackburn's employment.

6. Mayor Rose aided, abetted, incited, and compelled the termination, and through a meeting of the minds combined, confederated, and conspired with others working with the City government to bring about the termination. She is therefore jointly and severally liable.

7. Mr. Blackburn's political belief and/or opinion was a contributing factor, or alternately was a substantial or motivating factor, in the termination.

8. As a direct and proximate result, Mr. Blackburn has sustained economic and non-economic damages due to loss of his employment, loss of future employment prospects, incidental damages, and consequential damages – including severe emotional distress – that were foreseeable to the defendants.

9. Mr. Blackburn respectfully prays that this Court adjudge defendants jointly and severally liable for political discrimination under RSMo 130.028.4, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

**COUNT IV**

**TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**  
(against defendant Rose only)

1. Mr. Blackburn incorporates each and every other paragraph of this Petition as if fully set forth here.
2. Mr. Blackburn had a valid business expectancy in his future employment at the City, as he had rendered over a decade of good service and had a strong work record.
3. Mayor Rose knew of this business relationship.
4. Mayor Rose took actions that were calculated to terminate this business relationship. She succeeded, and Mr. Blackburn was forced out of his employment.
5. Mayor Rose used improper means in taking these actions.
6. There was no valid business justification for Mayor Rose's actions. Mayor Rose did not act out of the City's interest, but instead acted out of personal animus in order to protect her own power and to retaliate against Mr. Blackburn for whistleblowing. This was to the detriment of the City's and its taxpayers' interest in retaining a strong, loyal, and qualified employee.
7. Mr. Blackburn has suffered damages on account of this interference.
8. Mr. Blackburn respectfully prays that this Court adjudge Mayor Rose liable for tortious interference with business expectancy, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

**JURY DEMAND**

Mr. Blackburn respectfully demands a jury trial on all issues so triable.

### **PRAYER FOR RELIEF**

Mr. Blackburn respectfully prays that this Court grant him the following relief, in excess of \$25,000:

1. Actual damages in the amount of approximately \$450,000 in lost wages and benefits, \$1 million in other loss and actual damages, including damages for emotional distress, or such other amount as is determined to be fair and reasonable, subject to amendment as this case moves forward;
2. Punitive damages on account of defendants' reckless disregard of Mr. Blackburn's rights and/or evil motive or design, in the amount of \$7,250,000 or such other amount as is determined to be fair and reasonable and to sufficiently deter and punish defendants, subject to amendment as this case moves forward;
3. Civil damages of \$1,000 under RSMo 130.028.4;
4. Pre-judgment and post-judgment interest at the maximum rate permitted by law;
5. Declaratory and injunctive relief, including but not limited to backpay, reinstatement, or frontpay in lieu of reinstatement;
6. The costs of this action;
7. Reasonable attorney's fees; and
8. Any other and further legal and/or equitable relief that this Court deems just and proper.

Dated: March 19, 2013

Respectfully submitted,

KEENAN LAW FIRM, LLC

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