

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

OLGA ZUNIGA,  
Plaintiff,

V.

TEXAS COURT OF CRIMINAL APPEALS  
and JUSTICE KEVIN PATRICK YEARY, in  
his Official and Individual Capacities,  
Defendants.

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CASE NO. 1:18-cv-434

**PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Olga Zuniga (“Ms. Zuniga” or “Plaintiff”) brings this suit against the Texas Court of Criminal Appeals (“Court”) and Justice Kevin Patrick Yeary (“Yeary”), in his Official and Individual Capacities, (collectively “Defendants”) and respectfully shows this Court as follows:

**I.  
NATURE OF THE CASE**

1. This is an employment case arising under the First Amendment of the United States Constitution and 42 U.S.C. § 1983. The Texas Court of Criminal Appeals, the state’s highest appellate court for criminal cases, employed Olga Zuniga as an executive assistant performing secretarial duties for approximately 14 years. Defendants the Court and Judge Kevin Yeary regularly gave Ms. Zuniga strong, positive feedback about her performance – until Yeary learned that Ms. Zuniga posted on Facebook about politics and matters of public concern. Yeary disagreed with Ms. Zuniga’s political views and terminated Ms. Zuniga because she expressed those views on Facebook. The Constitution of the United States limits the power of government to control and

intrude on the lives of American citizens. Defendants Yeary and the Texas Court of Criminal Appeals have a sworn duty to uphold the Constitution. Instead, Yeary and the Court violated the First Amendment of the Constitution and ended the career of a public servant for exercising her right to free speech. Defendants' actions were devastating to Ms. Zuniga. This suit seeks justice for Defendants' unconstitutional and illegal actions.

## **II. PARTIES AND SERVICE**

2. Plaintiff Olga Zuniga is a resident of Travis County, Texas.

3. Defendant the Texas Court of Criminal Appeals is a governmental entity established under the constitution and laws of the State of Texas and may be served with citation by serving its Presiding Judge, Sharon Keller, Supreme Court Building, 201 W. 14th Street, Room 106, Austin, Texas 78701.

4. Defendant Kevin Patrick Yeary is an individual who is a citizen of Texas and who works and performs in his official capacity in Travis County, Texas. At all times relevant to this suit, Yeary worked and served as the Place 4 Judge on the Texas Court of Criminal Appeals. Yeary may be served at the offices of the Texas Court of Criminal Appeals, Supreme Court Building, 201 W. 14th Street, Room 106, Austin, Texas 78701.

## **III. JURISDICTION AND VENUE**

5. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

6. The events establishing the basis for this suit occurred in Travis County, Texas, and venue is proper in this Court pursuant to 28 U.S.C. § 1391.

#### **IV. FACTS**

7. Defendant the Texas Court of Criminal Appeals employed Ms. Zuniga as an executive assistant/secretary to the Place 4 Judge on the Court for approximately 14 years, since approximately 2003. Before working for the Court of Criminal Appeals, the State of Texas and the Texas Attorney General employed Ms. Zuniga as a legal secretary for approximately 14 years.

8. As an executive assistant at the Court of Criminal Appeals, Ms. Zuniga's job duties consisted of filing, copying, preparing documents, calendaring appointments and other clerical, administrative or secretarial-type duties. Ms. Zuniga did not decide cases or participate in making legal decisions or rulings in cases before the Court.

9. The Court of Criminal Appeals regularly gave Ms. Zuniga strong, positive feedback about her performance. The Court of Criminal Appeals never wrote Ms. Zuniga up or disciplined her during her many years of employment, to the best of her recollection.

10. The judges of the Court of Criminal Appeals are elected to their positions in partisan political elections. Defendant Yeary was elected to Place 4 on the Court in 2014 and he became Ms. Zuniga's supervisor.

11. After Yeary was elected in 2014, he continued to employ Ms. Zuniga as his executive assistant. Yeary did not raise any notable issues about Ms. Zuniga's employment or performance until approximately around the 2016 national presidential election.

12. Defendant Yeary is a member of the Republican political party, ran for election to Court as a Republican candidate and actively campaigned in the Republican Party. Defendant Yeary frequently and publicly posted on social media, including Facebook, about politics and his support of Republican politicians. For example, Yeary has a Facebook page on which he has posted

numerous photos of Republican politicians including Texas Senators Ted Cruz and John Cornyn, and former Governor Rick Perry. There are also numerous photos of Yeary promoting and appearing at Republican Party political events, and one in which he is standing in front of political signs for Republican candidates, including Cruz and Texas Governor Greg Abbott. Yeary in one Facebook post refers favorably to Fox News, a media outlet known for its conservative political views and support for Republican politicians and positions.

13. In addition to Yeary's Facebook posts, there are also several Twitter accounts online for "Kevin Yeary" which may be those of Defendant Yeary. On these accounts, it appears Defendant Yeary has publicly "Liked" numerous political tweets by President Trump, posted a picture of Trump, and "Liked" posts referring to "Low IQ Democrats" and "Dumbasses on the Internet."

14. In 2016, Yeary searched online to find Ms. Zuniga's Facebook profile and found that Ms. Zuniga posted comments on Facebook regarding politicians and political issues that were different than his. Some of Ms. Zuniga's Facebook postings expressed support for Democratic candidates and were critical of certain Republican politicians, including Donald Trump. Ms. Zuniga made these Facebook postings in her private capacity as a citizen and not as part of her job duties at the Court.

15. On or about November 9, 2016, the day after the 2016 election in which Donald Trump was elected president, Yeary called Ms. Zuniga into his office and "counseled" her about her Facebook posts.

16. In 2017, Yeary searched for and reviewed Ms. Zuniga's Facebook page on several occasions and expressed his disapproval to Ms. Zuniga about some of her posts regarding political issues and his disagreement with her political views.

17. On or about September 23, 2017, Defendant Yearly searched Ms. Zuniga's Facebook page and found posts on political topics by Ms. Zuniga that he disapproved of, including posts about Governor Abbott cutting criminal justice funding to Travis County because of its jail policy relating to immigration, Lt. Governor Dan Patrick's statements concerning "sanctuary cities," and President Trump.

18. On or about October 11, 2017, approximately two weeks after Yearly searched Ms. Zuniga's Facebook page and found political posts he disapproved of, Yearly terminated Ms. Zuniga's 14 years of employment at the Court. In the meeting when he terminated Ms. Zuniga, Yearly specifically raised Ms. Zuniga's political Facebook posts and expressed his disapproval of them. Yearly also falsely accused Ms. Zuniga of not recording leave on her September time sheet when she allegedly left the office before 5:00 pm. Citing only those reasons, Yearly terminated Ms. Zuniga's 14 years of employment.

19. After Yearly and the Court of Criminal Appeals terminated Ms. Zuniga's employment, Yearly and the Court fought to keep Ms. Zuniga from obtaining unemployment benefits. Yearly wrote a statement to the Texas Workforce Commission in which he specifically stated that Ms. Zuniga's Facebook postings were a reason for her termination. Yearly wrote that many of her Facebook posts "had a distinct political edge and which indicated what appeared to be clear political biases." While Yearly stated some of Ms. Zuniga's posts used "vulgar" or inappropriate language, Yearly was a supporter of President Trump who has publically used "vulgar" or inappropriate language, and Yearly himself used such language at times in the office.

20. The United States Constitution specifically limits the power of government to infringe on and control the lives of American citizens. The Texas Court of Criminal Appeals is the state's highest criminal appellate court and its judges, including Defendant Yearly, swear to protect

and defend the Constitution. The Court and Defendant Yeary knew or should have known of Ms. Zuniga's First Amendment right to speak on matters of public concern. This protection from government retaliation against public employees for speaking on matters of public concern was clearly established at the time Defendants terminated Ms. Zuniga's employment.

21. Ms. Zuniga's interests in free speech under the United States Constitution outweighed any alleged governmental interests of Defendants in the efficient provision of public services. Defendant Yeary posted publicly on social media expressing his political views. On information and belief, Defendant Yeary, other court justices, and employees also have spoken publicly (including on the internet) about matters of public concern, yet their employment was not terminated as Defendants did with Ms. Zuniga. Ms. Zuniga played no substantive role in the court's decision making, and to the best of Ms. Zuniga's knowledge, no complaints had ever been made about her Facebook postings other than from Defendant Yeary.

22. Defendants' termination of Ms. Zuniga's employment was initiated, conducted and/or approved by Yeary who is a policymaker for the Texas Court of Criminal Appeals and the Place 4 office.

**V.**  
**CAUSE OF ACTION**  
**UNITED STATES CONSTITUTION/SECTION 1983**

23. The preceding paragraphs are incorporated by reference as if set forth fully herein.

24. Defendants violated the First Amendment to the United States Constitution, and cognizable pursuant to 42 U.S.C. § 1983, including by terminating Ms. Zuniga's employment because of her exercise of the right to free speech.

**VI.  
RELIEF SOUGHT**

25. Defendants' illegal actions have caused Plaintiff to suffer actual damages in the form of lost wages and benefits (past and future). Defendants have also caused Plaintiff to suffer compensatory damages, including emotional pain and suffering, loss of standing in the community, damage to reputation, inconvenience, loss of enjoyment of life, mental anguish and other losses. As a result of Defendants' violations of law, Plaintiff requests the Court to enter an order for all actual, economic, compensatory, and other damages or remedies, equitable, statutory or otherwise, and attorney fees, expert fees, expenses and costs, that Plaintiff proves are appropriate.

**VII.  
JURY DEMAND**

26. Plaintiff requests a jury trial on all issues so triable.

**VIII.  
PRAYER FOR RELIEF**

27. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited and called to answer, and that on final judgment this Court order relief for Plaintiff under the Constitution of the United States and Federal law including:

- a) Damages for lost wages and benefits, past and future;
- b) Compensatory damages;
- c) Damages for emotional distress and mental anguish, past and future;
- d) Attorney fees, expert fees, expenses and costs of suit;
- e) Interest allowed by law;
- f) Reinstatement;
- g) General damages;

- h) Special damages;
- i) A declaration that Defendants violated Plaintiff's rights under the First Amendment of the United States Constitutional and prohibiting Defendants from similarly violating the Constitutional rights of other employees; and
- j) Such other and further relief that is proven to be appropriate.

Respectfully submitted,

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