

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

TABITHA CLAY,

Plaintiff,

v.

Case No. _____

**BOARD OF COUNTY COMMISSIONERS
FOR RIO ARRIBA COUNTY, RIO ARRIBA
COUNTY SHERIFF’S OFFICE, JAMES D.
LUJAN, in his official and individual capacities,
JEREMY BARNES, in his individual capacity,**

Defendants.

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS AND VIOLATIONS OF THE NEW
MEXICO TORT CLAIMS ACT**

COMES NOW Plaintiff Tabitha Clay, by and through her counsel the American Civil Liberties Union of New Mexico and Rothstein Donatelli LLP, and hereby brings this Complaint for damages against defendants pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30 (“NMTCA”), and New Mexico common law. Plaintiff seeks damages from Defendants Board of County Commissioners for Rio Arriba County (“Rio Arriba County”), Rio Arriba County Sheriff’s Office (“RASO”), Sheriff James D. Lujan, and Jeremy Barnes, in connection with their retaliation and intimidation arising from the exercise of Plaintiff’s constitutionally protected First Amendment Rights. As grounds for this complaint, Plaintiff states as follows.

INTRODUCTION

There is a reason the First Amendment is first in the Bill of Rights. The Founding Generation knew freedom of the press represented the single most important bulwark protecting a free people from tyranny. When the Cato Papers criticized the Crown, the Empire turned to

ensorship, and a revolution was born. From pre-Revolutionary America and the *Zenger* trial through the Pentagon Papers, the press provided a crucial service necessary for any democracy to function – accountability for public authorities.

Thus, law enforcement officials take a solemn oath to protect and uphold this bedrock of the American constitutional system. For years, press rightfully enjoyed access to public records and information in Rio Arriba County, until one reporter, Tabitha Clay, dared to publish a story critical of an out-of-control Sheriff's Department led by James D. Lujan. The Sheriff and his minions responded with frightening efforts to silence Ms. Clay, through obstruction and even intimidation. This case arises from those efforts and strikes at the very core of the First Amendment and our freedoms.

In May 2019, Ms. Clay, writing for the local Rio Grande Sun, reported on the use of a taser on a minor by Deputy Jeremy Barnes of the Rio Arriba County Sheriff's Department. The story quickly gained national attention and proved embarrassing to the Sheriff's Department. Despite it being part of the job description, the Sheriff and his deputy were displeased with being held accountable in a public setting. So they retaliated. Suddenly, Ms. Clay found her press access to public information was obstructed. She was denied by the Sheriff's Department the ability to bring her press equipment into the Rio Arriba County District Court where the Sheriff's Department was in charge of security. In sum, she was harassed and threatened by deputies for simply doing her job. As her reporting into the facts of the Sheriff's Department's activities continued, the efforts of the powerful to silence her escalated frighteningly, including multiple deputies waiting menacingly at her home to make sure she knew she was being watched.

What follows should cause a tremble in the heart of any freedom loving American. It is a troubling account of abuse of power by the very institutions armed by society to uphold the law.

Unfortunately for Defendants, Ms. Clay’s belief in the power of the freedom of the press steeled her spine to refuse to be intimidated into silence. This suit is her story.

PARTIES

1. Plaintiff Tabitha Clay was at all times material hereto a resident of Santa Fe County. In March of 2021, Plaintiff relocated to Lincoln County, Colorado.

2. Defendant Board of County Commissioners of the County of Rio Arriba (“Rio Arriba County”) is a political subdivision of the State of New Mexico. Pursuant to NMSA 1978, § 4-46-1, all suits or proceedings against a county are to be brought in the name of the board of county commissioners of that county. At all times material hereto, Rio Arriba County was a governmental entity and local public body as those terms are defined in the NMTCA, NMSA 1978, § 41-4-3(B), (C). Defendant Rio Arriba County is a “person” for purposes of 42 U.S.C. § 1983.

3. At all times material hereto, James D. Lujan was the Sheriff of Rio Arriba County. Upon information and belief, at all times material hereto, Defendant Lujan was responsible for the policies, practices, and customs of the RASO. Upon information and belief, Defendant Lujan was also responsible for the screening, hiring, training, retention, supervision, discipline, counseling, and control of the RASO’s staff, including Sheriff Deputies. Upon information and belief, at all times material hereto, Defendant Lujan was the final decision-maker, a policymaker for the RASO, and supervised its operation and management on a daily basis. Upon information and belief, as the individual in charge of the RASO’s overall operation and daily management, Defendant Lujan was responsible for the implementation of, and adherence to, RASO policies, procedures, and customs. At all times material hereto, Defendant Lujan was acting under color of law and within the scope of his duties. In connection with Plaintiff’s § 1983 claims, Defendant Lujan is sued in his official and individual capacities. Defendant Lujan is a public employee as that term is defined in the New

Mexico Tort Claims Act, NMSA 1978, § 41-4-3(F), and is a law enforcement officer under NMSA 1978, § 41-4-12.

4. Defendant Jeremy Barnes, upon information and belief, was at all times material hereto a resident of Rio Arriba County, New Mexico. At all times material hereto, Defendant Barnes was employed as a Rio Arriba County Sheriff's Deputy. At all times material hereto, Defendant Barnes acted under color of law and within the course and scope of his duties and employment. With regard to Plaintiff's § 1983 claims, Defendant Barnes is sued in his individual capacity only. At all times material hereto, Defendant Barnes was a public employee as that term is defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-3(F), and a law enforcement officer under NMSA 1978, § 41-4-12.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA 1978, § 38-3-1(A). This Court has jurisdiction of this action and of the parties as New Mexico District Court has original jurisdiction in all matters and causes, which are not otherwise excepted in Article VI, Section 13 of the New Mexico Constitution. Plaintiff resided in Santa Fe County at all times material hereto and the actions arose in Rio Arriba and Santa Fe counties.

6. With respect to Plaintiff's New Mexico Tort Claims Act claims, the acts and omissions complained of herein all constitute a basis for liability against Defendant Rio Arriba County and its agents, and come within the scope of the waivers of immunity contained within the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*

7. With respect to Plaintiff's New Mexico Tort Claims Act claims, Defendant Rio Arriba County received timely notice of Plaintiff's NMTCA claims in accordance with relevant statutory

and constitutional considerations. *See* N.M. Const. Art. II, §§ 4 & 18; NMSA 1978, § 37-1-10 and § 41-4-16(B).

FACTUAL BACKGROUND

8. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

9. In 2019, Plaintiff Tabitha Clay was a reporter for the Rio Grande Sun, covering the RASO, Española Police Department and the courts in Rio Arriba County.

10. Ms. Clay's reporting on the RASO resulted in a pattern of harassment and retaliation.

11. On May 29, 2019, the Rio Grande Sun published an article authored by Ms. Clay about Defendant Barnes' unlawfully using a taser on a minor.

12. Prior to May 29, 2019, Ms. Clay had had access to information concerning Rio Grande Sheriff activities, including records and regular communication with RASO employees. Beginning in June 2019, upon information and belief, as a result of the news article on Defendant Barnes, Defendant Lujan directed department employees to stop providing records, such as Computer-Aided Dispatch ("CAD") reports, to Ms. Clay related to ongoing issues within the RASO, and directed employees not to speak to her, as they previously had.

13. On July 1, 2019, Ms. Clay arrived at the scene of a fatal accident in Rio Arriba County. Upon arrival, Ms. Clay saw Defendant Lujan and Defendant Barnes. While, prior to her reporting on Defendant Barnes, Ms. Clay had been given access to report on stories from closer proximity (and in fact, was notified by the RASO and Sheriff Lujan of such RASO investigations), on this occasion she was kept at least thirty feet back by caution tape. While Ms. Clay was still a good distance back from the caution tape, Defendant Barnes started yelling at her to stay outside the perimeter, threatened to arrest her, and yelled for someone to get him some handcuffs. Upon

information and belief, this threat to arrest her for engaging in a constitutionally protected investigation as a member of the press, was done on Defendant Lujan's orders.



14. Defendant Barnes' activities caused Ms. Clay to fear that she was about to be subjected to a battery and wrongful arrest, so she quickly left the scene of the accident as Defendant Barnes was approaching her and before Defendant Barnes could act upon his threat to arrest her for doing her job as a member of the press.

15. On September 10, 2019, Ms. Clay returned to her apartment after a long day, where she found two Rio Arriba Sheriff's vehicles parked out front, one with Defendant Barnes, and one with Deputy Jerry Albo. The officers had no official business at the complex and, while the officers left shortly after she arrived, their departure appears to have been only in response to a dispatch call. The implication was clear that they knew where she lived and had no problem showing up while on duty in their official capacities.

16. On September 12, 2019, Ms. Clay wrote a story concerning the Rio Arriba County Sheriff's failure to do in-service trainings since 2011. Four days later, on September 16, 2019, deputies of the Rio Arriba County RASO refused to permit Ms. Clay to enter the Rio Arriba County Court with equipment she regularly used as a member of the press and was regularly permitted to bring into the court with her, including her phone, laptop and camera. In fact, only 7 days earlier, on September 9, 2019, Ms. Clay was permitted by the RASO Deputies to enter the courthouse with no issue, despite bringing in that same equipment. After the RASO Deputies refused to allow her in with her equipment, the bailiff for the court came down and spoke with the deputies, explaining that Ms. Clay was press and that the judge was allowing her to bring these items into the courtroom. The RASO Deputies informed the bailiff that the judge was not in charge downstairs, and that Ms. Clay would need to talk to the Sheriff. Eventually, Ms. Clay was permitted to bring in her camera, but not any of her other equipment.

17. As Ms. Clay continued to write articles that exposed the questionable conduct of the Rio Arriba County RASO, the withholding of information and intimidation continued and increased under the guise of changing official "policy" (policies that changed significantly and in direct relation to Ms. Clay's reporting).

18. These changes included dispatch logs that had been provided to the Rio Grande Sun every morning for approximately ten years and which had contained significant information related to RASO activities. Following Ms. Clay's reporting, Defendant Lujan pushed through policy changes to delay providing dispatch logs until after two weeks, and limiting the information provided in the dispatch logs.

19. Before May 2019, Ms. Clay had access to the RASO, was allowed in the building, and was able to do her job with accurate and timely information from employees, including from the RASO

Public Information Officer and Sheriff Lujan himself. Following the story on Barnes and the continued stories related to misconduct and concerns about the RASO and Sheriff Lujan, employees were instructed to answer only “official” requests.

20. The pattern of harassment and intimidation against Ms. Clay was related to her publishing information aimed at government accountability and raising concerns with Rio Arriba County, RASO, and Sheriff Lujan.

**COUNT I: FIRST AMENDMENT CLAIM – RETALIATION
(All Defendants)**

21. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

22. When Ms. Clay was reporting on the conduct and actions of the RASO, Defendant Lujan, and Defendant Barnes, she was exercising constitutionally protected rights.

23. In reaction to Ms. Clay’s protected First Amendment activities, Defendants retaliated against her by attempting to intimidate her, harass her, and impede her ability to report on the governmental actions of Defendants, in particular, actions that raise serious questions of competency and misconduct.

24. There is a causal connection between Ms. Clay engaging in constitutionally protected activities and Defendants’ reactions, which were taken as a direct response to Ms. Clay’s exercise of her First Amendment rights and constitute unlawful retaliation by public officials for Ms. Clay engaging in activity protected by the First Amendment.

25. The actions of Defendants Lujan and Barnes were unlawful and would chill an ordinary person in the exercise of First Amendment rights and Ms. Clay suffered damages as a result of their conduct.

26. Defendants Lujan and Barnes acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Ms. Clay of her constitutional rights. As a result of the nature of

Defendants' conduct, Ms. Clay is entitled to recover punitive damages against each individual Defendant.

**COUNT II: SUPERVISORY LIABILITY CLAIM
(Defendants Board of County Commissioners
For Rio Arriba County, Rio Arriba
County RASO, James D. Lujan)**

27. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

28. Prior to the acts and omissions alleged herein, Defendants Rio Arriba County, RASO, and Lujan failed to properly create, adopt, and inculcate appropriate policies and procedures for supervisors employed by them; failed to properly train, monitor, supervise, and discipline supervisors employed by them; and failed to otherwise institute adequate procedures and policies that would protect the rights of Ms. Clay. These acts and omissions were direct and proximate causes of the injuries complained of by Ms. Clay.

29. Defendant Lujan, as the head of the RASO, either knew of and acquiesced in the violations of Ms. Clay's constitutional rights or personally directed those violations. There is an affirmative link between the violation of Ms. Clay's constitutional rights and Defendant Lujan's actions and omissions such that Defendant Lujan is individually liable.

30. The acts and omissions of Defendants were undertaken under color of state law and operated to deprive Ms. Clay of her constitutionally protected rights.

31. In doing the acts set forth above, Defendants acted fraudulently, oppressively, maliciously, recklessly, and in knowing and conscious disregard of and callous indifference to Ms. Clay's constitutional rights, justifying an award of punitive damages.

**COUNT III: NEW MEXICO TORT CLAIMS ACT – VIOLATIONS OF MS. CLAY'S
CONSTITUTIONAL RIGHTS
(Defendants Lujan and Barnes)**

32. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

33. The conduct Defendants Lujan and Barnes engaged in in retaliation for Ms. Clay engaging in constitutionally protected activities violated Ms. Clay's constitutional rights, privileges or immunities secured by the constitution and laws of the United States and the State of New Mexico.

34. Immunity has been waived by NMSA 1978, § 41-4-12, for the conduct of Defendants Lujan and Barnes in violating Ms. Clay's constitutional rights, privileges, or immunities.

35. Defendants Lujan and Barnes acted recklessly, willfully, and wantonly in violating Ms. Clay's constitutional rights, privileges, or immunities.

36. Defendants Rio Arriba County and RASO, as Defendant Lujan's and Defendant Barnes' employer, are vicariously liable for torts committed within the course and scope of their duties as law enforcement officers.

37. Defendants Rio Arriba County and RASO failed to properly train and supervise Defendants Lujan and Barnes, which proximately caused Ms. Clay's damages.

**COUNT IV: NEW MEXICO TORT CLAIMS ACT - ASSAULT
(Defendant Barnes)**

38. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

39. In yelling at Ms. Clay at the scene of the car accident, Defendant Barnes engaged in an unlawful act, threat, or menacing conduct, which caused her to believe she was in danger of receiving an immediate battery.

40. In showing up at Ms. Clay's home with Deputy Albo in two marked patrol cars, Defendant Barnes engaged in an unlawful act, threat, or menacing conduct, which caused Ms. Clay to reasonably believe she was in danger of receiving an immediate battery.

41. Defendant Barnes' actions, as described in the preceding paragraphs, constitute assault under New Mexico law, for which immunity has been waived by NMSA 1978, § 41-4-12.

42. Defendant Barnes acted recklessly, willfully, and wantonly in committing assaults against Ms. Clay.

43. Defendant Rio Arriba County and RASO, as Defendant Barnes' employer, are vicariously liable for torts committed within the course and scope of his duties as a law enforcement officer.

**COUNT V: NEW MEXICO TORT CLAIMS ACT – NEGLIGENT MAINTENANCE
(Defendants Rio Arriba County, RASO, and Lujan)**

44. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

45. Upon information and belief, RASO Deputies were responsible for maintaining and operating security at the Tierra Amarilla Courthouse.

46. There, following Ms. Clay's reporting on stories that put Defendant Lujan and the RASO in a negative light, RASO Deputies prohibited Ms. Clay from entering the courthouse with her press equipment, impeding her ability to report as a member of the press and violating her constitutional rights.

47. RASO Deputies were acting within the scope of their employment when they engaged in this conduct.

48. In prohibiting Ms. Clay from bringing in her equipment, RASO Deputies indicated that the judge in the courthouse (who indicated the equipment was allowed in the courtroom), was not responsible for these operations, but rather Defendant Lujan.

49. In engaging in these operations of the Tierra Amarilla Courthouse, Defendants Rio Arriba County, RASO and Defendant Lujan had the duty to exercise that care ordinarily exercised by a reasonable, prudent, and qualified person in that position to not violate the constitutional rights of individuals using the courthouse.

50. Defendants Rio Arriba County, RASO, and Lujan had a duty to Ms. Clay, and similarly-situated members of the press, to exercise reasonable care in the maintenance and operation of the

courthouse and to keep the courthouse operating in a manner so as not to actively violate their constitutional First Amendment rights.

51. Defendants Rio Arriba County and RASO were the governmental entities that had immediate supervisory responsibility over the actions of employees of RASO, including but not limited to Defendants Lujan and Barnes. Defendants Rio Arriba County and RASO had a duty to supervise their employees and agents to ensure that they did not act negligently in the operation and maintenance of the Rio Arriba County courthouse. Supervision includes the obligation to adopt and inculcate reasonable and proper operation policies and procedures to prevent such constitutional violations.

52. Defendants Rio Arriba County, RASO, and Lujan failed to exercise reasonable care in adopting and implementing policies and procedures including employee training, which ultimately caused the violations of Ms. Clay's constitutional rights as a member of the press.

53. Immunity is waived under NMSA 1978, § 41-4-6, for the negligent maintenance and operation of public buildings, such as the Tierra Amarilla Courthouse.

54. Therefore, Defendants Rio Arriba County, RASO, and Lujan are jointly and severally liable for all injuries or damages caused by the negligence of any of their employees and agents under the doctrine of vicarious liability.

55. The conduct of Defendants Rio Arriba County, RASO, and Lujan was a direct and proximate cause of the injuries suffered by Ms. Clay.

RELIEF REQUESTED

56. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully stated herein.

57. As a direct and proximate result of the wrongful and unlawful acts and omissions of all Defendants, as described above, Plaintiff was injured, suffered, and continues to suffer damages,

including, but not limited to, emotional distress, anguish, suffering, humiliation, indignities, deprivation of constitutional rights, invasion of bodily integrity, and other damages.

58. As a result of the above-described damages and injuries, Plaintiff is entitled to recover awards of full compensatory damages against all Defendants in amounts to be determined at the trial of this cause.

59. Plaintiff requests damages in an amount sufficient to compensate her for all injuries and harm she suffered, as well as punitive damages as provided by law, along with costs of this action, pre- and post-judgment interest as provided by law, reasonable attorneys' fees as provided by law, and such other and further relief as proves just.

60. Plaintiff requests a trial by jury on all issues so triable.

May 26, 2021

Respectfully submitted,

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