UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FREDRICK H. PATCH, Plaintiff, v. GLEN POSUSTA, individually; CLINT HERBST, individually; and CITY OF MONTICELLO, Defendants.	Case No. 06-CV-0409 (PJS/JJG) ORDER

Klay C. Ahrens, J. Robert Keena, and Sharonah A. Jacobus, HELLMUTH & JOHNSON PLLC, for plaintiff.

Julie Anne Fleming-Wolfe, FLEMING-WOLFE LAW OFFICE, for defendants.

Plaintiff Fredrick Patch was the chief building official of defendant City of Monticello until January 2006, when he was terminated for violating a city ordinance prohibiting certain city officials, including the chief building official, from performing similar work for other cities. Patch has sued, filing a quintessential "kitchen sink" complaint containing a total of seventeen claims: thirteen against Monticello, one against Monticello city council member Glen Posusta, one against Monticello mayor Clint Herbst, and two against all three defendants.

This matter is before the Court on the parties' cross motions for summary judgment. Defendants move for summary judgment on all seventeen of Patch's claims. Patch moves for partial summary judgment on counts fourteen and fifteen of his complaint. For the reasons set forth below, Patch's motion is denied and defendants' motion is granted with respect to the four claims over which the Court has original jurisdiction. With respect to Patch's remaining state-law claims, the Court declines to exercise supplemental jurisdiction, and those claims are dismissed without prejudice.

I. BACKGROUND

As Monticello's chief building official, Patch was in charge of building inspections and zoning administration. Not long after becoming the chief building official in 1997, Patch's duties brought him into conflict with Posusta, who was then a local businessman.

A. Early Disputes Between Patch and Posusta

Patch's first encounter with Posusta arose as a result of Monticello's November 1998 request that Patch draft an ordinance prohibiting barbed-wire, razor-wire, and electric fences. Posusta believed that this ordinance was aimed at him. He ran a self-storage facility, and he had earlier mentioned to someone at city hall that he intended to put a barbed-wire fence around the facility. Posusta loudly opposed the ordinance at a planning commission meeting, and he directed much of his anger at Patch.

The ordinance was enacted despite Posusta's opposition. In April 1999, Posusta applied for a variance from the ordinance. His application was denied both by Monticello's planning commission and, on appeal, by the city council. As the chief building official, Patch had recommended the denial of Posusta's request.

Patch's next significant encounter with Posusta was a dispute over Posusta's U-Haul leasing business, which Posusta started in July 2000. Posusta started the business without obtaining the required conditional-use permit, and he later moved the U-Haul business to his storage facility without a permit or zoning approval. Posusta also unlawfully erected advertising and parked vehicles on adjacent city property. Patch contacted Posusta about his failure to obtain the proper permits. Patch also had to instruct Posusta repeatedly to remove the vehicles and advertisements from city property.

B. Patch's Outside Employment

In the summer of 2000, the city of Big Lake found itself without a building official. Big Lake approached Jeff O'Neill, Monticello's deputy city administrator, to find out if Patch could work for Big Lake as a consultant. Big Lake also asked Patch if he was interested in the position. After some discussion and an exchange of memos, O'Neill told Patch that he saw "no problem" with Patch's consulting work for Big Lake. Fleming-Wolfe Aff. Ex. 20. The Monticello city council also apparently gave its approval to the arrangement. Herbst Dep. 20. Patch later did similar work for other cities, including Andover, Hanover, and Dayton.

Herbst, who was later elected mayor, was serving on the city council in 2000. Herbst had concerns about Patch's work for Big Lake. In particular, Herbst suspected that Patch was using Monticello equipment to do work for Big Lake on Monticello time. At one point, Herbst followed a Monticello truck to Big Lake, believing that Patch was in the truck. As it turned out, however, Patch was not in the truck.

In November 2002, Posusta was elected to the Monticello city council. One of the reasons Posusta ran for city council was his concern about Patch's work for Big Lake and other cities. In March 2003, Posusta began investigating Patch's outside work activities to discover whether Patch was working for other cities on Monticello's time. Posusta requested records from Big Lake, and also sought records of Patch's cell-phone use from Monticello. Later, in 2005, Posusta obtained Patch's 2004 and 2005 vacation records, apparently for the purpose of determining whether Patch worked for other cities on Monticello's time.

C. Later Disputes Between Patch and Posusta

In the meantime, Patch and Posusta continued to find themselves on opposing sides of various disputes. Before he was elected to the city council, Posusta entered into a purchase agreement with Monticello for the purchase of some land. After his election, the agreement was renegotiated in a manner that Patch thought was unfairly favorable to Posusta. Patch complained to the state attorney general, the county attorney, and the state auditor's office about this transaction. The state auditor eventually opined that the renegotiation may have been a conflict of interest, but no action was ever taken, and there is no evidence that Posusta knew that Patch was the source of the complaint.

Patch, meanwhile, was facing accusations of a conflict of interest in connection with his role in a private development project called Liberty Park. Patch was the landowner and also did some design work for the project. Posusta was concerned that Patch's position as the official in charge of inspecting buildings and approving permits presented a conflict of interest. Posusta and O'Neill (the deputy city administrator) eventually proposed that Patch pay for an outside inspector to work on the project. Patch considered this discriminatory and now argues that the inspection work could have been performed by his employees without his involvement. The issue became moot when the project fell apart; Patch blames Posusta for the failure of the project.

D. The Outside-Employment Ordinance

At some point after Herbst's election as mayor, Herbst and Posusta became members of Monticello's personnel committee. In their capacity as members of the personnel committee, Herbst and Posusta proposed that Monticello adopt an ordinance regulating city workers' outside

employment. The council eventually asked the city attorney to draft an ordinance, which the council adopted in September 2005 as Monticello City Ordinance 1-6-33 ("the Ordinance"). The Ordinance provides as follows:

> OUTSIDE EMPLOYMENT: Any employee holding one of the positions listed below shall not perform the same or substantially similar duties for another local unit of government on either a full-time or ongoing part-time basis, either directly as an employee or independent contractor or indirectly through a corporation or other entity. The positions covered by this subsection are: City Administrator, Deputy City Administrator, Community Development Director, Economic Development Director, Public Works Director, Chief Building Official and City Engineer.

Compl. ¶ 84; Am. Answer ¶ 28. Any individual with outside employment in violation of this ordinance had until December 31, 2005 to comply. Patch does not dispute that he knew that he had to either resign his position with Monticello or stop working for Big Lake and other cities in order to comply with the ordinance. Patch, however, refused to do either. In January 2006, Monticello terminated Patch.

II. ANALYSIS

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute over a fact is "material" only if its resolution might affect the outcome of the action under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute over a fact is genuine only if the evidence is such that a reasonable jury could return a verdict for either party. *Ohio Cas. Ins. Co. v. Union*

Pac. R.R., 469 F.3d 1158, 1162 (8th Cir. 2006). In considering a motion for summary judgment, a court must assume that the nonmoving party's evidence is true and must draw all justifiable inferences arising from the evidence in that party's favor. *Taylor v. White*, 321 F.3d 710, 715 (8th Cir. 2003).

B. Count Nine — Federal Equal Protection

Patch alleges that the Ordinance violates the Equal Protection Clause of the Fourteenth Amendment. Because the Ordinance does not create a suspect classification or implicate a fundamental right, it is analyzed under the rational-basis test. *Crum v. Vincent*, 493 F.3d 988, 994 (8th Cir. 2007). Under this highly deferential standard, a law is presumed valid and will be upheld so long as the classification that it draws bears a rational relationship to a legitimate government interest. *Id.* The presumption of validity can be overcome only by a clear showing of arbitrariness and irrationality. *Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp.*, 21 F.3d 237, 240 (8th Cir. 1994). The actual subjective motives of the legislators who enacted the law are irrelevant; Patch must show that there is no conceivable rational basis for the legislative classification. *Id.* at 241.

Relying primarily on the assertion that Herbst and Posusta found little, if any, evidence to support their suspicions that Patch worked for other municipalities on Monticello's time, Patch argues that the Ordinance was unnecessary and therefore lacks any rational basis. Patch is incorrect. It is rational — indeed, it is laudatory — for a government to act to *prevent* a problem before the problem actually arises. The Ordinance unquestionably bears a rational relationship to the legitimate government purpose of avoiding conflicts of interest and ensuring that high-level city employees focus all of their attention and energy on promoting the best interests of

Monticello. The Court therefore grants Monticello's motion for summary judgment on Patch's federal equal-protection claim.

C. Count Eleven — Federal Due Process

Patch alleges that the Ordinance is overly vague and therefore violates the Fourteenth Amendment's Due Process Clause. A statute is void for vagueness if it either "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or "authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). Patch contends that the ordinance is vague because there is no way to tell what is meant by "substantially similar duties" or what is meant by duties performed on an "ongoing part-time basis."

The Court disagrees. Although there may be hypothetical situations in which the meaning of these phrases will present close questions, "'it is clear what the ordinance as a whole prohibits.'" *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972)). Indeed, Patch had no doubt that, under the Ordinance, he was prohibited from continuing his work for Big Lake and the other cities.

For the same reason, Patch's argument that the Ordinance invites arbitrary enforcement is without merit. The mere fact that enforcement requires the exercise of some judgment does not render the Ordinance void for vagueness. *Id.* The enforcement of *most* laws requires the exercise of discretion; lawmakers are not clairvoyant, and it is impossible, in a law of general applicability, to address with surgical precision every possible circumstance to which the law might apply. The Court therefore grants Monticello's motion for summary judgment with respect to Patch's federal due-process claim.

D. Count Thirteen — Federal Contracts Clause

Patch next alleges that the Ordinance is an unconstitutional "Law impairing the Obligation of Contracts." U.S. Const. Art. I, § 10, cl. 1. Although the language of the Contracts Clause is absolute, a law does not violate the Clause unless it *substantially* impairs a contractual relationship. *Honeywell, Inc. v. Minn. Life & Health Ins. Guar. Ass'n*, 110 F.3d 547, 551 (8th Cir. 1997). To determine whether a law substantially impairs a contractual relationship, a court must determine: (1) whether a contractual relationship exists; (2) whether the change in the law impairs that relationship; and (3) whether the impairment is substantial. *Id.* If the law substantially impairs a contractual relationship, the court must then determine whether the law serves a significant and legitimate purpose, and whether the nature and extent of the impairment is appropriate in light of that purpose. *See Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 439 (8th Cir. 2007).

For purposes of the Contracts Clause, the existence and scope of a contract are questions of federal law. *Id.* at 437. But the parties have briefed the contract issues as though Minnesota law applied, and neither party has suggested that federal common law differs in any material respect from Minnesota law on the relevant issues. The Court will thus follow the parties' lead and analyze the contract claims under Minnesota law.

Patch claims that he had a binding contract with Monticello under which Monticello was obligated to permit Patch to moonlight for Big Lake. In general, an offer of employment on particular terms of unspecified duration may create a binding unilateral contract. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626 (Minn. 1983). But to constitute a contractual offer, the employer's statement must be definite enough to enable a court to "discern with specificity

what the provision requires of the employer so that if the employer's conduct . . . is challenged, it can be determined if there has been a breach." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 742 (Minn. 2000).

The nearest thing to an offer by Monticello to contractually bind itself to permit Patch to work for Big Lake is a memo to Patch in which O'Neill, the deputy city administrator, stated merely that "I see no problem with your work for the City of Big Lake as long as it is done in a manner as you have described in your letter of August 4, 2000." Fleming-Wolfe Aff. Ex. 20. The "manner" described in Patch's letter is Patch's general assurance that his outside consulting work would not interfere with his position as Monticello's chief building official and would not create any conflicts of interest. *Id.* These statements are too general to constitute a definite offer of employment on the terms alleged by Patch. *Cf. Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 857 (Minn. 1986) (noting that a clause permitting termination for a "serious offense" "falls far short of the specificity necessary for a contractual offer").

Moreover, O'Neill's statement bears none of the other hallmarks of a contractual "offer." Every day, employees ask employers for permission to do one thing or another: to stay home from work to care for a sick child, to leave work early to attend a class, to take a few extra minutes during lunch to exercise, to listen to an iPod while sitting at a desk. According to Patch, every time an employer says "okay" to such a request, the employer has made a contract "offer," which, when "accepted" by the employee, creates a binding contract that prevents the employer from changing its mind. That obviously is not true as a matter of contract law, and, in the long run, such an approach would benefit neither employers nor employees. In short, to the extent that Patch's claim under the Contracts Clause is based on the allegation that, when O'Neill said

that he "[saw] no problem" with Patch working for Big Lake, O'Neill created a binding contract to forever permit Patch to moonlight for Big Lake, Patch's claim is without merit.

Patch also argues that the Ordinance substantially impaired his contractual relations with Monticello and the other municipalities because it prohibited him from working for both at the same time. There is a tension between Patch's argument that the work he did for the other communities was so minor that it did not in any way interfere with his work for Monticello and his argument that the Ordinance had a substantial impact on him because it cut off the work he did for the other communities. Putting that aside, "state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment." *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411 (1983). As described, neither Monticello nor anyone else made a contractual commitment to Patch to permit him to work for Monticello while moonlighting for nearby communities. Before the Ordinance, Patch had a contract to work full-time for Monticello as its chief building official for a particular salary. After the Ordinance, Patch had the same contract to do the same work for the same salary. In cutting off his moonlighting opportunities, the Ordinance did not substantially impair any of Patch's contractual rights.

Even if the Court were to find that the Ordinance substantially impaired a contract, the Court would find that the Ordinance serves a significant and legitimate purpose. The Court sees nothing wrong with Monticello insisting that its high-level employees work only for Monticello and not for nearby communities. After all, Monticello must compete with those communities on many fronts, from attracting new businesses to winning government grants to hiring new city workers. High-level employees such as Patch play an important role in determining whether,

say, a new business will locate in Monticello or in Big Lake. It is entirely understandable that Monticello does not want officials such as Patch to be working during the day for Monticello and on nights and weekends for Big Lake and other "competitors." Conflict-of-interest restrictions such as those contained in the Ordinance are common in both the private and public sectors.

The particular conflict-of-interest restriction imposed by the Ordinance is reasonable. It does not apply to every city employee, but only to high-level employees. And it does not forbid all moonlighting, but only moonlighting that involves the high-level employee being paid by another community for performing "the same or substantial similar duties" that the high-level employee performs for Monticello. For all of these reasons, the Court grants Monticello's motion for summary judgment on Patch's claim under the Contracts Clause.

E. Count Fifteen — Federal Bill of Attainder

Patch alleges that the Ordinance is an unconstitutional bill of attainder. *See* U.S. Const. Art. I, § 10, cl. 1 ("No State shall . . . pass any Bill of Attainder . . . ."). [1] To be considered a bill of attainder, a law must specify the affected persons and impose punishment on them without a judicial trial. *Palmer v. Clarke*, 408 F.3d 423, 433 (8th Cir. 2005).

1. Specificity of Identification

The hallmark of a bill of attainder is that it imposes punishment on a specifically identifiable person or group of persons. *See Selective Serv. Sys. v. Minn. Pub. Interest Research Group*, 468 U.S. 841, 847-48 (1984). Historically, bills of attainder usually identified the person or persons to be punished by name. *Id.* But obviously there are ways for a law to identify a

[1]In his complaint, Patch cites the bill-of-attainder clause applicable to Congress. *See* U.S. Const. Art. I, § 9, cl. 3. The two clauses are construed identically. *See Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 869 n.4 (8th Cir. 2006).

person or persons other than by proper name. For example, a law may describe a person or group of persons "'in terms of conduct which, *because it is past conduct*, operates only as a designation of particular persons.'" *Id.* (quoting *Communist Party of the U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 86 (1961)) (emphasis added). If a law describes a class of persons by reference to *past* conduct — e.g., "those who, in the past, have done *x*" — then all of those to whom the law applies are identifiable because the class is fixed. Someone who did *x* in the past cannot undo it, just as someone who did not do *x* in the past cannot travel back in time and do it.

By contrast, a law that describes a class of persons whose membership "'is made to turn upon continuingly contemporaneous fact' which [an individual] can correct" is not directed at a fixed, identifiable class and thus cannot be a bill of attainder. *Id.* at 851 (quoting *Communist Party*, 367 U.S. at 87). Such a law is focused on what a person is doing *now*, and not on what a person did *then*. Because a person who is doing *x* today can always stop doing *x* tomorrow — and because a person who is not doing *x* today can always start doing *x* tomorrow — the law is aimed at a class of persons that is in flux. By definition, such a law cannot be a bill of attainder because it does not inflict punishment on a fixed, identifiable group of people for what they have done in the past.

The Ordinance is such a law. The "punishment" that it allegedly inflicts is a prohibition on moonlighting. But that punishment is not imposed on a group of people identified either by name (e.g., "John Doe") or by reference to *past* conduct (e.g., "any person who has ever purchased a gun"). Rather, that punishment applies to whomever now holds or holds in the future one of seven high-level positions with the city. Because the person who held the position

of Economic Development Director in 2006 might not be the same as the person who holds the position in 2007, and the person who holds the position in 2007 might not be the same as the person who will hold the position in 2008, the Ordinance does not impose punishment on any particular person for what that person did in the past. Rather, the punishment is inflicted on a class of persons that "'is made to turn upon continuingly contemporaneous fact'" — that "continuingly contemporaneous fact" being employment in one of seven high-level positions. *Id.* at 851 (quoting *Communist Party*, 367 U.S. at 87).

The Court does not doubt that it was Patch's moonlighting — and not the moonlighting of some other employee — that caused the city council to take up this issue. But issues often come to the attention of legislative bodies because of the conduct of a single individual. What is important is not *why* the city council addressed the moonlighting issue, but *how*. The city council did not address the issue by punishing Patch or any other employee for what he did in the past. It addressed the issue by regulating the future conduct of whomever happens to hold particular high-level positions with the city. Such a law is not a bill of attainder, and thus Patch's claim must fail. *Cf. WMX Techs., Inc. v. Gasconade County*, 105 F.3d 1195, 1202 (8th Cir. 1997) (holding that an ordinance was not a bill of attainder, despite the fact that it applied only to one business, because "[r]ather than attaching to a specified organization, the ordinance attaches to described activities in which an organization may or may not engage").

2. Punishment

Patch's bill-of-attainder claim fails for a second reason. A law is a bill of attainder only if the burden that it imposes is a form of "punishment." To rise to the level of punishment, the burden imposed by a law must fall within the traditional meaning of legislative punishment (the

"historical" test), fail to further a nonpunitive purpose (the "functional" test), or be based on a legislative intent to punish (the "motivational" test). *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 869 (8th Cir. 2006); *WMX Techs.*, 105 F.3d at 1202.

Patch argues that, as a result of the Ordinance, he was forced out of his position as Monticello's chief building official, and that termination of employment is a punishment in the traditional sense. In support of his argument, Patch relies heavily on *Crain v. City of Mountain Home*, 611 F.2d 726 (8th Cir. 1979). In *Crain*, the Eighth Circuit indeed wrote that the "sanction of mandatory forfeiture of job or office has long been considered punishment under the bill of attainder clause." *Id.* at 728.

The problem with Patch's argument is that, in approving the Ordinance, the city council did not fire Patch, either de jure or de facto. Long before the Ordinance was approved — indeed, long before Patch began moonlighting for other communities — he agreed to work full-time for Monticello as its chief building official for a particular salary. Later, he started moonlighting for Big Lake and then other cities, but that did not change the fact that he held the same full-time position with Monticello, doing the same duties for the same salary. After the Ordinance was approved, Patch still held the same full-time position with Monticello, and he was still paid the same salary for doing the same duties. An ordinance that leaves a full-time employee with exactly the same title, position, duties, hours, salary, and benefits — and that affects an employee only by prohibiting him from moonlighting — cannot possibly be regarded as an ordinance that forced that employee out of office.

The contrast with *Crain* is instructive. In *Crain*, the plaintiff held the position of city attorney. *Crain*, 611 F.2d at 727. In that position, he had done various things that angered

members of the city council. On the eve of an election in which Crain was the sole candidate for city attorney, the city council passed two ordinances that collectively required Crain to forfeit the remaining term of his office, reduced the city attorney's salary to $1.00 per year beginning the following year, and prohibited anyone holding the position of city attorney from outside employment — i.e., from earning more than $1.00 per year. *Id.* at 727-28.

There is an obvious difference between Patch and Crain. Patch was left with the same title, position, duties, hours, salary, and benefits; the only thing affected was his moonlighting. Crain was left to survive on $1.00 per year. Crain suffered the "sanction of mandatory forfeiture of job or office." *Id.* at 728. Patch did not. Thus, under the "historical" test, the Ordinance did not inflict punishment on Patch.[2]

With respect to the "functional" test, the question is whether, when "viewed in terms of the type and severity of burdens imposed, [the ordinance] reasonably can be said to further nonpunitive legislative purposes." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 475-76 (1977). The Ordinance easily leaps this hurdle. As explained above, the Ordinance serves the rational, nonpunitive purpose of ensuring that high-level city employees devote their full energy and attention to furthering the interests of Monticello. The Ordinance ensures that full-time employees with the most important duties and with access to the most sensitive information are

[2]Patch also cites *Crain* for the proposition that the Ordinance specifically designates him for punishment. But the focus of the Eighth Circuit in *Crain* was on whether the ordinances at issue imposed punishment. *Crain*, 611 F.2d at 729 (noting, and disagreeing, with the district court's conclusion that one of the ordinances was not penal in nature). The *Crain* court did not engage in a detailed analysis of the specificity requirement. The Court does not believe that the Eighth Circuit would find that the Monticello ordinance — which, as described above, reasonably regulates the conduct of those who in the future hold one of seven high-level positions in city government — singles out identifiable persons to be punished for past conduct.

not influenced, consciously or unconsciously, by the desire to curry favor with competing communities that might pay them consulting fees. This minimal intrusion is certainly consonant with the Ordinance's legitimate purpose. *Cf. Bruning*, 455 F.3d at 869 (noting that the court's conclusion that the law at issue had a rational basis also demonstrated that the law furthered a nonpunitive purpose under the functional test).

The final test under which a law may be found to inflict punishment is the "motivational" test. Typically legislation that is otherwise constitutional cannot be struck down on the basis of an allegedly illicit motive. Lawsuits brought under the Bill of Attainder Clause, however, are included in the "very limited and well-defined class of cases where the very nature of the constitutional question requires an inquiry into legislative purpose." *United States v. O'Brien*, 391 U.S. 367, 383 n.30 (1968). The focus of the "motivational" test is "whether the legislative record evinces a [legislative] intent to punish." *Nixon*, 433 U.S. at 478.

The Court agrees with Patch that there is sufficient evidence in the record from which a jury could conclude that Posusta disliked Patch and voted for the Ordinance in order to inflict harm on Patch. But there is no evidence that the mayor or other members of the city council were motivated to pass the Ordinance by a desire to harm Patch.[3] Patch cites no evidence that

[3]The three other members of the council were Thomas Perrault, Wayne Mayer, and Brian Stumpf. Although Herbst, as a member of the personnel committee, proposed the Ordinance, it is not clear what role, if any, Herbst may have had in actually passing the Ordinance. Even if Herbst had a direct role in passing the Ordinance — in other words, even if Herbst, as mayor, was able to and did vote on the Ordinance — the record demonstrates, at most, that Herbst had a long-standing concern about Patch's outside employment activities, and a long-standing belief that high-level city employees should not moonlight for other municipalities. Such evidence is not enough to establish that Herbst was motivated by a desire to punish Patch. Moreover, the votes of Posusta and Herbst could not, in themselves, approve the Ordinance, and there is no evidence that Perrault, Mayer, or Stumpf supported the Ordinance for any reason other than that they thought that it reflected a sound policy.

these others had strong feelings about him one way or the other, and there is certainly no indication, in the Ordinance's legislative history, that the council acted with the collective intent to punish Patch. In the absence of any such evidence, the motivations of a single city council member cannot be attributed to the mayor and council as a whole. Patch has therefore failed to offer sufficient evidence of a legislative intent to punish.

Whether considered under the historical test, the functional test, or the motivational test, the Ordinance does not impose punishment. The Court therefore concludes that the Ordinance does not violate the constitutional prohibition against bills of attainder.

F. State-Law Claims

If, before trial, a federal district court dismisses all claims over which it has original jurisdiction, it is ordinarily appropriate for the court to decline to exercise supplemental jurisdiction over any remaining claims. *See* 28 U.S.C. § 1367(c)(3); *Barstad v. Murray County*, 420 F.3d 880, 888 (8th Cir. 2005). In this case, it is particularly appropriate for the Court to decline supplemental jurisdiction over Patch's state-law claims. The sheer number of those claims, and the fact that some of them (such as his defamation claims) have nothing to do with the Ordinance (which is the focus of his federal claims), counsel against the exercise of supplemental jurisdiction in this case. *See* 28 U.S.C. § 1367(c)(2) (district courts have discretion to decline supplemental jurisdiction over a claim if that claim substantially predominates over the claims over which the court has original jurisdiction). The Court therefore declines to exercise supplemental jurisdiction over Patch's remaining state-law claims.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendants' motion for summary judgment [Docket No. 15] is GRANTED in part and DENIED AS MOOT in part.

    a. Defendants' motion is GRANTED with respect to Counts Nine, Eleven, Thirteen, and Fifteen of plaintiff's complaint [Docket No. 1], and these claims are DISMISSED WITH PREJUDICE AND ON THE MERITS.

    b. Defendants' motion is DENIED AS MOOT in all other respects.

2. Plaintiff's motion for partial summary judgment [Docket No. 18] is DENIED with respect to Count Fifteen and DENIED AS MOOT in all other respects.

3. All remaining claims are DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1367(c).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 14, 2007

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge