UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5193
Summary Calendar

CHARLES DAPREMONT, Former Warden of the St. Mary Parish Jail,

Plaintiff-Appellant,

versus

HUEY P. BOURGEOIS, Sheriff of the Parish of St. Mary, officially & in his individual capacity, ET AL.,

Defendants,

HUEY P. BOURGEOIS,

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Louisiana (91-CV-2215)

(April 5, 1994)

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Charles Dapremont, the former warden of the St. Mary Parish Jail who was discharged after publicly opposing the re-election of Sheriff Huey P. Bourgeois, challenges the district court's holding

---

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

that the discharge did not violate Dapremont's First Amendment rights of free speech and association. We **AFFIRM**.

I.

Dapremont was employed by the St. Mary Parish Sheriff's Department from November 1977 through September 30, 1991. In July 1984, when Bourgeois took office, he appointed Dapremont as warden, resulting in his being third in command of the department (with three others). Dapremont did not support Bourgeois in his re-election bid in 1991, stating publicly that there was no leadership in the sheriff's office and that a change was needed. Dapremont also campaigned for Bourgeois' opponent, making telephone calls asking persons to vote for the opponent. In September 1991, several weeks before the election, Bourgeois discharged Dapremont, stating in a written termination notice:

> The manner of your repeated public opposition to my re-election to Sheriff has resulted in substantial disruption to the operation of this office and undermines trust and confidence in you which is essential to the proper discharging of your high ranking position of warden with this department.

Dapremont filed suit against Bourgeois under 42 U.S.C. § 1983, claiming, *inter alia*, that he was discharged in violation of his First Amendment rights of free speech and association. After a bench trial, the district court entered judgment for Bourgeois.

II.

The parties agree that the court applied the appropriate legal standard for resolving public employee discharge cases: the balancing test set forth in ***McBee v. Jim Hogg County, Tex.***, 730 F.2d 1009, 1016 (5th Cir. 1984) (en banc) ("a comprehensive but

flexible analysis -- a balance which weighs the particular aspects of the government's interest in effective service and the plaintiffs' interest in freedom of speech that arise in each fact situation"); *see also* ***Kinsey v. Salado Independent School Dist.***, 950 F.2d 988 (5th Cir.) (en banc), *cert. denied*, ___ U.S. ___, 112 S. Ct. 2275 (1992). They also agree that the factors to be weighed in striking that balance are:

> (1) whether the employee's actions involve "public concerns"; (2) whether "close working relationships" are essential to fulfilling the employee's public responsibilities; (3) the time, place, and manner of the employee's activity; (4) whether the activity can be considered "hostile, abusive, or insubordinate"; and (5) whether the activity "impairs discipline by superiors or harmony among coworkers."

Click v. Copeland, 970 F.2d 106, 112 (5th Cir. 1992) (quoting ***Matherne v. Wilson***, 851 F.2d 752 (5th Cir. 1988)). And, finally, they agree that the court correctly held that the first and third factors weigh in favor of Dapremont -- his opposition to Bourgeois' re-election involved a matter of public concern, and his political activities were conducted outside of the Sheriff's office, and while off duty.

Dapremont contends, however, that the court erred in resolving the other three factors: whether a "close working relationship" was essential to fulfilling Dapremont's public responsibilities; whether his political activity could be considered "hostile, abusive or insubordinate"; and whether his political activity impaired discipline by superiors or harmony among co-workers.

In cases such as this, we "will not disturb the district court's findings of fact unless they are clearly erroneous", but "we must weigh the facts for ourselves to arrive at an independent constitutional judgment". ***Gonzalez v. Benavides***, 774 F.2d 1295, 1300 (5th Cir. 1985) (internal quotation marks and citation omitted), *cert. denied*, 475 U.S. 1140 (1986). Nevertheless, "great reliance should be placed on the judicial discretion exercised by the trial judge in the fact-finding process". ***Id***. at 1303.

With respect to the second factor, the district court found, as quoted below, that a "close working relationship" was essential to the fulfillment of Dapremont's public responsibilities as Jail Warden:

> Since the sheriff is responsible for the jail and the conduct of his appointees who run it, and the Sheriff is subject to civil liability and fines for failure to perform statutory duties, he necessarily must have the loyalty, trust, and confidence of the warden who runs it on his behalf. This can hardly take place when a high-ranking appointee openly supports the sheriff's opponent during the sheriff's bid for reelection, and publicly criticizes the Sheriff's leadership.

With respect to the fourth and fifth factors, the district court found that Dapremont's public opposition to Bourgeois' re-election constituted insubordination, which resulted in "tenseness", "suspicion", and "hostility". Although it found that "any disruptions to the ongoing business of the sheriff's office caused by the time, place and manner were slight", and that Dapremont's political activities "may not have disrupted any daily working relationship at the jail", it concluded correctly that the First Amendment did not require Bourgeois to "sit silently by while

his appointed Warden publicly disavows the Sheriff's authority and leadership". *See* ***Connick v. Myers***, 461 U.S. 138, 152 (1983) ("We do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action").

In a thorough and well-reasoned opinion, the district court correctly applied the appropriate law to factual findings that are amply supported by the record. It is our "independent constitutional judgment", after weighing the facts for ourselves, that Bourgeois' interest in the effective provision of governmental services outweighed Dapremont's First Amendment rights to publicly oppose the Sheriff's re-election.

III.

For the foregoing reasons, the judgment is

AFFIRMED.