

OCT 06 2025

*Shirley A. Johnson Legal*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31208

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Joshua J. Walberg,

Appellant,

v.

Brown County Commission; Brown County, South Dakota;  
Brown County Human Resources Department;  
and Allison Tunheim,

Appellees.

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Appeal from the Circuit Court  
Fifth Judicial Circuit, Brown County, South Dakota  
The Honorable Julia Dvorak, Presiding Judge

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**APPELLANT'S CORRECTED BRIEF**

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*Appellant, pro se*

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*Attorney for Appellees*

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Notice of Appeal filed: September 3, 2025

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31208

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### Footnotes for Table of Authorities:

<sup>1</sup> Hollander – Recognizes that employee handbook provisions can create enforceable contractual rights even for at-will employees if sufficiently definite.

<sup>2</sup> Bates – Clarifies that South Dakota law requires courts to consider whether facts plausibly support a claim before granting dismissal; reinforces liberal pleading standards.

<sup>3</sup> Butterfield – Held that absent a specific contractual provision, certain claims fail; however, it does not stand for the proposition that at-will employees lack all due process rights.

<sup>4</sup> Johnson – Acknowledged that employee handbooks may create quasi-contractual rights.

<sup>5</sup> Labair – Affirms that courts must view facts in light most favorable to the non-moving party when reviewing summary judgment.

<sup>6</sup> Roth – Establishes that liberty interests may exist independent of contractual rights.

<sup>7</sup> Sindermann – Recognizes that even without a contract, mutually explicit understandings may create protected property or liberty interests.

<sup>8</sup> Loudermill – Holds that public employees with a property interest in employment are entitled to due process before termination.

<sup>9</sup> Anderson – Summary judgment is inappropriate if reasonable minds could differ on material facts.

<sup>10</sup> Celotex – Clarifies burden-shifting in summary judgment motions.

### **Statutes**

SDCL § 60-4-4

SDCL § 3-6D-22

## STATEMENT OF THE CASE

This appeal arises from the Judicial Circuit Court's dismissal of Plaintiff Appellant Joshua J. Walberg's claims against Brown County Commissioners and Allison Tunheim. Mr. Walberg, a former county employee, alleged wage disparity, retaliation for raising concerns, hostile work environment, denial of advocate assistance post-termination, and wrongful termination under South Dakota's public policy exception.

The trial court granted Defendants' motion to dismiss, alternatively treating certain arguments under Rule 56 summary judgment standards, without allowing discovery and while disregarding sworn testimony and documentary evidence favorable to Mr. Walberg. The court's order misapplied South Dakota law governing at-will employment, due process rights, and the enforceability of employee handbook provisions, and incorrectly relied on *Butterfield* in a manner that forecloses liberty-interest claims contrary to both state and federal precedent. Mr. Walberg now seeks reversal, arguing that the trial court failed to view the facts in the light most favorable to the non-moving party, ignored substantial evidence in the record, and prematurely dismissed viable claims that warrant full factual development through discovery.

## STATEMENT OF FACTS

Mr. Joshua J. Walberg was employed by Brown County in a capacity that, while technically labeled “at-will,” was governed by express policies, procedures, and commitments set forth in the County’s own employee handbook and related written assurances. These documents provided for fair treatment, nondiscrimination, adherence to public policy mandates, and protection against retaliation for lawful workplace concerns.

During his tenure, Mr. Walberg became aware of wage disparities between himself and similarly situated employees performing equivalent work. The disparities could not be explained by seniority, performance, or qualifications. Believing this disparity violated both internal policy and public policy, Mr. Walberg raised the issue internally with supervisory and administrative personnel.

Following these protected activities, Mr. Walberg began experiencing a hostile work environment. Supervisors engaged in exclusionary conduct, undermined his work, and made retaliatory remarks about his decision to “make trouble” by bringing up pay disparities. The work environment became increasingly intolerable, marked by increased scrutiny, removal of certain job responsibilities without justification, and treatment inconsistent with County policies promising fairness and respect.

In the weeks after his termination, Mr. Walberg was denied access to an employee advocate, a procedural safeguard expressly contemplated in County’s own policy. This denial deprived him

of a meaningful opportunity to defend himself, compounding the procedural defects in the County's actions.

On termination, the County did not provide written reasons or an opportunity for rebuttal. Mr. Walberg's reputation in the community suffered immediate harm; potential employers learned of his discharge under circumstances suggesting misconduct, as a result of media involvement thereby impairing his liberty interest to pursue employment in his chosen field in his community. Mr. Walberg filed suit asserting claims for: Retaliatory termination for engaging in protected activities.

The Circuit Court granted Defendants' motion to dismiss and, in doing so, relied heavily on *Butterfield v. Citibank of South Dakota, N.A.*, 437 N.W.2d 857 (S.D. 1989), to hold that at-will employees possess no enforceable rights absent an express contract. The court failed to recognize that *Butterfield* did not eliminate liberty-interest protections, nor did it overrule the enforceability of definite handbook promises. Further, the court conflated at-will employment principles with the absence of all procedural and substantive protections, contrary to both state and federal authority.

## ISSUES PRESENTED

1. Whether the Circuit Court erred by dismissing Appellant's due process claims on the basis that at-will employees have no protected liberty or property interests, contrary to controlling state and federal precedent.

### Authorities:

- Board of Regents v. Roth, 408 U.S. 564 (1972)<sup>6</sup>
- Perry v. Sindermann, 408 U.S. 593 (1972)<sup>7</sup>
- Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532 (1985)<sup>8</sup>

2. Whether the Circuit Court erred in disregarding enforceable provisions in the County's employee handbook that created contractual and quasi-contractual rights under South Dakota law.

### Authorities:

- Hollander v. Douglas County, 2000 S.D. 159, 620 N.W.2d 181 (S.D. 2000)<sup>1</sup>
- Johnson v. Kreiser's, Inc., 433 N.W.2d 225 (S.D. 1988)<sup>4</sup>

3. Whether the Circuit Court erred in failing to apply the public policy exception to at-will employment in circumstances involving retaliation for protected activity.

### Authorities:

- Baldwin v. National College, 537 N.W.2d 14 (S.D. 1995)
- Peterson v. Glory House of Sioux Falls, 2000 S.D. 27, 605 N.W.2d 720
- Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532 (1985)<sup>8</sup>

4. Whether the Circuit Court improperly applied Butterfield to foreclose claims that are legally distinct from those addressed in that case.

Authority:

- Butterfield v. Citibank of South Dakota, N.A., 437 N.W.2d 857 (S.D. 1989)<sup>3</sup>

5. Whether the Circuit Court misapplied the Rule 56 summary judgment standard by failing to view the facts in the light most favorable to the non-moving party and by resolving factual disputes without discovery.

Authorities:

- Duffy v. Vogel, 2012 S.D. 74, 822 N.W.2d 746
- Schreiner v. City of Sioux Falls, 502 N.W.2d 256 (S.D. 1993)
- State v. Buchholz, 403 N.W.2d 400 (S.D. 1987)
- Bates v. Sioux Valley Hospital, 2001 S.D. 59, 624 N.W.2d 833 (S.D. 2001)<sup>2</sup>
- Labair v. Johnson, 2014 S.D. 87, 857 N.W.2d 256 (S.D. 2014)<sup>5</sup>
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)

## STANDARD OF REVIEW

Questions of law, including the existence of a liberty or property interest, are reviewed de novo. *Petersen v. South Dakota Dep't of Labor*, 2019 S.D. 46, ¶ 9, 933 N.W.2d 54, 58. The grant of summary judgment or dismissal is also reviewed de novo. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Labair v. Johnson*, 2014 S.D. 87, ¶ 11, 857 N.W.2d 256, 260.

Under SDCL § 15-6-56(c) and Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate only where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in their favor. *Anderson*, 477 U.S. at 255; *Labair*, 2014 S.D. 87 at ¶ 11.

Under South Dakota law, employee handbooks containing definite terms—such as progressive discipline procedures, anti-retaliation commitments, and access to advocates may create enforceable contractual rights. *Johnson v. Kreiser’s, Inc.*, 433 N.W.2d 225 (S.D. 1988). Here, the County’s handbook provided:

A guarantee of access to an advocate regarding adverse employment action and requests for personnel file;

Non-retaliation protections for employees who raise workplace concerns; and

Procedures for equitable pay review.

The trial court disregarded these provisions entirely, despite this Court’s holding in *Hollander* that handbooks are enforceable where terms are sufficiently specific and are communicated to the employee.

### III. Retaliation Violated the Public Policy Exception to At-Will Employment

South Dakota recognizes a narrow public policy exception to the at-will doctrine where termination contravenes a “clear mandate of public policy.” *Peterson v. Glory House of Sioux Falls*, 2014 S.D. 27, ¶ 15, 847 N.W.2d 434, 438. Public policy is implicated when an employee is terminated for reporting violations of law, resisting illegal directives, or asserting statutory rights.

By raising wage disparity issues and seeking equal pay for equal work, Mr. Walberg engaged in protected activity aligned with public policy. Termination in response to such activity undermines state commitments to workplace fairness and violates the exception. The Court in this case even acknowledged Mr. Walberg's claims and evidence of wage disparity as "Correct" on the transcript record meeting the standard of law to allow for Mr. Walberg's claims to proceed, yet still dismissed his claims all together.

#### IV. The Court Misapplied Butterfield

The trial court's reliance on Butterfield to dismiss all claims was misplaced. Butterfield held that absent an express contract, certain wrongful termination claims fail; however, the case did not foreclose liberty-interest claims or the enforceability of handbook provisions.

Unlike in Butterfield, Mr. Walberg's claims rest on specific, definite handbook provisions and constitutionally protected liberty interests, both recognized under controlling authority.

#### V. Summary Judgment Standards Were Not Followed

Even if treated under Rule 56, the court's decision fails because factual disputes remain. The record contains:

Evidence of wage disparity among similarly situated employees, evidence that was acknowledged as "correct on the record";

Testimony regarding retaliatory remarks by supervisors;

Documentation of the denial of advocate assistance; and

Evidence of post-termination reputational harm.

Under *Anderson* and *Labair*, such disputes preclude summary judgment. The court's resolution of these disputes against the non-moving party was reversible error.

#### VI. Upholding the Circuit Court's Ruling Would Set a Dangerous Precedent Eliminating Due Process Protections for All At-Will Public Employees

If the Circuit Court's ruling is permitted to stand, it would create a sweeping and dangerous precedent with consequences far beyond this case. The court, adopting the defense's position, effectively declared that at-will employees including those employed by public entities possess no due process rights whatsoever. This assertion is not only factually and legally incorrect, but it is also contrary to the most fundamental principles of constitutional law.

The Fourteenth Amendment guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law." This protection applies to persons, not merely to those who can show a contractual right to continued employment. The South Dakota Supreme Court has consistently recognized that liberty interests such as the right to be free from arbitrary

governmental action, the right to protect one's reputation, and the right to pursue a chosen occupation survive even when no property interest in a job exists.

Public employees even those without tenure or contractual job security may not be terminated under circumstances that stigmatize them, destroy their professional standing, or retaliate against them for engaging in constitutionally protected conduct. The Circuit Court's ruling disregards this bedrock principle by suggesting that the mere fact of "at-will" status strips an individual of any due process rights a proposition flatly rejected by both South Dakota and federal precedent. Adopting the defense's view would give government employers unprecedented license to retaliate against whistleblowers, suppress reports of unlawful or unsafe practices, and impose arbitrary discipline without fear of judicial review so long as the employee is "at-will." Such an interpretation invites abuse, chills the reporting of misconduct, and erodes public trust in governmental institutions. The Constitution does not permit public employers to operate above the law simply by labeling a worker "at-will."

This Court should reject the Circuit Court's expansive and dangerous reading of the law and reaffirm that all public employees regardless of tenure status retain core due process protections for their liberty interests. To hold otherwise would invite a wholesale erosion of constitutional safeguards and undermine decades of established jurisprudence.

VII. The Circuit Court Erred by Denying Mr. Walberg's Motion for Leave to Amend Without Meaningful Analysis

South Dakota Rule of Civil Procedure 15(a) (SDCL 15-6-15(a)), patterned after Federal Rule 15(a), provides that “leave [to amend] shall be freely given when justice so requires.” This Court has long recognized that the standard is a liberal one, intended to ensure that cases are decided on their merits rather than on technical pleading defects. *Behrens v. Wedmore*, 698 N.W.2d 555, 571 (S.D. 2005) (“The policy of this rule is to freely allow amendments in order to promote the resolution of cases on their merits.”); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that absent reasons such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility of amendment, leave should be freely granted).

Here, Mr. Walberg’s motion for leave to amend was supported by specific factual allegations including wage disparity which the court acknowledged as “correct”, retaliatory stripping of job duties, exclusion from meetings, and a hostile work environment culminating in coerced resignation facts which, if accepted as true, and allowed to develop on discovery, clearly strengthen his claims. The circuit court even acknowledged on the record that his wage disparity allegations were correct, yet summarily dismissed the case.

The court’s treatment of the motion consisted of a cursory reference to “following the law” and dismissing, without addressing:

Whether the amendment would cause undue delay;

Whether there was any bad faith or dilatory motive;

Whether the proposed claims were legally sufficient;

Whether the amendment would cause undue prejudice to the defendants.

This omission is not a mere procedural technicality. South Dakota appellate precedent makes clear that a trial court must articulate its reasoning when denying leave to amend, particularly where the amendment is timely and not shown to be prejudicial. In *Behrens*, 698 N.W.2d at 571, the Court reversed where the trial court denied amendment without adequate reasoning, emphasizing that failure to apply the liberal standard is an abuse of discretion.

Moreover, the denial here is internally inconsistent: the circuit court credited Mr. Walberg's wage disparity claims yet refused to allow him to amend to assert those very claims more fully. This is precisely the kind of arbitrary or unsupported decision-making Rule 15(a) is designed to prevent. Federal courts interpreting Rule 15(a) uniformly hold that conclusory denials without analysis constitute reversible error, because they frustrate the rule's purpose and deprive litigants of their right to have claims decided on their merits. *Foman*, 371 U.S. at 182–83.

The denial of Mr. Walberg's motion, without meaningful engagement with the governing standard, is reversible error. At a minimum, this Court should remand with instructions that the circuit court apply the proper Rule 15(a) analysis and allow amendment absent a specific, legally sufficient reason to deny it.

#### VIII. Procedural Irregularities and Ignored Evidence

In addition to the substantive errors discussed above, two procedural and evidentiary irregularities further demonstrate why dismissal was inappropriate.

1. Service Discrepancy.

The Certificate of Service filed by defense counsel certifies service as of August 22, 2025, yet the accompanying envelope is postmarked August 25, 2025. This discrepancy is more than clerical; it deprived Mr. Walberg, a pro se litigant, of several days that could have been used to respond or preserve his rights. South Dakota courts have consistently emphasized that pro se parties are entitled to fairness in procedure, even if not to special treatment. See *State v. Buchholz*, 403 N.W.2d 400, 404 (S.D. 1987). Allowing certified service dates to diverge from actual mailing dates undermines confidence in the process and disadvantages the non-moving party. While this issue alone may not be dispositive, it reflects a broader pattern of prejudice.

2. Ignored Wage Disparity Evidence.

Mr. Walberg presented undisputed county minutes showing stark wage disparities:

- Sara Swisher, out of the Chief Deputy role for 4.5 years, was making \$34.20/hour.
- Mr. Walberg, then Chief Deputy, was making \$31.76/hour.
- Doreen Borchard, a 40-year veteran, was making \$32.55/hour.

The trial court acknowledged this evidence on the record as correct, yet dismissed the claims without permitting discovery. This omission is inconsistent with both South Dakota and federal

standards. At the motion to dismiss or summary judgment stage, courts must view facts in the light most favorable to the non-moving party. *Duffy v. Vogel*, 2012 S.D. 74, ¶ 14, 822 N.W.2d 746, 751; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Evidence of wage disparity tied directly to Mr. Walberg's protected complaints raises a factual dispute material to his constructive discharge and public-policy claims. By disregarding this record evidence, the court improperly resolved contested factual questions that should have been left to a fact-finder.

### 3. Broader Implications.

Taken together, these irregularities demonstrate a troubling pattern: the defense has misstated or minimized facts, the trial court has overlooked record evidence, and the procedural safeguards ordinarily available to litigants have been diluted. If allowed to stand, the ruling not only prejudices Mr. Walberg but also signals to other employees that wage disparity complaints may be ignored and summarily dismissed, even where corroborated by the employer's own records.

## **CONCLUSION**

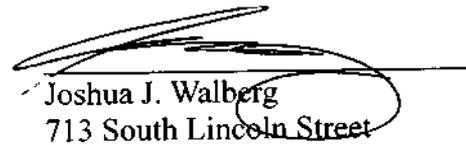
For these reasons, the judgment of the Fifth Judicial Circuit should be reversed, and this matter remanded for further proceedings, including full discovery and trial on the merits.

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 15-6-11 and the South Dakota Supreme Court's formatting requirements, I certify that this corrected brief contains 2,835 words, excluding the Table of Contents, Table of Authorities, and this Certificate of Compliance. This word count is in compliance with the word limits set forth in SDCL and the applicable rules of appellate procedure.

Dated: October 6, 2025

Respectfully submitted,



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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31208

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Joshua J. Walberg,

Appellant,

v.

Brown County Commission; Brown County, South Dakota;  
Brown County Human Resources Department;  
and Allison Tunheim,

Appellees.

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Appeal from the Circuit Court  
Fifth Judicial Circuit, Brown County, South Dakota  
The Honorable Julia Dvorak, Presiding Judge

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**APPENDIX TO APPELLANT'S BRIEF**

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Notice of Entry of Order Granting Motion to Dismiss & Denying Motion to Amend (dated August 22, 2025)	A-1

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF BROWN         )

IN CIRCUIT COURT  
  
FIFTH JUDICIAL CIRCUIT

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JOSHUA WALBERG,

06CIV25-000330

Plaintiff,

vs.

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION TO DISMISS &  
DENYING MOTION TO AMEND**

BROWN COUNTY COMMISSION;  
BROWN COUNTY, SOUTH DAKOTA;  
BROWN COUNTY HUMAN  
RESOURCES DEPARTMENT; ALLISON  
TUNHEIM, in her individual and official  
capacity; and DOES 1-10,

Defendants.

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Notice is hereby given that the Order Granting Motion to Dismiss and Denying Motion to Amend, a copy of which is attached hereto and by this reference made a part hereof, was signed by the Court on the 22<sup>nd</sup> day of August, 2025 and filed in the offices of the Clerk of Courts on August 22, 2025.

Dated this 22<sup>nd</sup> day of August, 2025.

*/s/ Lisa Hansen Marso*

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Lisa Hansen Marso  
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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I, Lisa Hansen Marso, hereby certify that I am a member of the Boyce Law Firm, L.L.P., and that on the 22<sup>nd</sup> day of August, 2025, the foregoing Notice of Entry of Order Granting Motion to Dismiss and Denying Motion to Amend was electronically filed through Odyssey File and Serve System and served via email and U.S. Mail upon:

Joshua Walberg  
713 South Lincoln Street  
Aberdeen, SD 57401  
Walberg.joshua@gmail.com

/s/ Lisa Hansen Marso  
Lisa Hansen Marso

STATE OF SOUTH DAKOTA )  
 )  
 ) :SS  
 )  
COUNTY OF BROWN )

IN CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT

JOSHUA WALBERG,

06CIV25-000330

Plaintiff,

vs.

**ORDER GRANTING MOTION TO  
DISMISS & DENYING MOTION TO  
AMEND**

BROWN COUNTY COMMISSION;  
BROWN COUNTY, SOUTH DAKOTA;  
BROWN COUNTY HUMAN  
RESOURCES DEPARTMENT; ALLISON  
TUNHEIM, in her individual and official  
capacity; and DOES 1-10,

Defendants.

Defendants filed a motion to dismiss or alternatively a motion for summary judgment, and Plaintiff filed a motion to amend his Complaint. The motions came before the Court on July 30, 2025. Plaintiff was present in person. Defendants were present by and through their attorney Lisa Marso. The Court having reviewed the pleadings and written arguments, and having considered the oral arguments, the Court finds Plaintiff's claims do not state a claim upon which relief may be granted as (1) Plaintiff is an at-will employee for which no due process or property interest exists and under settled law he therefore has no claims for breach of contract, bad faith, lack of good faith, lack of fair dealing or § 1983 claim; and (2) Plaintiff's allegations in his complaint and amended complaint related to resigning under duress and reporting concerns do not rise to the level of a clear mandate against public policy so as to create a constructive discharge claim. Now, therefore, for good cause finding, it is hereby

**ORDERED, ADJUDGED & DECREED** that Defendants' motion to dismiss is granted and Judgment in favor of Defendants is entered; it is further

A-3

1

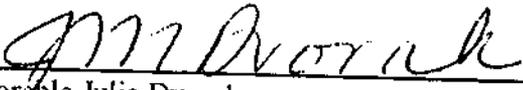
ORDERED that Plaintiff's motion to amend is denied as futile.

8/22/2025 8:55:31 AM

BY THE COURT:

Attest:  
Matejek, Jennifer  
Clerk/Deputy



  
\_\_\_\_\_  
Honorable Julie Dvorak  
Circuit Court Judge

A-4

2

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31208

---

JOSHUA WALBERG,

Appellant,

v.

BROWN COUNTY COMMISSIONERS,  
ALLISON TUNHEIM,

Appellees.

---

Appeal from the Circuit Court, Fifth Judicial Circuit  
Brown County, South Dakota

---

The Honorable Julie Dvorak  
Circuit Court Judge

---

**APPELLEES' BRIEF**

---

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2. Under settled South Dakota law, there is no viable claim for either a general constructive discharge of employment or for a retaliatory termination where not pled is any protected activity. Judge Dvorak dismissed Walberg’s general constructive discharge claim and denied Walberg’s motion to amend his complaint related to such claims finding it futile. Was the trial court’s dismissal of these claims proper?.....1

3. Under settled South Dakota law, an at-will public employee has no due process rights as to the termination procedure. Judge Dvorak found Walberg was an at-will employ and denied his motion to amend his complaint to assert a procedural due process claim, finding it futile. Was the trial court’s decision proper?.....2

4. A liberty interest in employment does not exist as to a general termination of an at-will public employee, and no exception exists when not pled in the complaint is that the public employer affirmatively created and disseminated a false and defamatory impression about the discharge. Judge Dvorak found Walberg was an at-will employee. The amended complaint did not alleged such affirmative act. The claim was denied as futile. Was the decision proper? .....2

5. Summary judgment is proper when the undisputed material facts demonstrate there is no question of fact and as a matter of law no viable claim exists. Judge Dvorak did not rule on the summary judgment motion instead dismissing the claims based on the motion to dismiss. Should Walberg’s claims also be summarily dismissed as no genuine issue of material fact exists and his claims fail as a matter of law? .....2

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## JURISDICTIONAL STATEMENT

Appellees, Brown County Commissioners and Allison Tunheim (collectively “the County”), agree that this Court has jurisdiction under SDCL 15-26A-3 to hear the appeal. Since Appellant Joshua J. Walberg (“Walberg”) does not set forth a Jurisdictional Statement, the County also states the order to be reviewed was filed on August 22, 2025, was entered by the Honorable Julie Dvorak, Circuit Court Judge, Fifth Judicial Circuit, County of Brown, State of South Dakota, and granted the motion to dismiss and denied the motion to amend. The Notice of Appeal was filed on September 3, 2025.

## STATEMENT OF LEGAL ISSUES

1. Under settled South Dakota law, an at-will public employee has no contract or other rights to production of documents after his termination. Judge Dvorak granted a motion to dismiss Walberg’s claim for production of employment records. Was the trial court’s dismissal of these claims proper?

*Butterfield v. Citibank of S. Dakota, N.A.*, 437 N.W.2d 857, 860 (S.D. 1989)

*Bass v. Happy Rest, Inc.*, 507 N.W.2d 317, 321 (S.D. 1993)

2. Under settled South Dakota law, there is no viable claim for either a general constructive discharge of employment or for a retaliatory termination where not pled is any protected activity. Judge Dvorak dismissed Walberg’s general constructive discharge claim and denied Walberg’s motion to amend his complaint related to such claims finding it futile. Was the trial court’s dismissal of these claims proper?

*Anderson v. First Century Fed. Credit Union*, 2007 SD 65, ¶ 16, 738 N.W.2d 40, 45

*Butterfield v. Citibank of S. Dakota, N.A.*, 437 N.W.2d 857, 860 (S.D. 1989)

*Harvey v. Reg’l Health Network, Inc.*, 2018 SD 3, 906 N.W.2d 382

*Nelson v. WEB Water Dev. Ass'n, Inc.*, 507 N.W.2d 691, 696 (S.D. 1993)

3. Under settled South Dakota law, an at-will public employee has no due process rights as to the termination procedure. Judge Dvorak found Walberg was an at-will employ and denied his motion to amend his complaint to assert a procedural due process claim, finding it futile. Was the trial court's decision proper?

*Butterfield v. Citibank of S. Dakota, N.A.*, 437 N.W.2d 857, 860 (S.D. 1989)

*Mogard v. City of Milbank*, 932 F.3d 1184, 1190 (8th Cir. 2019)

4. A liberty interest in employment does not exist as to a general termination of an at-will public employee, and no exception exists when not pled in the complaint is that the public employer affirmatively created and disseminated a false and defamatory impression about the discharge. Judge Dvorak found Walberg was an at-will employee. The amended complaint did not alleged such affirmative act. The claim was denied as futile. Was the decision proper?

*Mogard v. City of Milbank*, 932 F.3d 1184, 1190 (8th Cir. 2019)

*Singleton v. Cecil*, 176 F.3d 419, 420 (8th Cir. 1999)

5. Summary judgment is proper when the undisputed material facts demonstrate there is no question of fact and as a matter of law no viable claim exists. Judge Dvorak did not rule on the summary judgment motion instead dismissing the claims based on the motion to dismiss. Should Walberg's claims also be summarily dismissed as no genuine issue of material fact exists and his claims fail as a matter of law?

*Butterfield v. Citibank of S. Dakota, N.A.*, 437 N.W.2d 857, 860 (S.D. 1989)

*Singleton v. Cecil*, 176 F.3d 419, 420 (8th Cir. 1999)

## STATEMENT OF THE CASE

Walberg filed his Complaint on May 23, 2025, asserting three claims, involving a demand for documents he believes were removed from his personnel file and a claim for

a general “constructive discharge” (*i.e.*, he was “forced to resign under coercive conditions”). (Appx 2 at ¶¶ 14–23). After a motion to dismiss, or alternatively motion for summary judgment, was filed by the County, Walberg filed a motion for leave to file a First Amended Complaint. (Appx. 10, 39). The proposed amended complaint redrafted his claims to pursue claims for: (1) constructive discharge in violation of public policy (he experienced general harassment/ retaliation and was forced to retire) (¶¶ 15–18); (2) a § 1983 deprivation of liberty interests and of procedural due process (the termination process did not give notice and opportunity) (¶¶ 19–22); and (3) wrongful termination in retaliation (termination in retaliation for complaints about workplace training and general behaviors) (¶¶ 23–26). (Appx. 39).

A hearing was held before the Honorable Julie Dvorak, Fifth Judicial Circuit Court (hereinafter “Circuit Court”). (Appx. 73 at pg. 1). The Judge ruled from the bench and, on August 22, 2025, entered an Order granting the motion to dismiss and denying the motion to amend as futile, stating:

[T]he Court finds Plaintiff’s claims do not state a claim upon which relief may be granted as (1) Plaintiff is an at-will employee for which no due process or property interest exists and under settled law he therefore has no claims for breach of contract, bad faith, lack of good faith, lack of fair dealing or § 1983 claim; and (2) Plaintiff’s allegations in his complaint and amended complaint related to resigning under duress and reporting concerns do not rise to the level of a clear mandate against public policy so as to create a constructive discharge claim.

(Appx. 86 at pg. 1). Notice of Entry or Order was served the same day. (Appx. 93).

Notice of Appeal was filed on September 3, 2025. (Appx. 97). A Notice of Review was filed on September 16, 2025, concerning the dismissal being proper under SDCL 15-6-56 because the trial court found that issue moot and did not decide it. (Appx. 73 at pgs. 11-12; Appx. 86).

## STATEMENT OF THE FACTS

In reviewing entry of an order granting a motion to dismiss for failure to state a claim, the Court is bound by analysis of the facts as pled, and the consideration of additional “facts” set forth in the briefing is improper. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S. Ct. 1955, 1965 (2007). The facts pled in the Complaint and proposed First Amended Complaint are limited.

In the Complaint, Walberg asserted he is a former County employee. (Appx. 2 at ¶ 7). On March 11, 2025, he resigned and has alleged his resignation was made under duress and under “coercive and intimidating conditions.” (*Id.* at ¶¶ 7–8). He asserts the County’s Employee Handbook “guarantees employees ... reasonable access to their personnel records.” (*Id.* at ¶ 11) (emphasis added). After he was no longer an employee, Walberg asked the County to give him a copy of his personnel file and “documents related to his resignation and related meetings” but that the County “produced only onboarding materials and excluded all documents related to the events surrounding Plaintiff’s resignation” and further did not provide him “all communications, meeting notes, and internal references concerning Plaintiff’s resignation.” (*Id.* at ¶¶ 10, 11, 18).

In his proposed First Amended Complaint, Walberg added assertions that in 2024, as a Chief Deputy Auditor for the County he “experienced workplace hostility and humiliation” that included “business cards from a disliked lawmaker placed at his workstation,” a “whoopie cushion placed on his chair in public view,” and “[d]isparities in treatment including [a coworker’s] rehiring at a significantly higher rate than other Chief Deputies.” (Appx. 39 at ¶¶ 8, 11). In 2025, a County official announced discipline it took as to Walberg (*Id.* at ¶ 12). In 2025, five days after Walberg told the County

Auditor he had concerns about how his coworker was training and interacting with him, he was told his employment was ending without further discipline or the assistance of a representative on his behalf in the termination meeting. (*Id.* at ¶ 10). Walberg alleged his personnel file was stripped of relevant “communications, meeting notes, and internal documentation surrounding his resignation.” (*Id.* at ¶12).

Not pled in either the Complaint or First Amended Complaint, but asserted in his Brief to this Court, are additional allegations that Walberg’s reputation suffered due to his termination and that potential employers learned of Walberg’s discharge under circumstances suggesting misconduct due to media involvement and a wage listing earned by specific employees. (*Compare* Appx. 2, 39 and Appellant Brief pgs. 8, 19). These allegations may not be considered.

## **ARGUMENT**

### **I. Standards of Review**

#### **A. Motion to Dismiss**

To survive a motion to dismiss, the complaint must contain enough facts to state a claim to relief that is plausible on its face. *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1955. The factual contents of the complaint must “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 1937, 1940 (2009) (citations omitted). Notably, a “court may not consider documents ‘outside’ the pleadings when ruling on a motion to dismiss for failure to state a claim.” *Healy Ranch P’ship v. Mines*, 2022 SD 44, ¶ 35, 978 N.W.2d 768, 778 (emphasis added) (citations omitted). Moreover, while a court must accept as true all the factual allegations in the complaint, that requirement is inapplicable to “legal

conclusions, unsupported conclusions, unwarranted inferences, and sweeping legal conclusions cast in the form of factual allegations,” which the court is to ignore. *Nygaard v. Sioux Valley Hosps. & Health Sys.*, 2007 SD 34, ¶ 9, 731 N.W.2d 184, 190 (citations omitted).

A motion to dismiss tests the sufficiency of the claims as pled, not the discovery produced or needed. *See Gesinger v. Burwell*, 210 F. Supp. 3d 1177, 1186 (D.S.D. 2016); *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir. 1981) (stating discovery “is not a device to enable plaintiff to make a case when his complaint has failed to state a claim”). Rather, discovery should only “follow the filing of a *well-pleaded* complaint.” *Id.* (emphasis added). This Court reviews a “circuit court’s determination of a pleading’s sufficiency as a question of law using [the] *de novo* standard.” *Healy Ranch P’ship.*, 2022 SD at ¶ 34, 978 N.W.2d at 778.

### **B. Motion to Amend Complaint<sup>1</sup>**

A plaintiff does not have “an absolute or automatic right to amend” his complaint. *U.S. ex rel. Lee v. Fairview Health Sys.*, 413 F.3d 748, 749–50 (8th Cir. 2005) (citations omitted) (denying motion to amend due to futility). Rather, any motion to amend should be denied where there are reasons to do so, including futility of the amendment. *See Fodness v. City of Sioux Falls*, 2020 SD 43, ¶¶ 30–32, 947 N.W.2d 619, 629–30 (denying a motion to amend and noting the circuit court may deny leave to amend the complaint when the amendment would be futile).

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<sup>1</sup> At pg. 18 of his Brief, Walberg asserts the Circuit Court must “articulate its reasoning when denying leave to amend” and citing “*Behrens*, 698 N.W.2d at 571.” *Behrens v. Wedmore*, 2005 SD 79, 698 N.W.2d 555, did not set forth any such holding and did not even address a motion to amend.

This Court reviews a circuit court’s “decision denying [a] plaintiff’s request to amend pleadings under the abuse of discretion standard of review.” *McDowell v. Citicorp Inc.*, 2008 SD 50, ¶ 6, 752 N.W.2d 209, 212 (citations omitted). “An abuse of discretion occurs when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence.” *Id.* (citations omitted).

### **C. Motion for Summary Judgment.**

The summary judgment standard of review involves a determination of “whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law.” *Anderson v. First Century Fed. Credit Union*, 2007 SD 65, ¶ 16, 738 N.W.2d 40, 45 (citations omitted). “The evidence must be viewed most favorably to the non-moving party and reasonable doubts should be resolved against the moving party.” *Id.* “The non-moving party, however, must present specific facts showing that a genuine, material issue for trial exists.” *Id.* Otherwise summary judgment should be granted. *See Id.* This Court’s review of circuit court’s grant of a motion for summary judgment is also de novo. *See Rowe v. Rowe*, 2025 SD 40, ¶ 10, 24 N.W.3d 746, 751.

### **II. Non-Existent Legal Support Cited by Walberg.**

As a threshold matter, it is noted that in his briefing Walberg includes “legal authority” referencing “cases” that are non-existent. For example, there is no *Schreiner v. City of Sioux Falls* published case. There is no *Duffy v. Voegel* published case or even any case published as 2012 SD 74, 822 N.W.2d. 746. There is no *Bates v. Sioux Valley Hospital* case and the 2001 SD 49, 624 N.W.2d 833 (S.D. 2001) citation Walberg ties to such alleged case name instead relates to a stolen vehicle case (*State v. Olson-Lame*), in

which there are no related issues to the matter *sub judice*. There also is no *Labair v. Johnson*, 2014 SD 87, 857 N.W.2d 256 (S.D. 2014) case. The citation instead relates to a case called *Kustom Cycles, Inc. v. Bowyer*, which involved a personal jurisdiction issue.

Lastly, the *Peterson v. Glory House* case allegedly published at 2000 SD 27, 605 N.W.2d 720 is also non-existent. There is no case beginning at 720 of 605 N.W.2d. The 2000 SD 27 reference is instead *Peterson v. Hohm*, which involved a statute of limitations tolling issue. While there is a *Peterson v. Glory House* published case, that case is instead published at 443 N.W.2d 653, and nowhere in that case did the South Dakota Supreme Court hold that there is a retaliation claim simply for reporting “improper conduct” as Walberg claims.

### **III. The Circuit Court Properly Dismissed Walberg’s Claims in their Totality under SDCL 15-6-12 and/or Due to Futility.**

In his original Complaint, Walberg alleged claims related to document production and a claim of general constructive discharge. These are not cognizable claims and so were properly dismissed under Rule 12(b). In his First Amended Complaint, Walberg asked to pursue claims for violations of due process and liberty. Walberg fails to plead facts giving rise to such claims so the claims are futile, and the denial of the motion to amend was proper. The Circuit Court’s decision should be affirmed.

#### **A. No Claim Exists Related to Personnel Document Production.**

In his Complaint Walberg, in three causes of action, asserts the County is liable for not producing employment documents “related to the events surrounding Plaintiff’s resignation”/“all communications, meeting notes, and internal references concerning Plaintiff’s resignation”. (Appx. 2 at ¶¶ 14–21). This Court has long held there is no such cognizable claim even if an employer’s handbook requires an employer to produce

documents.

In *Butterfield v. Citibank of S. Dakota, N.A.*, this Court noted that there is no claim related to a breach of contract against an employer related to a handbook provision:

Finally, with regard to Butterfield’s claim for breach of the implied covenants of good faith and fair dealing in commercial transactions, we observe that *this court has specifically rejected this cause of action in the employment at will context.*

437 N.W.2d 857, 860 (S.D. 1989) (citations omitted) (emphasis added) (affirming dismissal of a contract and lack of good faith/fair dealing claim); *see also Bass v. Happy Rest, Inc.*, 507 N.W.2d 317, 321 (S.D. 1993) (stating “[t]his Court has repeatedly rejected the theory that there is an implied covenant of good faith and fair dealing in employment contracts” (citations omitted)). Consequently, a cause of action for “bad faith,” an “injunction,” or a “declaration” that would require the County to produce employment-related documents is not viable and was properly dismissed.

While South Dakota law clearly supports the lack of a viable claim, here Walberg’s asserted facts even fail to plead a claim. Walberg asserts he has a right to obtain documents because the “contract: says employees can have such documents. Yet, as set forth in the Complaint, when Walberg asked for the documents, he was not an employee and the County’s Handbook only applies to “employees.” (*See Appx. 2 at ¶ 11*). Accepting as true such allegations as pled in the Complaint, no claim is stated. Counts 1–3 of the Complaint were properly dismissed under SDCL 15-6-12(b)(6). The dismissal should be affirmed.

**B. No Constructive Discharge or Retaliation Claim Exists.**

Walberg’s remaining claim in his Complaint is for constructive discharge, and in his First Amended Complaint he adds in a retaliation claim. These claims fare no better.

The constructive discharge claim involves Walberg's assertion that he was "forced to resign under coercive conditions" (Appx. 2 at ¶¶ 22–23), based on general hostility and because another employee made more money. (Appx. 39 at ¶¶ 8, 11). As to a retaliation claim, Walberg asserts he was given the option to resign or be terminated five days after raising concerns about how his coworker trained and treated him. (Appx. 39 at ¶ 9). Such factual allegations do not state a claim under South Dakota law and were properly rejected by the Circuit Court.

First as to a general constructive discharge claim, this Court has consistently rejected the existence of any claim for a general "constructive discharge:"

Our review of tort law establishes that the claim of constructive discharge has been generally applied in cases where intolerable work environs arise out of sexual harassment and various types of discrimination. *On appeal, [the plaintiff] asks us for a holding that would constitute a radical departure from established law on constructive discharge. We decline his request.* Viewed in a light most favorable to [the plaintiff], we find no genuine issues as to material facts nor error in the circuit court's application of relevant law to those facts. We, therefore, find no basis to reverse the circuit court's grant of [the defendant's] motion for summary judgment as to [the plaintiff]'s wrongful discharge claim based on constructive discharge.

*Anderson*, 2007 SD 65, ¶ 36, 738 N.W.2d at 51 (emphasis added); *see also Butterfield*, 437 N.W.2d at 560 (holding there is no claim for termination of an at-will employment even where the employee feels forced to resign); *Nelson v. WEB Water Dev. Ass'n, Inc.*, 507 N.W.2d 691, 696 (S.D. 1993) (applying *Butterfield* to affirm dismissal of a plaintiff's wrongful termination claim when the plaintiff was fired after choosing to not resign).

Second, as to a constructive discharge/retaliation claim, Walberg does not plead a viable claim. In discussing the exception to the at-will doctrine in *Niesent v. Homestake Min. Co. of California*, this Court noted such exception is very narrowly construed and is

to be applied only in circumstances where the motivation for the termination “contravenes a clear mandate” of law as set forth in the Constitution, statutes, or judicial decisions. 505 N.W.2d 781, 783 (S.D. 1993). Here, in his First Amended Complaint, Walberg’s allegations do not rise to this high level of showing actions contravening a clear mandate. Rather, Walberg simply asserts that he complained to his supervisor about his coworker’s training and treatment of him. (Appx. 39 at ¶¶ 10, 11). Such allegations do not rise to the level of creating a public policy exception.

In fact, this Court has already rejected these types of allegations in its 2018 case, *Harvey v. Reg’l Health Network, Inc.*, 2018 SD 3, 906 N.W.2d 382. In *Harvey*, the plaintiff alleged there should be a public policy exception for terminations related to reporting “unsafe staff performance” as to treatment of nursing home residents. *Id.* ¶ 48, 906 N.W.2d at 396. In rejecting the application of such an exception and rejecting the claim, this Court noted the conduct involved was not so extreme or outrageous so as to have this Court recognize it as an exception, stating:

Harvey concedes that she is an at-will employee. But she argues that the whistleblower exception to the at-will doctrine applies in this case. She asserts that she was a whistleblower because she complained to her supervisors about “unsafe staff performance.” According to Harvey, the whistleblower protection is broad, and this Court should recognize the public policy in protecting employees that ensure our elderly have safe care.

It is well settled that “a cause of action for wrongful discharge arises on behalf of an employee where an employer’s motivation for termination contravenes a clear mandate of public policy.” . . . But “[t]o state a cause of action under this exception, the employee must plead and prove that a substantial public policy may have been violated.” . . .

Here, Harvey does not request this Court to adopt a new public policy exception; nor does she suggest that she complained of unlawful or criminal conduct. Rather, she requests that this Court expand the whistleblower exception beyond the language in *Dahl* to include her

complaints about coworkers and a recommendation that security cameras be purchased. This we will not do. Harvey has not identified a substantial public policy that may have been violated. And to conclude otherwise would eviscerate the at-will doctrine in favor of judicial management of employee/management relations. . . .

Harvey argues that “[f]alsely accusing a caregiver of slapping and secluding a disabled nursing home resident—felony elder abuse—goes far beyond insult or triviality.” She relies on the fact Regional Health submitted its mandatory five-day investigative report to the Department four months late and misrepresented in that report that Regional Health had interviewed residents. She also highlights that the Department of Labor concluded that she did not engage in gross misconduct, and the circuit court held that Harvey did not commit felony elder abuse. In Harvey’s view, Regional Health violated corporate policies, state laws, and state administrative rules.

Although Harvey ultimately prevailed in her unemployment claim and was acquitted of felony charges, we cannot say that Regional Health’s conduct surrounding Harvey’s termination was “so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” . . . We also recognize that the investigation into the accusations against Harvey before reporting to the Department of Health was at best inadequate and conclusory. In fact, the manner in which Golden Ridge handled the report of abuse violated the Department of Health’s rules and resulted in an investigation by the Department into Golden Ridge’s policies. It is further troubling that Meade immediately recommended termination when at least one of Harvey’s accusers arguably had a motive to get Harvey fired. But on the evidence before us, we cannot say that reasonable minds could differ in finding that Regional Health’s conduct was not extreme and outrageous.

*Id.* at ¶¶ 43–44, 48–50, 906 N.W.2d at 395–97 (internal citations omitted).

Here, the allegations Walberg asserted in his First Amended Complaint do not rise to such level. Instead, his allegations involve reporting concerns about training and being subjected to general harassment of having business cards left on a desk, of a whoopie cushion once placed on a chair, and of someone having a higher wage. Such allegations do not rise to these high required levels. *Harvey* mandates the determination that there is no public policy exception here.

In his Brief, Walberg also asserts retaliation due to reporting wage concerns. Notably absent from the Complaint and First Amended Complaint, however, is any allegation that Walberg reported a concern about wage disparity (*i.e.*, engaged in a protected activity) or allegation that his wages or hostile treatment were casually related to a protected classification (*i.e.*, based on sex, disability) to plead causation. Consequently, the retaliation claim is fatally flawed. *See, e.g., King v. United Parcel Serv., Inc.*, 152 F.4th 915, 923 (8th Cir. 2025) (noting the requirements of a retaliation claim and affirming dismissal of said claim when those requirements were not satisfied); *Stathis v. Marty Indian Sch. Bd. Inc.*, 560 F. Supp. 3d 1283, 1302 (D.S.D. 2021) (granting a motion to dismiss an employment retaliation claim based on raising concerns about how grant funds were administered). An employee’s general complaint about not being paid enough or as much as other employees is not a protected activity.

The general constructive discharge claim pled in the Complaint fails to state a claim and the dismissal of it should be affirmed. The retaliation claim pled in the First Amended Complaint also fails to state a claim, so the denial of the motion to amend as futile was proper and should be affirmed.

**C. No Procedural Due Process Claim Exists.**

Walberg’s next claim in his First Amended Complaint alleged he was denied procedural due process in his termination because he did not receive a “pre-deprivation hearing or adequate notice.” (Appx. 39 at ¶¶ 19–22). Yet, since Walberg is an at-will employee, such claim is not cognizable, and the denial of the motion to amend was proper.

This Court has consistently and adamantly maintained there is no due process rights held by someone related to at-will employment. *See, e.g., Butterfield*, 437 N.W.2d 857. In *Butterfield*, the plaintiff claimed he was repeatedly denied proper procedures during his termination and, when told he was going to be terminated and presented a resignation notice, he signed that notice under duress and coercion. *Id.* at 858, 861. The *Butterfield* court noted its duty to construe the employment policies as a question of law and determined that where there is at-will employment, any policies as to the termination process do not create a claim and that the employer did not need to follow them, noting that “[d]espite numerous challenges, the employment-at-will doctrine is still the law in South Dakota.” *Id.* at 858–60 (further stating that as to “*Butterfield*’s claims for wrongful discharge based upon various tort theories, we find that they have no validity as *Butterfield* was an employee terminable at will. . . . Therefore, summary judgment for Citibank on these claims was also appropriate.” (internal citations omitted)). *Butterfield* is no different than the present case in which Walberg asserts he was forced to resign and denied proper process. *Butterfield*’s clear holding also bars any due process claim. *See also Mogard v. City of Milbank*, 932 F.3d 1184, 1190 (8th Cir. 2019) (holding that as “an at-will employee, Mogard cannot demonstrate a property interest in continued employment”).

*Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985), and its progeny do not hold otherwise. *Loudermill* simply held that where there is a property interest in employment, then a public employee has a right to notice and opportunity prior to termination. *Id.* at 546, 105 S. Ct. at 1495. However, merely being a public employee does not establish a property interest. *See id.* at 538, 105 S. Ct. at 1491 (“Property

interests are not created by the Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” (citations omitted)).

Here, Walberg’s pleadings referenced that he was employed as a Deputy Auditor. SDCL 7-7-21 provides that the Auditor has the sole authority to hire and fire, and to remove an employee at her “pleasure.” As such, Walberg was an at-will employee. Even Walberg himself recognizes the at-will nature of his employment in his Brief where he states his employment was “labeled at-will.” (Appellant’s Brief at pg. 7). *See Truhe v. Turnac Grp., L.L.C.*, 1999 SD 118, ¶ 5 n.3, 599 N.W.2d 378, 379 n. 3 (stating that an “admission in a party’s brief is binding on that party as a judicial admission”).

Because Walberg was an at-will employee, he had no due process rights and, accordingly, a due process claim is not viable. Consequently, the motion to amend was futile, and this Court should affirm the Circuit Court’s denial of the motion to amend. *See Heary v. McFaul*, 65 Fed. Appx.927, 929 (6th Cir. 2003) (dismissing complaint for failure to plead rights deprivation claim).

#### **D. No Liberty Interest Claim Exists.**

Walberg’s remaining claim as pled in his First Amended Complaint is for a denial of his alleged liberty interest, in which he claims he was “denied the opportunity to respond to allegations or to challenge his termination in any meaningful way.” (Appx. 39 at ¶ 20). He pleads nothing else related thereto other than asking for compensatory damages for reputational harm and other losses in his prayer for relief. (*Id.* at 4).

While this Court seemingly has not directly addressed the liberty interest issue, courts consistently have held that a publicly employed, at-will employee does not have

any general liberty interest rights related to his employment. *See, e.g. Mogard*, 932 F.3d at 1190–91 (8th Cir 2019) (applying South Dakota law and stating “[a]t-will, public employees generally have no liberty interest in continued employment”); *Roark v. City of Hazen, Ark.*, 189 F.3d 758, 761 (8th Cir. 1999) (specifically holding that an at-will employee “did not establish[] that he possessed a protected liberty interest that was violated by his termination”); *W. Virginia Bd. of Educ. v. Marple*, 783 S.E.2d 75 (W. Va. 2015) (affirming dismissal of liberty and property interest claims related to employment based, in part, upon finding that the plaintiff was an at-will employee and there is no liberty or property interest in at-will employment).

The Eighth Circuit has repeatedly found public employees do not have a protected liberty interest in employment. In *Singleton v. Cecil*, the Eighth Circuit Court of Appeals held a “discharged municipal at-will employee does not have a section 1983 substantive due process occupational liberty interest under the Fourteenth Amendment.” 176 F.3d 419, 420 (8th Cir. 1999). In reaching this conclusion, the *Singleton* court noted to “hold otherwise would be to disregard Supreme Court precedent and the decisions of our sister circuits . . . [and] . . . would . . . also be abusing § 1983 to intrude upon and second-guess at-will employment decisions made by state actors, notwithstanding the Supreme Court’s admonishment that the . . . “court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies” and “[t]he United States Constitution cannot feasibly be construed to require . . . judicial review for every such error.” *Id.* at 24 (quoting *Bishop v. Wood*, 426 U.S. 341, 349–50, 96 S. Ct. 2074, 2080 (1976)).

The *Singleton* court also noted the difference between the Constitution's protection against the government acting "as [a] 'proprietor' that was managing its own internal affairs rather than as a 'lawmaker' that was attempting to regulate or license an entire trade or profession, or to control an entire branch of private business." *Id.* at 25 (citations omitted). The court continued that "[i]t is crucial to note the distinction between 'legislative' acts such as laws and regulations and 'non-legislative' or 'executive' acts such as employment terminations when analyzing substantive due process claims," the latter of which are not afforded liberty interest protection. *Id.* (citations omitted).

In its well-reasoned analysis, the *Singleton* court further noted that the mere ending of employment does not impose on the employee "stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities" and stated that to impose liberty interest rights under such a circumstance "stretches the concept too far to suggest that a person is deprived of 'liberty' when he [is discharged from] one job but remains as free as before to seek another." *Id.* at 426–27 (quoting *The Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 575, 92 S. Ct. 2701, 2708 (1972)).

*Singleton* continued: "as the Supreme Court has steadfastly" held, there is no occupational liberty protected by the constitution "when a public employer discharges an employee for no reason, a bad reason, or even a false reason absent the employer's publication of stigmatizing information about the employee in connection with the discharge." *Id.* at 427. Rather, it is "[o]nly if the employer creates and disseminates a false and defamatory impression about the employee in connection with his termination is [a procedural] hearing [constitutionally] required." *Id.* (citations omitted). The *Singleton* court went on to note that this principle is exceedingly important:

A contrary conclusion would enable every discharged at-will public employee who has no heretofore recognized right to procedural due process to assert a constitutional claim and seek redress in federal court. . . . Public at-will employees would then have the right to a hearing in connection with all discharge decisions so that they may ascertain whether the reasons for discharge were arbitrary or irrational. *This directly contradicts, if not outright vitiates, the Supreme Court's repeated assertions that an employee can be discharged for no reason, a bad reason, or a false reason without a hearing, and that an employee has no right to a hearing in the absence of a property right to his job or unless his employer publicly divulged a stigmatizing reason for the dismissal.* This also essentially abrogates the concept of at-will employment. This would also require us to formulate, on a case-by-case basis, standards distinguishing bad and false reasons, for which an at-will public employee can be discharged, from arbitrary or irrational reasons.

*Id.* at 428 (internal citations omitted) (emphasis added).

In concluding, the *Singleton* court noted that there simply is no liberty interest rights where the employer terminated an employee with “no public disclosure of the reasons for the discharge.” *Id.* at 429 (citations omitted). “Indeed, ‘the right to follow a chosen trade or profession’ is not constitutionally deprived when a plaintiff, notwithstanding an adverse employment action, ‘remain[s] entirely free to obtain employment’ or ‘to get any other job’ in his chosen trade.” *Id.* (quoting *Cafeteria & Rest. Workers Union, Loc. 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895–96, 81 S. Ct. 1743, 1749 (1961)). Thus, claims of stigma related to termination are not sufficient. *Id.* (stating “the mere fact that [a plaintiff] was discharged, while it ‘might make him somewhat less attractive to some other employers[,] would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty.’”) (quoting *Roth*, 408 U.S. at 574 n.13, 92 S. Ct. at 2707 n.13).

Consequently, there is no general liberty interest claim related to the mere fact that an employee has been terminated. Rather, a liberty interest claim can only be pursued

where the public employer “creates and disseminates a false and defamatory impression about the at-will employee in connection with his termination,” thereby affording an opportunity for a name-clearing hearing. *Singleton*, 176 F.3d at 427; *Mogard*, 932 F.3d at 1191.

Walberg’s pleadings here exceedingly fall short. As to his March 2025 termination, the Complaint merely states he was employed until he resigned under duress. (Appx. 2 at ¶ 7). The First Amended Complaint merely states Walberg was told his employment was ending, he was pressured to resign, and that he seeks money for reputational harm. (Appx. 39 at ¶¶ 9, 10, pg. 4). In his Brief (at page 8), even Walberg states the County did not provide reasons for his termination, which is an admission the County did not disseminate false and defamatory information about his termination. *See Truhe*, 599 N.W.2d at n.3 (stating that an “admission in a party’s brief is binding on that party as a judicial admission.”). *Singleton* and the cases upon which it relies makes it clear that such allegations are not the type for which there is a liberty interest protection. *See Singleton, supra* (affirming dismissal of claim finding insufficient mere concerns stigma from the fact of a termination); *Mogard*, 932 F.3d at 1191 (affirming dismissal of a liberty interest claim of an at-will public employee noting there “is no evidence in the record that defendants made official or intentional public statements about [the plaintiff’s] termination,” and the plaintiff’s demonstration that there were “rumors in the community that he was fired for criminal behavior” was nothing more than “unsupported speculation that defendants may be the source of these rumors . . . [which] does not support his claim” since “speculat[ion]” that public employer “must have leaked” stigmatizing statements to the public is insufficient to support claim for deprivation of

liberty interest”).

Since there is no general liberty interest liability related to a general termination and since Walberg failed to plead any false and defamatory facts for which a liberty interest claim is viable, the Circuit Court’s denial of the motion to amend the Complaint as futile was proper. It should be affirmed.

**IV. Alternatively, this Court May Affirm the Dismissal under SDCL 15-6-56.**

Lastly, after granting the motion to dismiss and denying the motion to amend the Complaint, the Circuit Court determined there was no viable claim and so it did not consider the evidence set forth in the Tunheim Affidavit otherwise entering dismissal under SDCL 15-6-56. Should this Court affirm the granting of the motion to dismiss and denial of the motion to amend, then there is no need for this Court to review the summary judgment motion. Yet, it is also clear that, in considering the affidavit provided, Walberg’s claims should also be disposed of via summary judgment.

As noted by the County, Walberg was employed as a Chief Deputy Auditor. (Appx. 21 (Tunheim Aff.) at ¶ 2). He was an at-will employee. (*Id.*). The personnel policy manual had no mandatory progressive discipline. (*Id.* at ¶ 2, Ex. 2). When Walberg was informed his employment was going to be terminated and given an option to resign, he gave the County a resignation notice. (*Id.* at ¶ 3). The County Commission approved the resignation, and the resignation was published in the minutes. (*Id.* at ¶ 4, Ex. 1). Walberg received the same benefit pay/unemployment rights by resigning as he would have if there was a termination. (*Id.* at ¶ 5). The County provided a copy of all documents that are in the personnel file pertaining to Walberg. (*Id.* at ¶ 6).

As to Walberg’s document production claim, review of such evidence demonstrates that claim is properly dismissed under SDCL 15-6-56. As set forth in the Tunheim Affidavit, there was nothing in the personnel file that was withheld. (*Id.*). The County has no obligation to search for emails, handwritten notes, etc., and/or otherwise place any specific documents in the personnel files—let alone produce them to a current or former employee. (*Id.* at Ex. 2). No claim related to the documents exists as a matter of law.

As to the constructive discharge and due process claims, dismissal under SDCL 15-6-56 is also appropriate. On March 11, 2025, Walberg met with Auditor Heupel and HR Tunheim wherein he was told his at-will employment was going to be terminated, but he was provided the opportunity to resign if he preferred that the end of his employment be documented as a resignation in the County’s meeting minutes. (*Id.* at ¶¶ 2–4, Ex. 1). As a matter of law, such conduct does not state a “constructive discharge” claim even if South Dakota courts recognized such a claim.

Lastly, as to the liberty interest claim and as set forth in the Tunheim Affidavit, the publication related to the termination by the County was simply a motion to accept Walberg’s resignation, and no reasons or other comments were given as to the same. (*Id.* at ¶ 4, Ex. 1). As set forth in Section III.D. above, no liberty interest claim exists as a matter of law.

Should these facts as set forth in the Tunheim Affidavit be considered, it is clear none of Walberg’s claims state claims upon which relief may be had and are also properly disposed of under SDCL 15-6-56. Affirmance of the dismissal of all claims is warranted.

## CONCLUSION

Walberg was an at-will employee who simply was provided an opportunity to resign in lieu of being terminated. His Complaint asserting actions for not producing documents and a general constructive discharge do not state claims upon which relief can be granted under settled South Dakota law. The Complaint was properly dismissed. As to Walberg's First Amended Complaint, it failed to plead allegations to create any claim upon which relief could be granted and so was properly denied as futile. As an at-will employee, Walberg did not have any due process or general liberty interest rights; and the facts alleged did not create a viable liberty interest or wrongful termination claim. The County respectfully requests this Court affirm the Circuit Court's decision, or alternatively, grant it summary judgment for the reasons set forth herein.

Dated this 21<sup>st</sup> day of November, 2025.

*/s/ Lisa Hansen Marso*

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31208

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Joshua J. Walberg,

Appellant,

v.

Brown County Commission; Brown County, South Dakota;  
Brown County Human Resources Department;  
and Allison Tunheim,

Appellees.

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Appeal from the Circuit Court  
Fifth Judicial Circuit, Brown County, South Dakota  
The Honorable Julia Dvorak, Presiding Judge

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**APPELLANT'S REPLY BRIEF**

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Notice of Appeal filed: September 3, 2025

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## INTRODUCTION

Appellees' Brief seeks affirmance by reframing this case as nothing more than dissatisfaction with at will employment. That framing is incorrect. Appellant has never alleged a right to continued employment. Instead, this appeal concerns whether the Circuit Court prematurely terminated the case at the pleading stage despite well-pleaded allegations of:

1. Retaliation following good faith reporting of wage disparities involving public funds;
2. A coerced resignation obtained under threat of termination and denial of promised representation;
3. Denial of mandatory statutory and employer created procedural rights;
4. Official publication of a misleading reason for separation without any opportunity for a name clearing hearing; and
5. Denial of leave to amend without the analysis required by SDCL 15-6-15(a).

At Rule 12, these allegations must be accepted as true and construed in Appellant's favor. The Circuit Court did not do so. Instead, it resolved factual disputes, credited Appellees' version of events, and denied leave to amend without meaningful analysis. Reversal is required.

**I. APPELLEES MISCHARACTERIZE THE RECORD AND THE BASIS OF APPELLANT'S CLAIMS**

Appellees repeatedly argue that Appellant seeks to convert at-will employment into a protected status. He does not. Appellant's claims arise from retaliation, coercion, denial of statutory and procedural rights, and reputational harm caused by official government action. None require a contractual right to continued employment.

Rule 12 permits dismissal only where no set of facts could entitle the plaintiff to relief. Here, Appellant alleged specific facts temporal proximity, coercive conduct, denial of representation, and official publication that, if proven, would support relief under recognized legal doctrines. Appellees' attempt to re litigate facts through affidavits is improper at this stage.

**II. APPELLEES' ASSERTION THAT APPELLANT CITED "NON-EXISTENT CASES" IS INCORRECT**

Appellees assert that Appellant relied on "non existent cases." That assertion is inaccurate and misleading.

The legal principles cited by Appellant are supported by valid, published authority. Some citations contained minor clerical errors, which Appellant has corrected. For example, Appellees claim Peterson v. Glory House does not exist. It does, and the correct citation is 443 N.W.2d 653

(S.D. 1989), where this Court held: “An employer may be liable for wrongful discharge when the termination violates a clear mandate of public policy.” Id. At 655.

Similarly, citations referenced by Appellees as “non existent” correspond to real published decisions under different case names. These clerical issues do not undermine the governing law. Appellees’ effort to portray them as substantive defects is unsupported and distracts from the merits.

### **III. APPELLANT ADEQUATELY STATED A CLAIM FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

South Dakota recognizes a clear public policy exception to at will employment. In *Peterson v. Glory House*, this Court held: “An employer may be liable for wrongful discharge when the termination violates a clear mandate of public policy.” *Peterson v. Glory House*, 443 N.W.2d 653, 655 (S.D. 1989).

This exception applies where an employee is terminated for engaging in conduct that serves an important public interest. Reporting improper or irregular governmental conduct squarely implicates such interests, particularly where public funds and transparency are involved.

In *Dahl v. Combined Insurance Co. of America*, this Court reaffirmed that the public policy exception protects employees who report wrongdoing in good faith: “South Dakota recognizes a public policy exception to the at will employment doctrine where the employee

alleges discharge for refusing to violate the law or for reporting violations of the law.” Dahl v. Combined Ins. Co., 2001 SD 19, ¶ 9, 621 N.W.2d 163, 166.

Appellant alleged that he raised good faith concerns regarding wage disparities within a county office an issue directly affecting public accountability and taxpayer funds and that he was immediately summoned and pressured to resign. The close temporal proximity between the protected report and the coerced separation supports an inference of retaliatory motive sufficient to survive dismissal.

At the Rule 12 stage, these allegations must be accepted as true. Whether Appellant ultimately proves retaliation is a matter for discovery, not dismissal.

**IV. APPELLANT ADEQUATELY PLEADED CONSTRUCTIVE  
DISCHARGE UNDER DURESS**

Appellees rely on *Butterfield v. Citibank*, 437 N.W.2d 857 (S.D. 1989), but *Butterfield* does not establish a categorical rule that coerced resignations are never actionable. It turned on its facts.

Here, Appellant alleged that he was confronted without warning, after reporting misallocation of public funds and expressed concerns regarding inadequate training and told he was being terminated and pressured to resign immediately. He was denied his chosen representative, in violation of the handbook. These allegations describe coercion sufficient to

plead constructive discharge. Whether the coercion occurred is a factual question that cannot be resolved on a motion to dismiss.

Appellees incorrectly assert and the circuit court appears to have accepted the proposition that a plaintiff must identify a “clear public policy” in order to plead constructive discharge. That is a misstatement of South Dakota law. Constructive discharge is not itself a cause of action requiring a public policy showing; rather, it is a factual doctrine used to determine whether an ostensibly voluntary resignation should be treated as an involuntary termination.

The public policy requirement arises only when a plaintiff seeks to overcome the at will employment doctrine by asserting a claim for wrongful discharge in violation of public policy. By conflating these distinct inquiries, Appellees improperly collapse multiple independent claims into a single standard and effectively immunize coercive governmental conduct from review.

Here, Appellant pleaded constructive discharge to establish that his resignation was coerced thereby triggering procedural due process protections, statutory rights, and liberty interest analysis separate and apart from his public policy wrongful termination claim. Dismissing the constructive discharge allegations at the pleading stage on the ground that public policy was insufficiently pled constitutes reversible legal error.

**V. THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR BY DENYING LEAVE TO AMEND WITHOUT REQUIRED ANALYSIS**

This is Appellant's strongest claim of reversible error.

The circuit court committed reversible error by denying leave to amend based on a legally flawed futility analysis. "Futility exists only where the proposed amended complaint would itself be subject to dismissal under Rule 12(b)(6)." The court expressly stated that it accepted all allegations in the proposed amended complaint as true and acknowledged Appellant's allegation of a wage discrepancy in public employment. Nevertheless, it denied amendment as "futile" on the ground that it would not cure the pending Rule 12(b)(6) motion. (SEE Transcript p. 11, 24-25.) That reasoning misapplies SDCL 15-6-15(a). An amended complaint supersedes the original pleading as a matter of law, rendering any motion directed at the original complaint moot. Futility must be assessed by determining whether the amended complaint itself would fail to state a claim not whether it would salvage a superseded motion. The court evaluated futility against a procedurally nonexistent target. This is not a discretionary judgment call, it is a misapplication of law. "Compounding this error, the court relied on an unidentified "Harvey case" without citation, explanation, or factual comparison, depriving this Court of any basis for meaningful appellate review. By conflating Rule 12 and Rule 15 standards and failing to conduct the required analysis, the circuit court abused its discretion, requiring reversal.

South Dakota follows a liberal amendment policy. SDCL 15-6-15(a) mandates that leave to amend "shall be freely given when justice so requires." This Court has repeatedly held that denial of leave to amend constitutes an abuse of discretion when the circuit court fails to analyze the recognized factors governing amendment.

In *Behrens v. Wedmore*, this Court reversed a denial of leave to amend, emphasizing: “The policy of this rule is to freely allow amendments in order to promote the resolution of cases on their merits rather than on technical pleading defects.” *Behrens v. Wedmore*, 2005 SD 79, ¶ 37, 698 N.W.2d 555, 571. This Court further adopted the United States Supreme Court’s framework in *Foman v. Davis*, holding that leave may be denied only upon a showing of: “Undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility of amendment.” *Id.* (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Here, none of these factors were addressed. Appellant sought amendment before an answer was filed, before discovery, and for the express purpose of clarifying factual allegations. The circuit court did not find bad faith, delay, prejudice, or futility. Instead, it dismissed the action outright while acknowledging that Appellant had alleged facts as (“correct” supporting his claims. See transcript p. 11, 2-3)

The circuit court committed reversible error by denying leave to amend after expressly accepting Appellant’s factual allegations as true yet resolving disputed legal questions against him at the pleading stage. The transcript reflects that the court twice acknowledged it was required to accept Appellant’s allegations including the wage discrepancy report as accurate for purposes of ruling on the motion to dismiss (“I take what you pled as correct”( See Transcript p.11, 2-3) and “I’m taking all of those allegations as accurate at this point in ruling on the motion See Transcript p. 11 17-18 ). Nevertheless, the court summarily concluded that the proposed

amended complaint “would be futile” without analyzing whether amendment would cause undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or whether additional factual development could cure any perceived defect. This is precisely the type of conclusory futility determination South Dakota law forbids. See *Behrens v. Wedmore*, 698 N.W.2d 555, 571 (S.D. 2005) (leave to amend must be freely granted and denial requires articulated reasoning); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

By accepting Appellant’s allegations as true and then foreclosing relief as a matter of law without meaningful analysis or opportunity to amend, the circuit court exceeded the limited role of Rule 12 and abused its discretion. Reversal is required.

Under *Behrens* and *Foman*, denial of leave to amend under these circumstances is reversible error. At minimum, remand is required so Appellant may amend and proceed on the merits.

**VI. APPELLANT ADEQUATELY PLEADED A LIBERTY-INTEREST CLAIM UNDER *CODD v. VELGER***

Appellant does not rely on *Board of Regents v. Roth* as a basis for relief. Instead, his liberty interest claim is grounded in *Codd v. Velger*, 429 U.S. 624 (1977), and its progeny.

Codd holds that when a public employer creates and disseminates a stigmatizing or misleading impression in connection with termination, procedural due process requires an opportunity for a name clearing hearing. The claim is procedural, not substantive.

Appellant alleged:

1. A resignation obtained through coercion and threat;
2. Official publication in County Commission minutes stating he “resigned”;
3. Omission of the coercive circumstances;
4. No opportunity to respond or clear his name.

Whether the publication was materially misleading and stigmatizing is a fact question. At Rule 12, Appellant need only allege sufficient facts to trigger the right to a hearing. He did so. Dismissal at the pleading stage was premature.

**VII. APPELLEES CANNOT CURE RULE 12 DEFECTS WITH SUMMARY JUDGMENT MATERIALS**

Appellees' reliance on affidavits and factual denials is improper. The question is not whether Appellees dispute coercion or publication, but whether Appellant alleged facts that, if proven, would entitle him to relief. He did.

**VIII. APPELLANT STATED A VIABLE CLAIM BASED ON THE  
COUNTY'S FAILURE TO FOLLOW ITS OWN HANDBOOK  
PROCEDURES**

South Dakota law is clear that employers who promulgate personnel policies may not disregard them at will. In *Osterkamp v. Alkota Manufacturing, Inc.*, this Court upheld a verdict in favor of an employee where the employer failed to follow its own handbook. Here the plaintiff argues just that. The defendant disregarded its own handbook policy which the plaintiff was required to follow and yet the defendant was not, this flies in the face of logic.

"An employer who promulgates termination procedures may not disregard them at will."

*Osterkamp v. Alkota Mfg., Inc.*, 332 N.W.2d 275, 277 (S.D. 1983).

This principle was reaffirmed in *Larson v. Kreiser's Inc.*, where the Court explained: "There are exceptions... to the at will doctrine. In *Osterkamp*... we upheld a verdict for the plaintiff in a wrongful discharge action when the employer failed to follow its own termination rules set forth in the employee handbook." *Larson v. Kreiser's Inc.*, 427 N.W.2d 833, 835 (S.D. 1988).

Appellant alleged that Brown County's handbook permitted employees to request access to personnel records and to utilize a representative. Despite this, the County denied Appellant the representative he requested and imposed a new, unwritten requirement that any representative must be an attorney an obligation found nowhere in the handbook.

Under Osterkamp and Larson, such conduct states a viable claim. Appellant does not seek to transform at will employment into tenure; he seeks enforcement of the County's own self-imposed rules. Dismissal at the pleading stage was therefore improper.

The circuit court's determination that amendment would be futile cannot be reconciled with the County's own employment handbook, which Appellant plausibly alleged and the court expressly accepted as true that the County violated.

The handbook guarantees an employee and his designated representative reasonable access to the personnel file upon written authorization, yet the County imposed an extra textual requirement that the representative be an attorney, a condition found nowhere in the policy.

It further mandates that disciplinary actions and grievance outcomes be maintained in the personnel file and affords employees the right to review, rebut, and respond to adverse material, rights Appellant was denied when the County refused production altogether.

The handbook's Standards of Conduct expressly prohibit dishonesty, misuse of public resources, and moral turpitude precisely the misconduct Appellant reported while its grievance

procedures require investigation and prohibit retaliation, obligations the County ignored before effectuating Appellant's separation.

Finally, the termination provisions require notice and procedural safeguards that were not followed. Under South Dakota law, an employer's failure to adhere to its own promulgated policies supports employee claims and precludes dismissal at the pleading stage. *Osterkamp v. Alkota Mfg., Inc.*, 332 N.W.2d 275, 277–78 (S.D. 1983); *Larson v. Kreiser's, Inc.*, 427 N.W.2d 833, 836–37 (S.D. 1988). Because Appellant's proposed amended complaint alleged multiple, interrelated handbook violations that, if proven, establish enforceable rights and retaliatory motive, the circuit court's summary conclusion that amendment was futile without meaningful analysis constituted reversible error.

## **CONCLUSION**

**Appellant alleged detailed, non-conclusory facts supporting claims for:**

**Wrongful termination in violation of public policy;**

**Constructive discharge under duress;**

**Denial of statutory and employer-created procedural rights;**

**Deprivation of a liberty interest without a name-clearing hearing; and**

**Improper denial of leave to amend.**

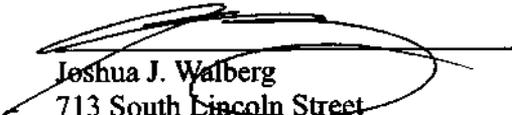
**The Circuit Court resolved factual disputes, misapplied Rule 12, and denied amendment without analysis. The dismissal should be reversed and the case remanded for further proceedings.**

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 15-6-11 and the South Dakota Supreme Court's formatting requirements, I certify that this corrected brief contains 2,371 words, excluding the Certificate of Compliance. This word count is in compliance with the word limits set forth in SDCL and the applicable rules of appellate procedure.

Dated: December 19, 2025

Respectfully submitted,



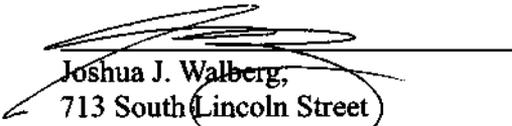
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of December, 2025, a true and correct copy of the foregoing

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