



MEMORANDUM

TO: Lance Ingalls, Esq.

FROM: Elizabeth Chilcoat

DATE: July 25, 2022

RE: Report of Investigation Findings

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Douglas County, Colorado (the “County”) retained Sherman & Howard LLC to conduct an impartial and independent investigation regarding certain allegations against Commissioner Lora Thomas, some of which were brought forward by a former employee of the Douglas County Sheriff’s Office (the “Complaining Witness”). On June 21, 2022, the Board of County Commissioners voted to expand the investigation to include interviews of certain elected officials and independent contractors of the County, and of two candidates for political office.

1. Summary of Findings

The County has requested a report of the findings of the investigation. These findings are based on a the documentary and recorded evidence collected or reviewed and the witness interviews conducted in the course of this investigation.

The County requested this investigation answer three categories of specific questions drafted by the County. Therefore, the findings are presented below, organized according to the overarching subject and then by specific question asked by the County.

In reaching these findings, I have applied a “preponderance of the evidence” standard, rather than the higher standard of “beyond a reasonable doubt” applicable in criminal investigations and the “clear and convincing evidence” standard imposed on some civil claims by statute. A preponderance of the evidence standard requires a finding that something is more likely than not, or that 50.01% of the evidence weighs in favor of a finding. A preponderance of the evidence standard is the most common governing standard in civil claims and, relevant here, is the standard that would govern claims implicated by the County’s questions.

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2. Answers to the County's Questions

a. Questions Regarding Distribution of the Alleged Deputy Letter by Commissioner Thomas.

- 1. Did Lora Thomas herself, or through others at her direction, draft a letter written "anonymously" to the Douglas County Board of County Commissioners ("Board") in 2019 which included the full names of first responders and individuals in the employee of the Douglas County Sheriff's office?*

Answer to Question 1: I did not receive sufficient evidence to conclude that Commissioner Thomas wrote the Alleged Deputy Letter. I also did not receive sufficient evidence to conclude that Commissioner Thomas did not write the Alleged Deputy Letter. On the one hand, the content of the Alleged Deputy Letter suggests that it was not written by Commissioner Thomas. The information in the Alleged Deputy Letter is the sort of insider information that is likely to be known by an employee of the Sheriff's Office. Additionally, although Commissioner Thomas refused to participate in this investigation, Commissioner Thomas has previously denied writing the Alleged Deputy Letter. On the other hand, suspicions that Commissioner Thomas wrote the Alleged Deputy Letter are reasonable. Commissioner Thomas is well-connected within the broader law enforcement community and publicly defended the veracity of the contents of the Alleged Deputy Letter by saying she had discussed the allegations in the letter with Sheriff's Office employees, suggesting that she could have collected the information contained in the Alleged Deputy Letter. Multiple witnesses opined that writing and sending the Alleged Deputy Letter was generally consistent with Commissioner Thomas's character or past practice, but I do not find this character evidence dispositive.

In order not to interfere with a parallel criminal investigation, one component of which is apparently the origin of the Alleged Deputy Letter, I will refrain from making a finding on the authorship of the Alleged Deputy Letter at this time. However, the answer to this question does not and would not effect any of the other findings of this investigation, including any finding regarding the existence of valid legal claims based on Commissioner Thomas's actions.

- 2. Did Lora Thomas distribute a letter written "anonymously" to the Board in 2019 ("Letter") which included the full names of first responders and individuals in the employ of the Douglas County Sheriff's office, disparaging them?*
- 3. Did Lora Thomas distribute this Letter on her political website.*
- 4. Did Lora Thomas knowingly distribute this Letter or otherwise make this Letter available to the hundreds of attendees of a political assembly, specifically the March 19, 2022 Douglas County Republican Assembly?*

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Answers to Questions 2-4: Commissioner Thomas published the Alleged Deputy Letter on the website for her 2022 campaign for Douglas County Sheriff. In at least one public appearance during that campaign, Commissioner Thomas encouraged the audience to visit the website for her 2022 campaign for Douglas County Sheriff in order to review the Alleged Deputy Letter. Multiple witnesses reported seeing Commissioner Thomas personally distribute the Alleged Deputy Letter at the 2022 Republican Assembly for Douglas County (the “Republican Assembly”). Therefore, I find it more likely than not that Commissioner Thomas knew she was distributing the Alleged Deputy Letter when she did so on her website and at the Republican Assembly.

5. *Did Lora Thomas distribute this Letter with the intent to benefit herself politically?*

Answer to Question 5: Yes. I find it more likely than not that Commissioner Thomas used the Alleged Deputy Letter to support her 2022 political campaign for Douglas County Sheriff. *See* Answers to Questions 2-4, above.

6. *Did Lora Thomas demonstrate a callous disregard for the individuals named in the correspondence and the impact of her distribution of this Letter on them?*

Answer to Question 6: “Callous disregard” is a concept applied sparingly in law as an aggravating factor when considering the severity or reprehensibility of a wrongdoer’s conduct. Some courts have found that an individual acted with callous disregard when the individual knew or should have known the conduct was wrong. *See, e.g., National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 640-43 (1976) (upholding sanction under rule requiring “willfulness, bad faith or fault” where trial court found the party’s violation of the rule showed “flagrant bad faith” and “callous disregard” for the party’s duties under the rule) (quotations omitted); *Ramsden v. United States*, 2 F.3d 322, 325 (9th Cir. 1993) (finding callous disregard for criminal defendant’s constitutional rights where the government admitted not obtaining a warrant before conducting a search, the government had the opportunity to obtain a warrant, and the government chose not to obtain a search warrant); *People v. Tucker*, 755 P.2d 452, 452-53 (Colo. 1988) (finding “callous disregard for the integrity of the judicial process and for the substantive laws of this state” when defendant married his second wife knowing that the divorce from his first marriage was incomplete). Courts also have found callous disregard when an individual was cruelly reckless and indifferent to whether his or her actions would cause harm or would cause a particular type of harm or harm to a particular individual. *E.g., People v. Fei Qin*, 470 P.3d 863, 871 (Colo. O.P.D.J. 2016) (severity of assault revealed perpetrator’s callous disregard for the victim’s welfare and “indifference” to whether the assault would harm a child held by the victim); *Pettit v. Namie*, 931 A.2d 790 (Pa. Commw. Ct. 2007) (distinguishing between willfulness and callous disregard). Courts consider whether a defendant exhibited callous disregard only after finding particular wrongdoing giving rise to legal liability. As discussed elsewhere in this report, I find it more likely than not that Commissioner Thomas did not engage in conduct that would give rise to legal liability. Because that prerequisite to finding callous disregard is not present, I find it more likely than not that the facts do not support a

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finding that Commissioner Thomas's conduct with respect to the Alleged Deputy Letter was aggravated by callous disregard.

7. *Did Lora Thomas's distribution of this Letter result in a negative impact to first responders and others in the employ of Douglas County?*

Answer to Question 7: The concept of a "negative impact" is a nebulous one and could range from momentary discomfort to a lasting adverse consequence. In answering this question, I have not attempted to evaluate whether any County employee, including any first responder, felt momentary discomfort or fleeting discouragement upon reading the Alleged Deputy Letter. Instead, I have focused on whether there was a negative impact sufficient to alter the terms and conditions of employment or to cause persistent dissatisfaction in employment (referred to collectively herein as "negative impact").

I find it more likely than not that Commissioner Thomas's publication of the Alleged Deputy Letter did not have a negative impact on County employees, including first responders. Collectively, witnesses recalled a small handful of Deputies expressed the opinion that Commissioner Thomas intended to cause a deterioration of morale or to reduce the prestige of the Sheriff's Office, a small number of Sheriff's Office employees expressed concern about their job security if Commissioner Thomas were elected Sheriff, and a small number of Sheriff's Office employees expressed some embarrassment after the publication of the Alleged Deputy Letter. There is no evidence that morale among employees of the Sheriff's Office was actually harmed, that the reputation of the Sheriff's Office was actually undercut, or that any County employee resigned from employment because of Commissioner Thomas's publication of the Alleged Deputy Letter. Thus, while recognizing that the publication of the Alleged Deputy Letter may have caused discomfort to some employees of the Sheriff's Office, I do not find that the Alleged Deputy Letter's publication altered the terms and conditions of any employee's employment.

Detailed findings regarding the impact of the Alleged Deputy Letter on Complaining Witness are set forth below, beginning on page 6 of this Report, in response to the third category of questions presented for investigation. Those findings are incorporated as though fully set forth here.

b. Questions Related to Misdirection of Outside Counsel.

1. *Did the Board of County Commissioners have a discussion regarding residents of the San Luis Valley who feared personal and financial retribution for speaking out about the RWR proposal?*

Answer to Question 1: Yes.

2. *Was the Board direction to ensure that those vulnerable individuals were protected from disclosure of their personal identifying information?*

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Answer to Question 2: Yes.

3. *Did Lora Thomas draft correspondence to outside counsel Stephen Leonhardt, without informing the Board, that was contrary to this Board direction and sign it as the Chair of the Board of County Commissioners?*

Answer to Question 3: Yes.

c. Questions Pertaining to Allegations that Commissioner Thomas Created a Hostile Workplace.

1. *Are there instances where Lora Thomas, through her actions, communications, and behavior, has created a hostile work environment?*

Answer to Question 1: No. A “hostile work environment” is a legal claim that arises from an employment relationship. Two types of hostile work environments are actionable in public employment. First, hostile work environment claims that are based on statuses protected by law, such as immutable characteristics like race and sex and protected activity like making a complaint about workplace discrimination. Second, a work environment may be so hostile that a reasonable person would view themselves as having no option other than to resign, giving rise to a constructive discharge claim based on the public employer’s failure to provide due process before terminating the employee’s employment. Employees are generally expected to endure some workplace friction without an employer incurring legal liability.

Commissioner Thomas’s Treatment of Non-Employees. The majority of the complaints received about Commissioner Thomas concerned Commissioner Thomas’s treatment of elected officials and independent contractors. Elected officials, candidates for political office, and independent contractors do not have an employment relationship with Douglas County and cannot pursue claims for hostile work environment against the County. When new laws have been enacted to protect a new group of people from workplace mistreatment, those laws have not applied retroactively as retroactive application is viewed as offending traditional notions of fair play by penalizing employers for actions they could not have known were prohibited by law. Therefore, Commissioner Thomas’s treatment of elected officials, candidates for political office, and independent contractors cannot now sustain, and are unlikely ever to sustain a legal claim against the County based on a hostile work environment or constructive discharge.

Commissioner Thomas’s Treatment of High-Level County Employees. A hostile work environment claim arises when an employee is subjected to harassment that is so severe or pervasive that it alters the terms and conditions of the employee’s working environment. In most cases, the treatment is based on the employee’s protected characteristic or protected activity. I find it more likely than not that Commissioner Thomas’s treatment of high-level County employees and the fractious relationships between the Commissioners have not led

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any high-level County employee to formulate or state any intention to resign from employment with the County.

However, multiple County employees expressed fears about retaliation for participating in this investigation. County employees are aware of the acrimonious relationships between the Commissioners and fear that one faction of the Commissioners will be displeased with the outcome of this investigation regardless of the outcome. In particular, County employees expressed concern that one or more Commissioners would intentionally make continued employment with the County unpleasant or untenable for County employees who participated in this investigation. Retaliation against employees, former employees, and prospective employees for participating in workplace investigations can both give rise to liability and discourage honest participation in future investigations.

Complaining Witness's Allegations. Complaining Witness claims that the work environment was made so hostile that Complaining Witness was constructively discharged from employment. Almost all employees who resign from employment do so because of dissatisfaction with some component of their employment. That dissatisfaction may be entirely reasonable without making the employee's resignation involuntary. A constructive discharge claim distinguishes between perfectly reasonable and nevertheless entirely voluntary resignations and resignations that occur when an employer wrongfully creates working conditions so intolerable that a reasonable person would be compelled to resign. For example, particularly egregious harassment based on a protected characteristic can cause a constructive discharge under certain circumstances.

Complaining Witness alleges that Complaining Witness was constructively discharged because (1) Commissioner Thomas publicized the Alleged Deputy Letter, (2) the Alleged Deputy Letter contains false and defamatory information about Complaining Witness and creates a negative impression of Complaining Witness, (3) after the Alleged Deputy Letter was published, someone asked Complaining [REDACTED] about Complaining Witness's compensation, and (4) after Complaining Witness gave notice of resignation, someone asked [REDACTED] why Complaining Witness would leave if Complaining Witness was earning Deputy pay.

Some courts have recognized that a public employee may pursue a due process claim based on defamation if the employee can show: (1) defamation, (2) that the employer deprived the employee of a hearing to refute the allegation, and (3) that the employer took an employment action against the employee. A constructive discharge is considered an employer action in many legal contexts, and might be considered an employer action in this context. Because Complaining Witness has characterized the contents of the Alleged Deputy Letter as defamatory and as creating a negative impression of Complaining Witness, Complaining Witness's hostile work environment and constructive discharge claims are evaluated under this rubric.

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Colorado recognizes two types of reputational injury claims that could be relevant here: defamation and unreasonable publicity given to another's private life.¹ Therefore, the analysis of Complaining Witness's claims focuses, first, on whether Commissioner Thomas's actions were defamatory or unreasonably publicized Complaining Witness's private life and, second, whether Complaining Witness was constructively discharged from employment as a result. Complaining Witness was not provided with a hearing to refute the allegations in the Alleged Deputy Letter, so in-depth consideration of that element is not necessary.

Analysis of Potential Defamation Claim. A statement may be defamatory "if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Burns v. McGraw-Hill Broadcasting Co.*, 659 P.2d 1351, 1357 (Colo. 1983) (quoting *Restatement (Second) Torts* § 559 (1976)). However, expressions of opinion are Constitutionally protected as free speech and cannot support a defamation claim. *Id.* at 1358. An opinion that leads the audience to assume that it is based on undisclosed but defamatory facts is not a protected opinion. *Id.* at 1359. Thus, if the opinion implies that it is based on facts known to the speaker but unknown to the audience, the opinion may not be protected. *Id.* Additionally, to be defamatory, a statement must be false.

Generally, liability for defamation is imposed upon the individual who made the statement and not upon any party who merely reports on or republishes the statement. However, such is not the case if the party making the republication endorses the truth of the original statement. Commissioner Thomas endorsed the truth of the allegations in the Alleged Deputy Letter when interviewed by George Brauchler on his radio show and podcast. Therefore, I will consider whether the statements about Complaining Witness could support a defamation claim.

The Alleged Deputy Letter makes allegations that primarily concern the public employment of Sheriff's Office employees. With respect to Complaining Witness, the Alleged Deputy Letter contains the following accurate statements that could not be used to support a defamation claim:

- A statement that Complaining Witness worked with [REDACTED] as a paralegal before going to work for the Sheriff's Office.
- The description of the position Complaining Witness was first hired to perform for the Sheriff's Office.
- A statement that Complaining Witness was sponsored by Sheriff Spurlock to attend Highlands Ranch Law Enforcement Training Academy ("HRLETA").
- A statement that Complaining Witness [REDACTED].
- A statement that Complaining Witness was assigned to Detentions after becoming a Deputy.

¹ Although some states have recognized a tort of false light invasion of privacy, Colorado has expressly rejected the doctrine. *Denver Publishing Co. v. Bueno*, 54 P.3d 893, 894 (Colo. 2002). A false light invasion of privacy claim "aris[es] out of publicity that unreasonably places another person in a false light before the public." *Id.* Colorado views the claim as unnecessarily duplicative of a standard defamation claim. *Id.*

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- A statement that Complaining Witness eventually returned to the position Complaining Witness first held with the Sheriff's Department.
- A statement that Complaining Witness is friends with [REDACTED].²
- A statement that Complaining Witness was not required to take a test to attend HRLETA and Detentions Specialists must take a test to attend HRLETA.³
- [REDACTED] for Complaining [REDACTED].
- Complaining Witness made it known that she did not like working as a Deputy in the Jail.

I find that the statements listed above are more likely to be true than to be false. As a result, I find that those statement cannot be used to support a claim of defamation. In addition, I find that many of the statements listed above are more likely than not to cause no reputational injury to Complaining Witness.

The Alleged Deputy Letter also contains the following partially-accurate statement:

- Complaining Witness was assigned to the hiring division to perform civilian duties, but was still classified as a Detentions Deputy.

This statement is accurate on the following points: (1) Complaining Witness received temporary daily assignments to the hiring division, and (2) Complaining Witness was still classified as a Detentions Deputy while temporarily assigned to the hiring division. The statement is inaccurate on the following point: Complaining Witness performed Deputy duties and not civilian duties while assigned to hiring. Within the Sheriff's Office, the background check and canvassing work Complaining Witness performed while temporarily assigned to the hiring division is performed by a sworn peace officer. However, I find it more likely than not that this false statement would not discourage anyone from associating with Complaining Witness. The false information does not concern Complaining Witness's character or conduct. Instead, it reflects criticism of management of the Sheriff's Office, which was responsible for assigning tasks to Complaining Witness.

Finally, the Alleged Deputy Letter contains two statements that might be opinion:

- It is unknown whether Complaining Witness is still paid at a Deputy level, and the author or authors believe that question requires investigation; and
- An unidentified person believes that there was a plan to increase Complaining Witness's compensation to a Deputy level while she performed civilian work.

² Whether that friendship continues is uncertain, but Witness 6 indicated that [REDACTED] [REDACTED] during the pandemic when it would otherwise have been impossible for Witness 6 to fulfill job duties and also supervise children who were home from school during school closures and remote learning. That level of support suggests that a friendship did exist between [REDACTED] at one time.

³ The Alleged Deputy Letter does not claim that Complaining Witness was a Detentions Specialist or was subject to the same requirements as Detentions Specialists. Moreover, I received conflicting information about whether Complaining Witness was required to take a test as a condition of admission to HRLETA and find it more likely than not that Complaining Witness was not required to take a test as a condition of admission to HRLETA.

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I find that it is more likely than not that the first of these two statements (regarding the possibility that Complaining Witness was still compensated as a Deputy) is not defamatory because it is a statement of opinion. The author or authors of the Alleged Deputy Letter expressly acknowledged that they did not know whether Complaining Witness was still paid as a Deputy and recommended an investigation. I find that it is more likely than not that the second of the two statements (regarding the belief that there was a plan to increase Complaining Witness's compensation) is not defamatory because it is a statement of opinion. Although an opinion may lose First Amendment protection if it is based upon undisclosed false and defamatory facts, the Alleged Deputy Letter sets out the facts that the belief is based on. As discussed above, most of those facts are true and the one that is false does not harm Complaining Witness's reputation. I conclude that it is more likely than not that Complaining Witness was not defamed by Commissioner Thomas's publication of and endorsement of the truth of the Alleged Deputy Letter.

Unreasonable Publicity to an Individual's Private Life Analysis. An individual's privacy may be tortiously invaded if a defendant gives unreasonable publicity to the individual's private life. *Robert C. Ozer, P.C. v. Borquez*, 940 P.2d 371, 377 (Colo. 1997). An essential element of the claim is that the facts disclosed must be private in nature. *Id.* Additionally, the disclosure must be to the public, must be highly offensive to a reasonable person, must not be of facts that are of legitimate concern to the public, and disclosed by a defendant with reckless disregard for the private nature of the facts. *Id.*

The subjects that constitute "private life" are limited to things like sexual relations and "disgraceful" illnesses. *Id.* The positions that an employee has held and the names of an individual's friends are unlikely to be sufficiently "private" to support an invasion of privacy claim. This is particularly true in the case of a public employee. Under the Colorado Open Records Act ("CORA"), some information about public employees is considered a public record. Public records include information about a government employee's compensation, C.R.S. § 24-72-202(4.5), and complaints about sexual harassment, discrimination, and retaliation (names of accused perpetrators may be redacted only if the allegations are not substantiated). *Daniels v. City of Commerce City*, 988 P.2d 648, 650-51 (Colo. App. 1999). In contrast, a government employee's home address, telephone number, and financial information are not public records. C.R.S. §§ 24-72-202(4.5), 24-72-204(3)(a)(II)(A). Reasonable legal minds may disagree about whether some of the statements in the Alleged Deputy Letter would or would not be considered a public record under CORA. However, I find it more likely than not that the subjects covered in the Alleged Deputy Letter concerning Complaining Witness are not sufficiently private for the publication of the Alleged Deputy Letter to tortiously invade Complaining Witness's privacy. To the extent that any of the statements in the Alleged Deputy Letter do constitute statements about Complaining Witness's private life, such as identifying [REDACTED], I find it more likely than not that those statements would not be highly offensive to a reasonable person. Therefore, I find it more likely than not that Complaining Witness cannot substantiate a claim that Commissioner Thomas's publication of the Alleged Deputy Letter unreasonably publicized Complaining Witness's private life.

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Analysis of Employer Action Against Complaining Witness. Additionally, I find it more likely than not that Complaining Witness cannot show that the Sheriff's Office or County took an employment action against Complaining Witness. Complaining Witness alleges that Complaining Witness experienced a hostile work environment and was constructively discharged because Commissioner Thomas publicized the Alleged Deputy Letter. Complaining Witness reported that, for years before Commissioner Thomas published the Alleged Deputy Letter, rumors that Complaining Witness benefited from favoritism circulated within the Sheriff's Office. Complaining Witness alleges that the following occurred after Commissioner Thomas published the Alleged Deputy Letter and before Complaining Witness decided to resign from employment with the Sheriff's Office: (1) Complaining [REDACTED] received one inquiry from a Sheriff's Office employee about Complaining Witness's pay, (2) some people might have stopped talking to Complaining Witness, (3) people talked about the Alleged Deputy Letter but did not mention Complaining Witness, and (4) Complaining Witness feared that Commissioner Thomas would dismiss Complaining Witness if she were elected Douglas County Sheriff. Complaining Witness also reported that someone asked [REDACTED] why Complaining Witness would leave the Sheriff's Office if Complaining Witness was receiving Deputy pay for a civilian role, but that question must have been posed after Complaining Witness decided to leave because it concerned Complaining Witness's motivation for resigning.

A hostile work environment is established by harassment so severe or pervasive that it alters the terms and conditions of the work environment. When considering whether a work environment is hostile, courts look at the frequency of the conduct, the severity of the conduct, whether the conduct was physically threatening, humiliating, or merely offensive, and whether the conduct unreasonably interfered with the employee's work performance. More than a mere hostile work environment is required to convert a voluntary resignation into a constructive discharge. The employee must show that the working conditions would cause a reasonable person to believe there was no alternative but to resign.

One isolated inquiry of a third party about an employee's pay is not sufficient to create a hostile work environment. Complaining Witness was uncertain whether people had stopped speaking to Complaining Witness, but unless that treatment was so severe that it altered the terms and conditions of Complaining Witness's employment, it would not create a hostile work environment. Complaining Witness's uncertainty about whether people stopped speaking to Complaining Witness undercuts the argument that Complaining Witness experienced a hostile work environment. That coworkers spoke about the Alleged Deputy Letter without mentioning Complaining Witness would not create a hostile work environment. The conduct Complaining Witness complained about was not directed at Complaining Witness, was not physically threatening or humiliating, and does not appear to have prevented Complaining Witness from performing Complaining Witness's duties for the Sheriff's Office. I find it more likely than not that Complaining Witness's coworkers did not engage in conduct that created a hostile work environment for Complaining Witness based on the publication of the Alleged Deputy Letter. Moreover, I find it more likely than not that Complaining Witness's ability to defend against rumors that Complaining Witness benefitted from favoritism was not significantly diminished by the publication of the Alleged Deputy Letter. By Complaining Witness's own admission, Complaining Witness perceived favorable employment-related treatment or consequences

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flowing from Complaining Witness's relationship with Sheriff [REDACTED], including increased job security. Additionally, nothing in the Alleged Deputy Letter maligned or questioned Complaining Witness's competency, skill, or qualifications for the positions Complaining Witness held within the Sheriff's Department. Complaining Witness does not claim that Complaining Witness lost access to internal systems permitting Sheriff's Office employees to report discrimination or harassment. Therefore, I also find it more likely than not that the Sheriff's Department did not cause Complaining Witness's coworkers to engage in conduct that created working conditions that were so intolerable that a reasonable employee in Complaining Witness's position would have felt compelled to resign. Consequently, I conclude that it is more likely than not that Complaining Witness was not constructively discharged from employment based on the conduct of Complaining Witness's coworkers after Commissioner Thomas published the Alleged Deputy Letter.

Complaining Witness separately alleged that Complaining Witness was concerned about job security because Commissioner Thomas was running for Sheriff. Complaining witness had no interaction with Commissioner Thomas regarding the Alleged Deputy Letter or Complaining Witness's employment with the Sheriff's Office. When Complaining Witness resigned, Commissioner Thomas was one of four candidates seeking the Republican nomination to run for Douglas County Sheriff. Complaining Witness's fear about job security based on Commissioner Thomas's primary candidacy was premature. I find it more likely than not that Commissioner Thomas's primary candidacy for Douglas County Sheriff would not lead a reasonable person in Complaining Witness's position to feel compelled to resign. This view is supported by the fact that, although other Sheriff's Office employees expressed concern that Commissioner Thomas would fire them if elected Sheriff, Complaining Witness is the only Sheriff's Office employee known to have resigned because of those concerns. Based on all of the foregoing, I find it more likely than not that a reasonable person in Complaining Witness's position would not have felt compelled to resign because of Commissioner Thomas's publication of the Alleged Deputy Letter and candidacy for Sheriff.

I find, also, that it is more likely than not that Complaining Witness did not feel compelled to resign because of Commissioner Thomas's publication of the Alleged Deputy Letter. Complaining Witness stated that Complaining Witness was not miserable working for the Sheriff's Office and decided to resign only after Complaining Witness was recruited for a different job, which Complaining Witness considered to be a "sign" that Complaining Witness should leave the Sheriff's Office. Thus, I find it more likely than not that Complaining Witness voluntarily decided to resign employment with the Sheriff's Office because an outside employer contacted Complaining Witness about a new job and was not compelled to resign by the publication of the Alleged Deputy Letter.

I find that it is more likely than not that Complaining Witness cannot show that Complaining Witness had no alternative other than to resign after Commissioner Thomas published the Alleged Deputy Letter. Complaining Witness had previously complained about harassment related to perceived favoritism, so knew how to make those types of complaints to address any alleged harassment that occurred after Commissioner Thomas published and publicized the Alleged Deputy Letter. Complaining Witness did not make any complaints to the

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Sheriff's Office or to County HR before she resigned her employment. Because Complaining Witness did not take advantage of these alternatives short of resignation, I find it more likely than not that Complaining Witness was not constructively discharged from employment with the Douglas County Sheriff's Office.