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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

MICHELLE WILSON,

Plaintiff,

v.

Case No.: 2023 CA 001569

**FLORIDA COMMISSION ON
HUMAN RELATIONS, and
CHEYANNE COSTILLA, in her
official capacity, and
individually,**

Defendants.

_____ /

COMPLAINT

Plaintiff sues Defendants and states:

JURISDICTION, VENUE, PARTIES

1. This action for monetary damages, for declaratory and injunctive relief, and for other equitable and ancillary relief is brought under the Florida Constitution, Article I §§ 9 (due process), 21 (access to courts), 22 (jury trial); Article II, § 3 (separation of powers); and the First (right to petition) and Fourteenth (due process) Amendments of the United States Constitution, pursuant to 42 U.S.C. §1983. These claims are, individually, valued in excess of Fifty Thousand Dollars (\$50,000.00), exclusive of costs, interest, & attorney's fees.

2. Plaintiff Michelle Wilson is a female citizen of the United States and a

citizen and resident of the State of Florida and has so resided at all times material hereto.

3. Defendant Florida Commission on Human Relations (FCHR) is a department of the State of Florida with its principal place of business in Tallahassee, Florida. FCHR is a public body corporate, appointed by the Governor, which, collectively, has authority to hire and fire the executive director. It is sued under the Florida Constitution for equitable relief.

4. Defendant Cheyanne Costilla is Executive Director of the Florida Commission on Human Relations and, as such, is that agency's chief executive officer. She is sued for prospective equitable relief in her official capacity and for monetary damages in her individual capacity under 42 U.S.C. §1983. Her principal place of business is in Leon County, Florida.

5. Substantially all the transactions and occurrences herein occurred in Leon County, Florida.

CONDITIONS PRECEDENT

6. All conditions precedent have been fulfilled, waived, or excused.

FACTUAL ALLEGATIONS

7. Plaintiff Michelle Wilson worked for seventeen years for Defendant FCHR, beginning in 2003.

8. After starting in a low-ranking position, Plaintiff worked her way up to

Executive Director, the agency's chief executive position, serving in that capacity for the last nine years of her tenure.

9. There came a point at which members of the Commission itself, which was, collectively, Plaintiff's boss, began demanding that Plaintiff perform illegal acts.

10. For example, and without limitation, members of the Commission, including one who had more than a score of discrimination charges against his business, began demanding that Plaintiff issue "no-cause" determinations against employment discrimination claims that had not yet been investigated.

11. Both a Florida Statute and a binding administrative rule required that a charge be investigated before being given a "cause" or "no cause" determination. Even so, these Commissioners, instead of seeking amendments to the statute and the rule, simply demanded that Plaintiff act in violation of them.

12. Plaintiff insisted on following the law.

13. FCHR fired Plaintiff on October 15, 2020, because of her refusal to violate laws, rules, ad regulations.

14. Plaintiff filed a formal Whistleblower Charge on December 14, 2020, taking care to address the charge to both FCHR and the Office of the Chief Inspector General (OIG). The pertinent statute gives both agencies equal jurisdiction over receiving and processing whistleblower charges. §112.31895(1)(a), Florida Statutes.

15. In the email transmitting the Charge, Plaintiff pointed out FCHR's obvious conflict in passing judgment on its own firing decision and noted the authority of OIG to act instead of FCHR.

16. Even so, FCHR kept the charge itself.

17. The Charge was drafted by Plaintiff, who had run the agency for nine years, and by a board-certified labor and employment lawyer with more than 30 years' experience before FCHR. It easily met all the requirements of a whistleblower charge under Florida law.

18. Plaintiff had no communication from FCHR for 144 days.

19. At that time, FCHR wrote Plaintiff, saying that the Charge was not adequate and that she had an opportunity to amend.

20. Plaintiff's team sought details concerning what FCHR thought to be wrong or inadequate, but was able to extract only contradictory, vague, and senseless comments for guidance on what to amend.

21. It became apparent that FCHR was not going to be able to rise above its conflict of interest in processing the Charge.

22. That would be disappointing, but still workable, because under the controlling statutory framework, FCHR was required to issue a positive or negative determination on every charge, and, unlike discrimination charges, a negatively determined whistleblower charge could still go on to circuit court.

23. But rather than making a determination of any kind, FCHR chose not to process or investigate Plaintiff's charge and thus to issue no determination, positive or negative.

24. Without a determination, Plaintiff lacked a "ticket" to get into court.

25. Plaintiff filed an appeal in the First District Court of Appeal, challenging the authority of FCHR to withhold a determination under the operative statute, but also raising state and federal constitutional issues of separation of powers, conflict of interest, due process, access to courts, and right to trial by jury.

26. The appeals court failed to acknowledge or address any of the constitutional issues, even on rehearing, and found FCHR to have an "inherent" power to decline jurisdiction over a whistleblower charge.

27. Accordingly, Plaintiff brings this plenary action to force consideration of her constitutional claims.

28. Plaintiff has had to retain counsel to vindicate her rights in this matter and owes a reasonable attorney's fee.

COUNT I
U.S. CONSTITUTION
FIRST AMENDMENT – RIGHT TO PETITION
42 U.S.C. § 1983
(Against Costilla, official and individual capacities)

29. Plaintiff realleges paragraphs 1-28.

30. Defendant Costilla violated Plaintiff's First Amendment right to

petition the government for redress of grievances by refusing to honor Plaintiff's right to a determination on her whistleblower charge when such a determination serves as Plaintiff's ticket to her statutorily guaranteed judicial proceeding on that whistleblower charge.

31. Plaintiff's rights to petition government through judicial proceedings were clearly established.

32. The acts of Costilla as described herein were taken under color of state law, custom, or usage.

33. The acts of Costilla as described herein were purposeful and arise from an official policy or custom.

34. The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of liberty without due process of law. The First Amendment of the United States Constitution, applicable to the states under the Fourteenth Amendment, guarantees the right of access to courts as part of the right to petition government for the redress of grievances—a right which stands at the very apex of constitutional protection when exercised, as here, in political speech aimed at protesting the restrictive conduct of government on matters of the gravest public concern.

35. The acts of Costilla violated the First Amendment, 42 U.S.C. § 1983.

36. Plaintiff has suffered damages because of the Defendant's unlawful

actions.

COUNT II
U.S. CONSTITUTION
FOURTEENTH AMENDMENT – DUE PROCESS – NEUTRAL TRIBUNAL
42 U.S.C. § 1983
(Against Costilla, official and individual capacities)

37. Plaintiff realleges paragraphs 1-28

38. Defendant Costilla violated Plaintiff's right to due process of law by causing FCHR to review and pass upon the propriety of its own decision to fire Plaintiff, thereby denying Plaintiff a neutral tribunal, which is an essential element of due process.

39. Plaintiff had warned Costilla at the outset upon submitting her charge that FCHR had a conflict of interest in passing upon its own decision and even suggested one of several places (Chief Inspector General) to which FCHR could have referred the charge for processing and determination.

40. FCHR has previously outsourced similar determinations to the Florida Attorney General to avoid conflicts of interest.

41. Plaintiff's right to a neutral tribunal was clearly established.

42. The acts of Costilla as described herein were taken under color of state law, custom, or usage.

43. The acts of Costilla as described herein were purposeful and arise from

an official policy or custom.

44. The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of life, liberty, or property without due process of law. There can be no due process where the officers of a tribunal judge their own conduct.

45. The acts of Costilla violated the Fourteenth Amendment, 42 U.S.C. § 1983.

46. Plaintiff has suffered damages because of the Defendant's unlawful actions.

COUNT III
U.S. CONSTITUTION
FOURTEENTH AMENDMENT – DUE PROCESS
42 U.S.C. § 1983
(Against Costilla, official and individual capacities)

47. Plaintiff realleges paragraphs 1-28.

48. Defendant Costilla violated Plaintiff's right to due process of law by capriciously and without standards sweeping away Plaintiff's valuable right to proceed in court on her whistleblower claim.

49. The Legislature established a duty for FCHR to issue a determination on every whistleblower charge presented to that agency. That determination serves as the charging party's ticket to court. There is no access without it. FCHR arrogated to itself the power to rewrite the statute to give itself power to refuse to

investigate or process a charge FCHR in its sole discretion deems inadequate.

50. FCHR has no objective criteria nor any sort of standards written – the agency merely operates on unarticulated, subjective feelings, whims, and prejudice in determining which charges not to investigate and thus to strangle in infancy.

51. Plaintiff's right to due process was clearly established.

52. The acts of Costilla as described herein were taken under color of state law, custom, or usage.

53. The acts of Costilla as described herein were purposeful and arise from an official policy or custom.

54. The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of life, liberty, or property without due process of law. There can be no due process where rights are “capriciously swept away on the wings of luck and happenstance.” *Roth v. Board of Regents*, 408 U.S. 564, 577.

55. The acts of Costilla violated the Fourteenth Amendment, 42 U.S.C. § 1983.

56. Plaintiff has suffered damages because of the Defendant's unlawful actions.

COUNT IV
FLORIDA CONSTITUTION
Article I, § 9 – DUE PROCESS
(Against FCHR)

57. Plaintiff realleges paragraphs 1-28.

58. Defendant FCHR violated Plaintiff's right to due process of law by capriciously and without standards sweeping away Plaintiff's valuable right to proceed in court on her whistleblower claim.

59. The Legislature established a duty for FCHR to issue a determination on every whistleblower charge presented to that agency. That determination serves as the charging party's ticket to court. There is no access without it. FCHR arrogated to itself the power to rewrite the statute to give itself power to refuse to investigate or process a charge FCHR in its sole discretion deems inadequate.

60. FCHR has no objective criteria nor any sort of standards written – the agency merely operates on unarticulated, subjective feelings, whims, and prejudice in determining which charges not to investigate and thus to strangle in infancy.

61. Plaintiff's right to due process was clearly established.

62. Article I, § 9 of the Florida Constitution guarantees that, "No person shall be deprived of life, liberty, or property without due process of law."

63. The acts of FCHR violated Article I, § 9 of the Florida Constitution.

64. Plaintiff is entitled to relief because of the Defendant's unlawful actions.

COUNT V
FLORIDA CONSTITUTION
Article I, § 21 – Right of Access to Court

(Against FCHR)

65. Plaintiff realleges paragraphs 1-28.

66. Defendant FCHR violated Plaintiff's right of access to court by placing illegitimate and insuperable obstacles in her path to vindication of her rights to litigate her whistleblower claims in circuit court.

67. The Legislature established a duty for FCHR to issue a determination on every whistleblower charge presented to that agency. That determination serves as the charging party's ticket to court. There is no access without it. FCHR arrogated to itself the power to rewrite the statute to give itself power to refuse to investigate or process a charge FCHR in its sole discretion deems inadequate.

68. FCHR has no objective criteria nor any sort of standards written – the agency merely operates on unarticulated, subjective feelings, whims, and prejudice in determining which charges not to investigate and thus to strangle in infancy.

69. Plaintiff's right to access to court was clearly established.

70. Article I, § 21 of the Florida Constitution guarantees that, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

71. The acts of FCHR violated Article I, § 21 of the Florida Constitution.

72. Plaintiff is entitled to relief because of the Defendant's unlawful actions.

COUNT VI
FLORIDA CONSTITUTION
Article I, § 22 – Trial by Jury
(Against FCHR)

73. Plaintiff realleges paragraphs 1-28.

74. Defendant FCHR violated Plaintiff's right to trial by jury by capriciously and without standards sweeping away Plaintiff's valuable right to proceed in court on her whistleblower claim.

75. As an administrative agency of the executive branch, FCHR is not authorized to resolve any determination of a party's right to the monetary damages for emotional distress that the whistleblower statute provides. By blocking Plaintiff's access to a court that could pass on such issues, FCHR violated Plaintiff's right to trial by jury.

76. The Legislature established a duty for FCHR to issue a determination on every whistleblower charge presented to that agency. That determination serves as the charging party's ticket to court. There is no access without it. FCHR arrogated to itself the power to rewrite the statute to give itself power to refuse to investigate or process a charge FCHR in its sole discretion deems inadequate.

77. FCHR has no objective criteria nor any sort of standards written – the agency merely operates on unarticulated, subjective feelings, whims, and prejudice in determining which charges not to investigate and thus to strangle in infancy.

78. Plaintiff's right to due process was clearly established.

79. Article I, § 22 of the Florida Constitution guarantees that, “The right of trial by jury shall be secure to all and remain inviolate.”

80. The acts of FCHR violated Article I, § 22 of the Florida Constitution.

81. Plaintiff is entitled to relief because of the Defendant’s unlawful actions.

COUNT VII
FLORIDA CONSTITUTION
Article II, § 3 – SEPARATION OF POWERS
(Against FCHR)

82. Plaintiff realleges paragraphs 1-28.

83. Defendant FCHR violated the Florida Constitution’s mandate of separation of powers, under which no branch of government may exercise the powers reserved to the others.

84. The language of Article II, § 3, is, “[t]he powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided therein. “

85. By effectively amending the public whistleblower statute to grant itself an unlimited and undefined exception to the mandate to issue a determination in every case to allow each case to go to court, FCHR unlawfully exercised the powers of the legislative branch.

86. By effectively amending the whistleblower statute, the Florida

Constitution, and the common law to allow itself to make final determinations on claims for emotional distress damages and other unliquidated damages, FCHR arrogated to itself the powers of the judicial branch.

87. FCHR has no objective criteria nor any sort of standards written – the agency merely operates on unarticulated, subjective feelings, whims, and prejudice in determining which charges not to investigate and thus to strangle in infancy.

88. The acts of FCHR violated Article II, § 3 of the Florida Constitution. Plaintiff is entitled to relief because of the Defendant's unlawful actions.

PRAYER OF RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a) that process issue and this Court take jurisdiction over this case;
- b) award a declaratory judgment against Defendants and for the Plaintiff;
- c) award judgment for damages against Defendant Costilla and for the Plaintiff;
- d) award Plaintiff compensatory damages for garden variety emotional distress in an amount to be determined by the enlightened conscience of the jury;
- e) award Plaintiff punitive damages against Costilla, individually, in an amount to be determined by the enlightened conscience of the jury;
- f) enter an injunction for the Plaintiff, compelling FCHR to issue a determination on Plaintiff's whistleblower claim;

- g) judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- h) award Plaintiff prejudgment interest;
- i) award Plaintiff reasonable attorney's fees, expenses, and costs of litigation;
- j) award Plaintiff such other and further relief as is appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted this 25th day of May 2023,

Respectfully submitted,

/s/Richard E. Johnson

Richard E. Johnson, Bar No 858323

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