

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 11-cv-00853-RPM

CHARLES W. MCCLURE,

Plaintiff,

v.

TOWN OF CENTER; and  
JULIO PAEZ, individually and in his official capacity as Trustee for the Town of Center;  
MARK GARCIA, individually, and in his official capacity as Town Clerk for the Town of  
Center; and  
SUSAN BANNING; and  
PEGGY MARTINEZ,

Defendants.

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ORDER DENYING MOTION TO DISMISS

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On June 27, 2011, the defendants filed a motion to dismiss the federal claims for failure to state a claim for relief, pursuant to Fed.R.Civ.P. 12(b)(6). The plaintiff filed his response on July 18, 2011, and the defendants filed their reply on August 1, 2011. Accepting the factual allegations of the complaint as true and considering the plausible allegations concerning the multiple roles in which the plaintiff served the Town of Center, it is not apparent that his position as Town Clerk would permit the termination of his employment without any procedural protections and without cause. Additionally, it is not clear that his benefit plan was a government plan and that he is exempt from FLSA protection. Accordingly, it is

ORDERED that the defendants' motion to dismiss is denied.

DATED: August 3<sup>rd</sup>, 2011

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge