

AUG 04 2009

JOHN F. CORCORAN, CLERK
BY: *J. Paradise*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

JOHN C. ROMANO

Plaintiff

v.

CITY OF LYNCHBURG, VIRGINIA

SERVE: Joan F. Foster, Mayor
City of Lynchburg
900 Church Street
Lynchburg, Virginia 24504

and

KIMBALL PAYNE, III, CITY MANAGER
CITY OF LYNCHBURG

SERVE: c/o Walter C. Erwin, III, Esquire
Office of the City Attorney
900 Church Street
Lynchburg, Virginia 24504

and

COL. PARKS H. SNEAD, III, POLICE CHIEF
CITY OF LYNCHBURG POLICE DEPT.

SERVE: c/o Walter C. Erwin, III, Esquire
Office of the City Attorney
900 Church Street
Lynchburg, Virginia 24504

Defendants

Civil Action No.: 6:09cv00040

COMPLAINT

COMES NOW the plaintiff, John C. Romano, by counsel, and respectfully files this Complaint against the above-named defendants, City of Lynchburg, Virginia; Kimball Payne, III; and Col. Parks H. Snead, III, jointly and severally, on the grounds

and in the amount as hereinafter set forth.

I. NATURE OF ACTION

1. The plaintiff is and was at all times material hereto employed by Defendant City of Lynchburg, Virginia in its police department as a police officer. The plaintiff, John C. Romano, complains that he was retaliated against for speech and association protected by the First and Fourteenth Amendments to the United States Constitution, and his rights under the Constitution of the Commonwealth of Virginia. The plaintiff seeks declaratory, injunctive, equitable and legal relief due him under 42 U.S.C. §1983 and under the applicable statutes under the laws of the Commonwealth of Virginia. In addition, the plaintiff seeks an assessment of attorneys' fees and costs under 42 U.S.C. §1988 as well as under the applicable statutes in the Commonwealth of Virginia.

II. JURISDICTION

2. Jurisdiction of this action is conferred upon the United States District Court for the Western District of Virginia by 28 U.S.C. §§1331 and 1343. The United States District Court for the Western District of Virginia has supplemental jurisdiction over the state law claims of the plaintiff under 28 U.S.C. §1367(c). Venue lies within this district pursuant to 28 U.S.C. §1391.

3. Jurisdiction over the state law claims of the plaintiff are conferred by Article 1, Sections 1, 11 and 12, of the Constitution of the Commonwealth of Virginia (1971). The governmental immunity implicated by the state law claims against these defendants is not implicated in this action. Alternatively, the governmental immunity as to the state law claims of the plaintiff against these defendants is waived as to

declaratory and injunctive relief contemplated by Federal and State law as well as the provisions of §15.2-209, Code of Virginia (1950), as amended.

III. PARTIES

4. Plaintiff John C. Romano is a resident of the Commonwealth of Virginia who was at all times relevant to this complaint employed as a police officer by the defendant, City of Lynchburg, Virginia in their police department.

5. Defendant City of Lynchburg, Virginia (hereinafter Defendant "City of Lynchburg") is a municipal corporation acting under the laws of the Commonwealth of Virginia within its geographical boundaries.

6. Defendant Kimball Payne, III (hereinafter defendant "Payne") is an individual who at all times material hereto served as the City Manager for the City of Lynchburg, Virginia. Defendant Payne is sued in both his official and individual capacities. Defendant Payne may be served with process through the Office of the City Attorney located at 900 Church Street, Lynchburg, Virginia 24504.

7. Defendant Col. Parks H. Snead, III (hereinafter defendant "Snead") is an individual who at all times material hereto served as Police Chief for the City of Lynchburg Police Department. Defendant Snead is sued in both his official and individual capacities. Defendant Payne may be served with process through the Office of the City Attorney located at 900 Church Street, Lynchburg, Virginia 24504.

IV. FACTUAL ALLEGATIONS

8. At all times material hereto, defendant City of Lynchburg has been a municipal corporation organized under the laws and statutes of the Commonwealth of Virginia and has employed a City Manager as well as a Police Chief for the purposes

of providing a Chief Executive Officer to govern the day-to-day operations of the City of Lynchburg, as well as a Police Chief who is employed as the chief law enforcement officer within the jurisdiction of the City of Lynchburg.

9. At all times material hereto, the plaintiff was an employee of the City of Lynchburg and was a police detective with the City of Lynchburg Police Department. The plaintiff, John C. Romano, was also a City of Lynchburg resident and in his capacity as a citizen of the City of Lynchburg was also the President of the New Towne Homeowners Association, Inc. which was the association which governs the area where he maintains a personal residence within confines of the City of Lynchburg. As part of his duties as the President of the Association, John C. Romano was authorized to conduct the business of the New Towne Homeowners Association, Inc. in all matters regarding taxation issues as well as city services provided to the residents who comprised the New Towne Homeowners Association, Inc.

10. On information and belief, as part of his duties as the President of the Association, John C. Romano contacted Patricia Kost, Clerk of the Council, City of Lynchburg, to be placed on the schedule to address the City Council on Tuesday, March 10, 2009, regarding the FY 2009 Operating Budget; its implementation; and, management issues which the plaintiff felt needed to be addressed as they pertained to the current City Manager, Kimball Payne, III. See Exhibit A.

11. As requested, John C. Romano was scheduled to address the City Council and did so from prepared remarks which are attached hereto as Exhibit B. As scheduled, John C. Romano appeared before the City Council and read from the prepared remarks without identifying himself as a city employee or police officer and

at no time did he ever comment on any matter which was not part of the public discussion then occurring regarding the budget and financial issues being addressed by the City Manager and City Council at that time.

12. On information and belief, some time after the City Council meeting of March 10, 2009, Payne and Snead conspired to isolate, confront and intimidate John C. Romano in response to this remarks which were publicly reported following his prepared remarks to the City Council during the evening of March 10, 2009.

13. On information and belief, during the period of March 11, 2009 and April 2, 2009, Payne and Snead conspired to confront John C. Romano in an effort to harass, intimidate and otherwise threaten him in the exercise of his Federal and State Constitutional rights by isolating him during normal employment hours and at a location utilizing City of Lynchburg public property to create an atmosphere of maximum intimidation and emotional distress which could be inflicted upon the plaintiff, John C. Romano.

14. The violation of Federal and State Constitutional law and statutes took place on Friday, April 3, 2009 at approximately 1:00 p.m. at the City of Lynchburg Police Department. Romano had been ordered to report to the Office of the Chief for a meeting and was informed that the meeting would take place between Romano, Payne and Snead. Romano, fearing that he was being misled regarding the purpose of the meeting with Payne and Snead, and, more importantly, fearing that in the event there were some legal repercussions regarding this meeting and that it would be likely that the City Manager and Police Chief would deny that certain anticipated threatening statements were ever made, brought with him a recording device which

he utilized to make a verbatim audio recording of the meeting. See Exhibit C.

15. As directed, Romano reported to the Office of the Police Chief of the City of Lynchburg and had a short meeting with Snead before they responded to the Chief's conference room where Romano, Payne and Snead met. During the course of the meeting with the City Manager, the City Manager made several and repeated illegal and unconstitutional threats to Romano which were an attempt to threaten him; harass him; and, restrain his constitutional rights to free speech and freedom of association. Several of the statements and threats which were made by Payne in the presence of Snead are set forth as follows:

- a) "Impossible to draw the line as a citizen and employee."
- b) "If I was a vindictive son of a bitch, you would have a lot of problems on your hands you're lucky I am not."
- c) "You can't just draw a line we're not gonna start letting any employee ... cause I'm gonna start takin' it personally ... to stand up in front of city council as a citizen when that son of a bitch doesn't know what he's doing and expect there not to be any repercussions."
- d) "You can't hide behind the law here you have to understand with another person in another setting there would be repercussions."
- e) "I'm just telling you for the rest of your career, don't pretend you can do this because you can't. You're gonna get away with it this time because I'm not a vindictive person, but don't pretend you can do that because it's gonna make a difference in your career and you'll never be able to prove it didn't. I'm telling you the truth as I see it."

f) "But if I start to see a line of employees coming to city council meetings hiding behind their constitutional rights to insult me, it's not gonna work there's gonna be repercussions."

16. Following this meeting, there continued to be a pattern of restraint and repercussions inflicted upon Romano as a result of the exercise of his constitutional rights as a private citizen. Following this meeting, Romano, based on this conversation as well as the tone of the berating which he received from Payne, in the presence and with the approval of Snead, was not able to participate in protected activities and the continued exercise of his constitutional rights which further constituted a subsequent restraint on his constitutional rights as a private citizen in the City of Lynchburg.

V. FEDERAL CAUSE OF ACTION

The plaintiff incorporates by reference each and every allegation set forth in Paragraphs 1 through 16, inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

17. This cause of action is brought against defendants City of Lynchburg, through its Mayor, Joan F. Foster, as well as Payne and Snead. Payne and Snead are being sued in both their official and individual capacities as representatives of the City of Lynchburg and, on information and belief, are representatives and executive officers of the City of Lynchburg who acted in their capacity and with the acquiescence of the City Council of the City of Lynchburg to retaliate and/or otherwise to intimidate Romano in the exercise of his right of association and freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. The defendants actions complained of herein in fact violated the plaintiff's right of

association and freedom of speech as aforesaid set forth and the actions of defendants Payne and Snead did in fact deprive the plaintiff of his First Amendment rights as those rights are secured to him under the provisions of the due process clause of the Fourteenth Amendment to the United States Constitution, made actionable by 42 U.S.C. §1983.

18. Defendant City of Lynchburg is liable for the actions of defendants Payne and Snead. The actions of defendants Payne and Snead alleged herein represent the official policy of the City of Lynchburg and defendant Payne alone establishes the official policy of the City of Lynchburg concerning matters involving employee relations in the police department with the acquiescence of the Mayor of the City of Lynchburg as well as the City Council of the City of Lynchburg.

VI. STATE CAUSE OF ACTION

The plaintiff incorporates by reference each and every allegation set forth in Paragraphs 1 through 18, inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

19. This cause of action is brought against defendant City of Lynchburg and defendants Payne and Snead in their official and individual capacities. It is a cause of action based on deprivation of civil rights under the Constitution of the Commonwealth of Virginia and the plaintiff has, as a statutory condition precedent, given the required notice under §15.2-209, Code of Virginia (1950), as amended.

VII. INJURIES

The plaintiff incorporates by reference each and every allegation set forth in Paragraphs 1 through 19, inclusive, in the same force and effect as though they were

fully and specifically set forth in detail, and further alleges as follows:

20. As a result of the foregoing acts committed against the plaintiff by the defendants, the plaintiff has suffered the following injuries:

a) The plaintiff has suffered and continues to suffer the loss of the enjoyment of his profession and will, as a result of the threats of sanctions imposed upon him by defendants Payne and Snead, suffer the loss of earning capacity, which loss will continue indefinitely into the future.

b) The plaintiff has suffered, and continues to suffer, mental pain and anguish because of the wrongful acts of the defendants; injury to his good name; injury to his character; and, to his general and professional reputation as a police officer and detective within the City of Lynchburg Police Department and has suffered embarrassment; humiliation; and, loss of enjoyment of his life as a citizen exercising his constitutional rights in the City of Lynchburg.

c) The plaintiff has been deprived of having and exercising the rights and privileges guaranteed to citizens of the United States and the Commonwealth of Virginia by the First and Fourteenth Amendments to the Constitution of the United States.

d) In affecting the above mentioned actions and threats directed to the plaintiff, defendants Payne and Snead acted without authorization of law, willfully and knowingly and purposefully with the specific intent of depriving the plaintiff of his First and Fourteenth Amendment rights of free speech and association. Therefore, defendants Payne and Snead in both their professional and individual capacities are liable to the plaintiff for exemplary damages.

VIII. PRAYER

WHEREFORE, the plaintiff, John C. Romano, respectfully requests and demands that the United States District Court find and so conclude that the defendants have violated his federal and state constitutional rights and upon such evidence, award the plaintiff the following relief:

a) Declare that the actions of the defendants complained of herein violated the plaintiff's rights to freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution.

b) Permanently enjoin the defendants from violating the plaintiff's rights to freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution.

c) Permanently enjoin the defendants from promulgating and adopting any City policy which violates the rights of any City of Lynchburg employee in the exercise of his or her freedom of speech and his or her freedom of association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

d) Award the plaintiff compensatory damages in the amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)** for the plaintiff's past and future mental anguish, loss of earning capacity, and other losses specified here and above.


e) Award the plaintiff exemplary and punitive damages against defendants Payne and Snead in their official and individual capacities for their willful and wanton acts in violation of the plaintiff's constitutionally protected rights in the amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**.

f) Order the defendants to pay the plaintiff's reasonable attorney's fees and costs pursuant to 42. U.S.C. §1988.

g) And order such further relief, whether legal, equitable or injunctive, as the court deems necessary and just.

Respectfully submitted,

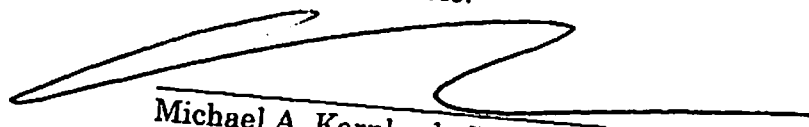
JOHN C. ROMANO
By Counsel



Michael A. Kernbach, Esquire
BURGESS, KERNBACH & PERIGARD, PLLC
10680 Main Street, Suite 140
Fairfax, Virginia 22030-3811
Telephone: (703) 273-0888
Facsimile: (703) 273-3907
VSB No.: 025722

JURY DEMAND

Plaintiff hereby requests a trial by non-jury on all issues so triable.



Michael A. Kernbach, Esquire

New Towne Home Owners Association Inc.
C/O Brown Stone Properties Inc. 3720 Old Forest Road Lynchburg, VA 24502
www.newtownehoa@gmail.com

Board Members:

John Romano President
Ryan Ayres Vice President
Chuck Andrews Treasurer
Captain McCurry Secretary
Brandon Aronson Director
Tracy Wimberly Director

Patricia Kost
Clerk of Council
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear Mrs. Kost,

The purpose of my writing is to respectfully request that I be afforded the opportunity to address the City Council of Lynchburg on Tuesday the 10th of March 2009 during the scheduled session. I will be representing the New Towne Home Owners Association Inc. and speaking on a matter regarding the FY 2009 Operating Budget and its implementation and management by the City Manager Kimball Payne III. Should you have any questions or need to contact me please feel free to do so on my cell phone at 4 _____m.

Sincerely,


John Romano
President Board of Directors
New Towne Home Owners Association

EXHIBIT

A

Good Evening:

Madam Mayor, distinguished members of the City Council, and to the citizens of Lynchburg, it is with great concern that I come before you tonight to address a matter of utmost importance. I speak before you tonight as President of the New Towne Home Owners Association Inc. which is comprised of approximately 129 single family homes and 25 town homes in the City of Lynchburg. New Towne is a quite family oriented community where our residents enjoy the daily benefits of city life including the excellent services provided and afforded to us by the City of Lynchburg. I feel it is my duty to address our concerns with the implementation and management of the FY 09 Adopted Budget by the City Manager Kimball Payne III.

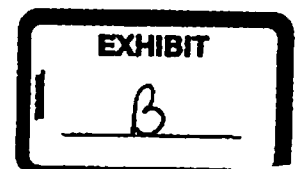
As Thomas Jefferson once said "Follow truth as the only safe guide, and... eschew error, which bewilders us in one false consequence after another" (1). Manager Payne has reported that the FY 09 Budget will have a shortfall at the end of the City's fiscal year. My duty is not to point or place blame, but rather to state the facts as they have been presented to me either by facts contained in the current year FY 09 Adopted Budget or from statements or remarks made by Manager Payne himself. In his budget message for FY 09 Manager Payne asked City Council for approximately 4.5 million dollars in additional spending for anticipated revenue shortfalls and contingencies and was granted by council approximately 1.8 million in the FY 09 Adopted Budget. In his FY 09 Budget Message Manager Payne stated in his introduction,

"The proposed budget responds to the precarious nature of the national economy and its impact on state and local revenues. Revenue streams, such as sales and meals tax, that have been relied on to provide modest increases from year to year are flat at best."(2)

He later states:

"During the preliminary preparations, a number of issues that would affect the FY 09 Budget were identified. They included: The national economic picture with the bursting of the housing bubble, increasing federal deficits, challenges to federal programs that provide state and local funding, and an actual perceived or imminent recession" (3)

It is clear from his message that Manage Payne was in fact aware of the imminent global recession and short falls of Federal and State funding, not to mention reductions in the City's local revenue sources. His implementation of the current years budget and management has been dubious.



To illustrate the point as detailed in the FY 09 Adopted Budget Council Manger Offices budget has by increased 16%, well ahead of the majority of other departments listed under the General Government Services. This may well be the result of the addition of an assistants position to the Manger which pays approximately 52,000 dollars a year and a Parking Manager position which pays approximately 70,000 dollars a year while the FY 09 Adopted Budget shows parking fines revenues of only \$100,000. In a time when revenues for government are decreasing exponentially, I have to question this decision by this council and support by the Manager to approve these additional positions, which in my opinion only serve to further strain the City's ability to deliver and maintain critical service areas.

On the 10th of February 2009 Manager Payne addressed City Council in response to the FY 09 City Schools Budget. Manger Payne reported that he had assumed that, as in years past, the City Schools Budget would have a surplus in their general fund expenditures approved by the City, and in his words, "he error" and did not wait till the audit was complete and transferred approximately 1.5 million dollars to their Capital Improvements Fund. I might point out to this Council that the Manager has projected revenues shortfall for FY 09 of approximately 4.0 million dollars. Although he has taken actions to trim approximately 2.0 million in savings from departmental reductions in spending, I can only speculate how avoiding this costly mistake may have better positioned the City to end the FY 09 fiscal year with a balanced budget and enter into the FY 2010 process with a better financial foundation.

In the January 09 copy of *The City Source*, a Newsletter Publication for the Citizens of Lynchburg, the Manager announced, with little warning to citizens or affected business alike, that he would be moving forward with an ambitious capital improvement project with the construction of the roundabout at 5th Street and Federal Street. This is of note because the Manger clearly knew or, choose to ignore the concerns he outlined in his FY 09 Budget Message about declining revenues, the national and global financial data available to him showing a national recession, and evidence of declining City revenues as he has stated the revenue reports have shown. In a time when we are in the mist of a financial crisis and will no doubt be forced to make tough choices for the coming fiscal year, I have to question his decision to go forward with this project when it is in my opinion not necessary to maintain the City's critical infrastructure.

In closing, it is apparent to me that the Manager has made several decisions in the implementation and management of FY 09 Budget that make me uncertain of his logic and reasoning. While I do not believe that Manager Payne has intentionally taken these steps without the best interest of the citizens and those who provide the services to them, I believe that it is our duty as citizens to see to it that these misfortunes are not repeated in FY 2010. I respectfully ask this Council to review, discuss, and implement improvements to the Budget process so that we can restore transparency, honesty, and accountability this process. As Abraham Lincoln stated in the Lincoln Douglas debate of August 1858 "Public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed." I urge this council to make future processes open, honest, and available to public, as well as, provide a mechanism for citizens to be able to access updated information related to the budget throughout the budget year so that we may all participate in this great experiment called Democracy. I look forward to working with this council and Manager Payne to present ideas and solutions that will assist you in the hard work that each and every one of you do. Thank you for your service and commitment towards continuing to make Lynchburg one of the top places to live and raise a family in the United States.

Good night.

John C. Romano
v.
City of Lynchburg, Virginia, et al.

Audio Recording - 4/3/2009

EXHIBIT

C

CIVIL COVER SHEET

6:09CV00040

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS: John C. Romano; (b) County of Residence of First Listed Plaintiff: City of Lynchburg; (c) Attorney's (Firm Name, Address, and Telephone Number): Michael A. Kernbach, Esquire, Burgess, Kernbach & Perigard, PLLC, 10680 Main St., Ste 140, Fairfax, VA 22030, 703-273-0888; DEFENDANTS: City of Lynchburg, et al.; County of Residence of First Listed Defendant: City of Lynchburg; NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED; Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only); III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant); PTF DEF Citizen of This State [] 1 [] 1 Incorporated or Principal Place of Business In This State [] 4 [] 4 Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business In Another State [] 5 [] 5 Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only); CONTRACT: [] 110 Insurance, [] 120 Marine, [] 130 Miller Act, [] 140 Negotiable Instrument, [] 150 Recovery of Overpayment & Enforcement of Judgment, [] 151 Medicare Act, [] 152 Recovery of Defaulted Student Loans (Excl. Veterans), [] 153 Recovery of Overpayment of Veteran's Benefits, [] 160 Stockholders' Suits, [] 190 Other Contract, [] 193 Contract Product Liability, [] 196 Franchise; PERSONAL INJURY: [] 310 Airplane, [] 315 Airplane Product Liability, [] 320 Assault, Libel & Slander, [] 330 Federal Employers' Liability, [] 340 Marine, [] 345 Marine Product Liability, [] 350 Motor Vehicle, [] 355 Motor Vehicle Product Liability, [] 360 Other Personal Injury; PERSONAL INJURY: [] 362 Personal Injury - Med. Malpractice, [] 365 Personal Injury - Product Liability, [] 368 Asbestos Personal Injury Product Liability, PERSONAL PROPERTY: [] 370 Other Fraud, [] 371 Truth in Lending, [] 380 Other Personal Property Damage, [] 385 Property Damage Product Liability; FORFEITURE/PENALTY: [] 610 Agriculture, [] 620 Other Food & Drug, [] 625 Drug Related Seizure of Property 21 USC 881, [] 630 Liquor Laws, [] 640 R.R. & Truck, [] 650 Airline Regs., [] 660 Occupational Safety/Health, [] 690 Other; LABOR: [] 710 Fair Labor Standards Act, [] 720 Labor/Mgmt. Relations, [] 730 Labor/Mgmt. Reporting & Disclosure Act, [] 740 Railway Labor Act, [] 790 Other Labor Litigation, [] 791 Empl. Ret. Inc. Security Act; IMMIGRATION: [] 462 Naturalization Application, [] 463 Habeas Corpus - Alien Detainee, [] 465 Other Immigration Actions; BANKRUPTCY: [] 422 Appeal 28 USC 158, [] 423 Withdrawal 28 USC 157; SOCIAL SECURITY: [] 861 HIA (1395f), [] 862 Black Lung (923), [] 863 DIWC/DIWW (405(g)), [] 864 SSID Title XVI, [] 865 RSI (405(g)); FEDERAL TAX SUITS: [] 870 Taxes (U.S. Plaintiff or Defendant), [] 871 IRS-Third Party 26 USC 7609; OTHER STATUTES: [] 400 State Reapportionment, [] 410 Antitrust, [] 430 Banks and Banking, [] 450 Commerce, [] 460 Deportation, [] 470 Racketeer Influenced and Corrupt Organizations, [] 480 Consumer Credit, [] 490 Cable/Sat TV, [] 810 Selective Service, [] 850 Securities/Commodities/Exchange, [] 875 Customer Challenge 12 USC 3410, [] 890 Other Statutory Actions, [] 891 Agricultural Acts, [] 892 Economic Stabilization Act, [] 893 Environmental Matters, [] 894 Energy Allocation Act, [] 895 Freedom of Information Act, [] 900 Appeal of Fee Determination Under Equal Access to Justice, [] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only); [X] 1 Original Proceeding, [] 2 Removed from State Court, [] 3 Remanded from Appellate Court, [] 4 Reinstated or Reopened, [] 5 Transferred from another district (specify), [] 6 Multidistrict Litigation, [] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION; Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):; Brief description of cause: Constitutional Deprivation

VII. REQUESTED IN COMPLAINT: [] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23; DEMAND \$ 500,000.00; CHECK YES only if demanded in complaint; JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions):; JUDGE; DOCKET NUMBER

DATE: August 4, 2009; SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY; RECEIPT #; AMOUNT; APPLYING IFP; JUDGE; MAG. JUDGE