

FILED  
12th JUDICIAL DISTRICT COURT  
Otero County  
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AUDREY HUKARI  
CLERK OF THE COURT  
Albert Ochoa

**STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT**

**FLICKINGER CENTER FOR THE  
PERFORMING ARTS, and  
LORRIE BLACK,**

**Plaintiffs,**

v.

**Civil No. ~~D-1215-CV-2023-00054~~  
Bryant, Daniel A.**

**BOARD OF EDUCATION OF  
ALAMOGORDO PUBLIC SCHOOL  
DISTRICT # 1, ALAMOGORDO  
PUBLIC SCHOOLS, DR. KENNETH  
MOORE, as Superintendent of the  
Alamogordo Public Schools and Individually  
and RACHEL BURKS, as Records Custodian  
for the Alamogordo Public Schools,**

**Defendants.**

**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF OR  
EQUITABLE RELIEF, DAMAGES FOR VIOLATION OF THE NEW MEXICO CIVIL  
RIGHTS ACT, MANDAMUS PURSUANT TO THE NEW MEXICO INSPECTION OF  
PUBLIC RECORDS ACT AND DEFAMATION**

Comes now FLICKINGER CENTER FOR THE PERFORMING ARTS, and LORRIE BLACK, by and through their attorney, Steven K. Sanders (Steven K. Sanders & Associates, LLC) and assert the following claims for Declaratory Judgment, Injunctive Relief or Equitable Relief and/or damages for violation of the New Mexico Constitution, the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-1 through -13 (2021), the Declaratory Judgment Act, NMSA 1978, § 44-6-1 through -15 (1975), the New Mexico Inspection of Public Records Act and for common-law defamation.

**Parties, Jurisdiction, Venue**

1. Plaintiff Lorrie Black is an individual who resides in Otero County, New Mexico. She is the Executive Director of the Flickinger Center for the Performing Arts.

2. Plaintiff Flickinger Center for the Performing Arts (FC or Flickinger Center) is a non-profit domestic corporation, incorporated in the State of New Mexico on July 20, 1984, with its principal place of business in Otero County, New Mexico. Its purpose is to, “Provide a facility that will stimulate the growth and education of the arts & culture and give access throughout the entire community.”

3. Defendant BOARD OF EDUCATION OF ALAMOGORDO PUBLIC SCHOOL DISTRICT #1, (herein BOE or Board) is the governing authority<sup>1</sup> for Defendant the ALAMOGORDO PUBLIC SCHOOLS, (herein APS or Schools) which is located and doing business in the County of Otero, New Mexico. (See N.M.Stat. 22-1-1 etc.).

4. The BOE has the capacity to sue and be sued.<sup>2</sup> Defendant BOARD OF EDUCATION OF ALAMOGORDO PUBLIC SCHOOL DISTRICT #1, (herein APS) by law<sup>3</sup> employs the School Superintendent, Defendant DR. KENNETH MOORE. It is the governing body of and the entity that is empowered to determine policies of and to employ all personnel as more fully set forth in the Policy Manual and Administrative Regulations adopted by the Board in 2012.

5. The BOE’s own policies require that it, “Ensure the adherence to generally accepted management principles and applicable laws and regulations in implementing the

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<sup>1</sup> See B-0150 BB SCHOOL BOARD LEGAL STATUS Policy Manual and Administrative Regulations, 2012.

<sup>2</sup> Id., B-0150 BB SCHOOL BOARD LEGAL STATUS

<sup>3</sup> See NM Stat. 22-5-4 Local school boards; powers; duties. (New Mexico Statutes (2020 Edition))

22-5-4. Local school boards; powers; duties.

A local school board shall have the following powers or duties:

...

B. employ a local superintendent for the school district and fix the superintendent's salary;

responsibilities delegated to support service functions.”<sup>4</sup> The Board and the Schools are public bodies as defined by N.M.S.A. 41-4A-2. Defendants APS and Board are each a “public body” under the terms of the New Mexico Inspection of Public Records Act. N.M. Stat. 14-2-6 F.

6. Defendant DR. KENNETH MOORE is at all times relevant the Superintendent of Defendant Alamogordo Public Schools. His actions as described herein were under color of law, Defendant BOE and Defendant APS, and by virtue of and under the authority of Defendant's office as Superintendent.

7. Defendant RACHEL BURKS, is the Records Custodian for the Alamogordo Public Schools and responsible for responding to all IPRA requests on behalf of APS. On information and belief, Burks is the designated records custodian and the only official who is assigned IPRA compliance duties.

8. This Court has jurisdiction of the subject matter of this action pursuant to Article VI, Section 13 of the New Mexico Constitution, the New Mexico Civil Rights Act, NMSA 1978, §41-4A-3(B) (2021) and the Declaratory Judgment Act, NMSA 1978, § 44-6-2 (1975). This Court has personal jurisdiction over Plaintiffs and Defendant.

9. All actions relevant to this case took place in the County of Otero, New Mexico. Venue is proper in Otero County, New Mexico, pursuant to NMSA 1978, § 38-3-1

**Factual background.**

10. On or about June 21, 2021, Lorrie Black emailed all APS board members concerning critical race theory and transgender sports. Only Board Member Angela Cadwallader responded.

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<sup>4</sup> See E-0050 © EA SUPPORT SERVICES GOALS / PRIORITY OBJECTIVES Policy Manual and Administrative Regulations, 2012.

11. Thereafter, on August 3, 2021: Lorrie Black emailed all Board members concerning vaccines and masks. Again, Lorrie Black only received a call back from Board Member Angela Cadwallader.

12. On August 8, 2021, a group of concerned citizens rented the Flickinger Center. The group was very concerned about a recent school board meeting where parents were not allowed to speak and were not allowed to ask the APS School Board questions.

13. The group invited citizens to come to the meeting to voice their concerns. There were around 400 people in attendance. Speakers included Robert Aragon (attorney that was helping the Floyd School Board members that PED had just removed from office for not wanting to follow the PED and NM Health orders and close their schools) and Congresswoman Yvette Herrell.

14. On February 6, 2022 Lorrie Black sent APS an IPRA (Inspection of Public Records Act) requesting copies of APS Surety Bonds for Superintendent Ken Moore, and APS Board Members.

15. On February 16, 2022 Lorrie Black sent an email to Dr. Moore stating that she had filed a complaint with the NM Attorney General's office because she had not received a response from APS to her February 6, 2022, IPRA request.

16. On February 16, 2022 Lorrie Black sent APS an IPRA request concerning the board moving their monthly in-person meeting to a virtual meeting. A response was issued seven days later, after the statutory provided three-day deadline.

17. On February 21, 2022 Lorrie Black sent APS an IPRA requesting copies of APS Districts Insurance Policy and APS Districts School Board Insurance Policy.

18. On February 23, 2022 Lorrie Black sent NM Public Education Department an IPRA requesting copies of APS Surety Bonds for Superintendent Ken Moore, and APS Board Members.

19. On February 23, 2022, Lorrie Black sent APS an IPRA requesting information concerning a “credible threat to APS” that made APS Board President Rabon change in-person school board meeting to a Zoom meeting. APS information officer replied that no information was available.

20. On February 27, 2022, Lorrie Black sent an email to APS Board Members, Superintendent Moore, Lisa Patch, APS Director of Health Services concerning APS advocating the Covid 19 vaccine on students. Lorrie Black respectfully requested that APS also distribute the adverse effects the shots have on children. Black included several links to articles that she recommended that they read and pass on to the parents. APS did not forward any adverse information to parents, nor did anyone of those addressed respond.

21. On April 13, 2022 Black sent IPRA requesting email correspondence between Dr. Moore and all APS Board members for the dates of March 29, 2022, through April 12, 2022. On April 29, 2022, a portion of the request was allowed; however, Defendant Burks refused to produce at least five emails claiming that they were exempted from production as “Matters of Opinion in a Personnel file.” On information and belief, the e-mails were not items in a personnel file because they were e-mails. Thus, this portion of the IPRA request was denied and the court is requested to order the e-mails produced pursuant to Claim three (3) below. See NM Stat. 14-2-11 and See NM Stat. 14-2-12.

22. On June 15, 2022 at the Center of Commerce (CofC) Board Meeting, Dr. Moore was invited to speak, CofC Board Members included Lorrie Black, Marianne Schweers, Sue Danekas, Ed McDonald, Nick Paul, Rodney Eaton, Trisha Roberts, City Manager Brian Caesar,

HAFB Public Relations Officer Shelley Bailey and City Commissioner Sharon McDonald all of whom heard Dr. Moore make outrageous remarks about Chuck Andreas.

23. According to the official minutes of the Alamogordo Center of Commerce for June 15, 2022, Dr. Moore stated, “We must stop and keep people from spreading false information, Mr. Chuckles Grandpa Chuckie (Chuck Andres) went before the County Commission and gave incorrect information. Dr. Moore stated Mr. Andres was part of a national group that is causing havoc for school boards, Ken Moore said he thought he must have been watching porno.”

24. Lorrie Black was well acquainted with Mr. Andreas and found it appalling that a man in Dr. Moore’s position would ever say such a slanderous comment. Black confronted Dr. Moore and told him he had no right to talk about one of Otero County’s citizens that way. She has known Chuck Andreas and his family for years. She knows for a fact that he does not belong to a national conspiracy group and the fact that Mr. Andreas was accused of watching porn absolutely upset Black so much that she felt she must defend his honor in a room filled with people she highly respects. Rodney Eaton, Board Chair of CofC at the time, asked Dr. Moore to sit down.

25. After the meeting, Black sent an email to Dr. Moore and the entire APS School Board telling them how appalling and inappropriate Dr. Moore’s remarks were. She also alerted Chuck Andreas to Dr. Moore’s statements.

26. Board Member Angela Cadwallader contacted Black via telephone the next day. She was appalled and mortified that this had occurred. No other board members contacted Black about this incident.

27. On June 16, 2022, Black received an email from Dr. Moore stating, “Would you like to meet and talk sometime. A meeting was scheduled for June 22, 2022, at 10:00 between Dr.

Moore, Rodney Eaton, GB Oliver, and Lorrie Black. The meeting was to be held at the Center of Commerce.

28. Thereafter, Dr. Moore contacted the Center of Commerce to state he could not meet at 10:00 am on June 22, 2022, at the Center of Commerce. He requested the meeting be moved to June 22, 2022, at 10:30 am at his office at the APS Administration Building.

29. On June 20, 2022, Black sent an IPRA requesting any email Dr. Moore sent the school board concerning an attachment titled “Extremists Are Using Lies to Undermine America’s Public Schools: We Need to Take a Stand.” A response was received.

30. On June 21, 2022, Rodney Eaton and GB Oliver received text messages from Dr. Moore requesting to meet only with them at 10:00 am on June 22, 2022, without Lorrie Black. Moore stated Lorrie Black would be allowed to join the meeting at 10:30 am as planned. Rodney texted Moore back and said, “We will all three be there at 10:30 am.”

31. Later on, June 21, 2022, Bob Pattillo contacted Lorrie Black and asked to attend the meeting with Rodney, GB, and Lorrie the next day.

32. On June 22, 2022, at 10:30 am Center Executive Director GB Oliver, Center Board Chair Rodney Eaton, Center Chair Elect Lorrie Black and CoC Treasure Bob Pattillo showed up to meet with Dr. Ken Moore. In the office with Dr. Moore was Associate Superintendent Colleen Tagle and APS Board President Judy Rabon. Discussion topics where ways Center of Commerce and Main Gate could help the schools and Center of Commerce stated concerns for declining ranking of our schools. At the end of the meeting Lorrie left with Rodney Eaton (Bob Pattillo had to leave the meeting early). Rodney and Lorrie waited outside for GB Oliver. When he came out, he said that comments made by the APS representatives were about Lorrie Black. They stated

something to the effects of “needed Lorrie Black on their side,” “Lorrie Black needed to change her mind” and that she was a concern to them.

33. At that moment Lorrie told GB Oliver and Rodney Eaton that if they didn’t want her as Chair of the Center of Commerce, she would decline the position. Both Rodney and GB stated, “You are exactly who we need in the office of Chair at this time”.

34. On July 8, 2022 at the Center of Commerce Change of Command Banquet Lorrie Black took over as Chair of the Board.

35. On August 31, 2022 at the Main Gate Education Committee Meeting of the CofC Bob Pattillo stated he received a message from Associate Superintendent Colleen Tagle requesting Main Gate host an event to welcome new teachers to APS. The Education Committee agreed. The group discussed hosting a meal in a local park and hiring a food truck to feed the new teachers.

36. As Executive Director of Flickinger Center for Performing Arts and Patron’s Hall, Lorrie Black had an idea to make the event much more special for the teachers.

37. With approval from the Flickinger Center Board President, Cynthia Stong, Black offered the Flickinger Center facility for the event. Black said that Main Gate could cater the event to be held in Patron’s Hall, then Main Gate could purchase tickets to the Flickinger Center’s Premier Season event, the California and Montreal Guitar Trios. The idea was that the teachers could come in to have a wonderful meal then walk into the theater to enjoy a world class live performance. The Main Gate Education Committee was extremely pleased with this idea. Bob Pattillo offered to put up a tent from his daughter's rental business if more space was needed. The idea took off and Plaintiff Black and others began to plan the event.

38. On September 7, 2022 Plaintiff Black put in notice to resign from Flickinger Center for Performing Arts to have more time available for other matters, including the care of her elderly



mother. Plaintiff's last day was not stated to give the Flickinger ample time to find a replacement. Her resignation has been withdrawn due to the personal attacks against her by Dr. Moore.

39. On September 8, 2022, a certified letter was sent from Main Gate to Superintendent Moore with certified copies also going to all APS Board Members. The purpose of the letter was for Main Gate to establish an open communication between the Business Community and APS. Main Gate requested Dr. Moore to provide written answers to twenty (20) questions on or before October 8, 2022.

40. During September and early October 2022 Dr. Christina Calentine, APS Director of Curriculum and Instruction, was working with Main Gate to prepare for Teacher Appreciation Night. On September 20, 2022, she acknowledged that the event was planned at the Flickinger and that there would be food for the teachers and additionally 109 tickets to the event had been set aside by Flickinger for the teachers. Dr. Calentine wanted to create a flyer for the event to be held on October 12, 2022 for the teachers with a link for sign up.

41. On September 27, 2022 Nancy Hudson (who was the lead on the APS Teacher Appreciation event sent an e-mail to Dr. Calentine (AHS Principal) sending the flyer to invite teachers to the October 12 event.

42. On October 4, 2022 at a Main Gate United meeting discussion ensued concerning the APS teacher's appreciation event at the Flickinger Center.

43. On October 7, 2022 was the final meeting of the Main Gate Education Committee to finalize the APS Teacher Appreciation Event. Attending was Jim Klump, Danielle Rondelez, Nancy Hudson and Lorrie Black. Dr. Calentine was invited but she had another meeting and could not attend. Jim Klump stated that Dr. Moore requested to meet with him at 2:00 pm and he would try to nail down how many teachers would be attending.

44. On October 7, 2022, 2:00 pm in the meeting between Jim Klump and Dr. Moore. Dr. Moore stated that he could not support the APS Teacher Appreciation event because the Flickinger Center had become an “Ultra MAGA Headquarters” and he could not allow his teachers to attend the event. Dr. Moore also stated, “Lorrie Black is being let go because of misappropriation of funds from the Flickinger Center.”

45. Dr. Moore also stated that he had most of the questions answered but would not put them in writing, he wanted to have a face-to-face meeting with the Education Committee to avoid misunderstandings.

46. On October 7, 2022 at 7:34 pm, Dr. Moore sent Jim Klump an email with his recap of their meeting. In that email, Dr. Moore stated, inter alia, “...While I am grateful for Main Gate’s willingness and generous offer to welcome our new teachers, I hope you will understand why I cannot officially endorse this event by using district resources to promote it, as the Flickinger has become closely aligned with a particular political party. My decision would be the same if the event had been sponsored by or held at a venue associated with any political party. The APS school board and I are an apolitical entity, and as Superintendent, I cannot endorse or give the appearance of endorsing any political party...”

47. On Friday, October 7, Dr. Calentine abruptly stopped all correspondence.

48. On October 9, 2022, 2:04 pm: Jim Klump responded to Dr. Moore's recap email.

49. October 10, 2022 was Columbus Day and Plaintiff s were unable to get ahold of anyone at APS to find out if any teachers were coming.

50. On October 11, 2022, Lorrie Black met with staff of Flickinger Center. They decided to go ahead and hold the event, as Flickinger Center had posted the event on its social

media, and had promoted it on various radio shows. Main Gate agreed that it would not want teachers to show up and not be recognized.

51. Lorrie Black had invited Kim Perry Field Representative for Congresswoman Yvette Herrell to read a letter to the teachers from US Congresswoman Herrell, the food had been ordered, the blocked off seats were unsaleable, so it was decided it was best to stay the course and hope that teachers would come.

52. On October 11, 2022, Bob Pattillo called and spoke with Dr. Moore about the APS Teachers Appreciation event. Dr. Moore first stated that he did not know anything about the event. Bob responded by saying “Is Colleen Tagle listening to this conversation?” Dr. Moore stated yes. Bob then asked Colleen “Did you ask me to set up an event sponsored by Main Gate for teachers?” Ms. Tagle answered “Yes.” Dr. Moore then repeated his October 7 statements that he could not let the schools support the event because the Flickinger Center was an Ultra MAGA headquarters, and that Lorrie Black was being fired for misappropriation of funds.

53. Bob told Lorrie Black that he is never speechless, but he could not believe what he was hearing from a man that was the Superintendent of our schools. Bob said there are five (5) high positions of power in our county, the Executive Director of the Center of Commerce, the Chair of the County Commission, the Mayor, the CEO of the hospital and the Superintendent of Schools.

54. Bob was shocked that a person holding that prestigious position would ever say such a thing about Lorrie Black or anyone else for that matter. Bob was extremely mad after the conversation, especially since Bob was the Main Gate representative, they had asked to put on the event.

55. Bob felt as though they said, “Thanks for trying, but we don’t like your location, so move it.” In an email from Dr. Moore to Bob, Dr. Moore states: “I hope you will understand why I cannot officially endorse this event by using district resources to promote it, as the Flickinger has become closely aligned with a particular political party.”

56. Dr. Moore also doubled down with Bob that he would not be answering the 20 questions requested from Main Gate in writing.

57. On October 11, 2022: Bob Pattillo called APS Board President Judy Rabon. She also stated that the Flickinger Center was Ultra MAGA headquarters, and that APS would not support the event. They would be happy to support such an event if Main Gate chose another venue.

58. October 12, 2022, was the scheduled date for the APS Teacher Appreciation Night at the Flickinger. Working the event for Main Gate was Lorrie Black, Jim Klump, Danielle Rondelez, Nancy Hudson and Linda Burghardt (representing Bob Pattillo). No teachers showed up from Alamogordo Public Schools. The only representative from Alamogordo Public Schools was Board Member Angela Cadwallader.

59. The event was catered by Fatwood BBQ.

60. Premier Series California/Montreal Guitar Trio was also provided by Flickinger Center, 126 seats had been blocked off for APS Teachers and family/guests.

61. Kim Perry, Field Representative for Congresswoman Herrell read a letter from the Congresswoman.

62. On October 13, 2022 at the Main Gate Education Committee Meeting, the discussion was how to move forward with the way APS treated Main Gate, Flickinger Center and the personal attack on Lorrie Black.

63. On October 14, 2022 the Center of Commerce Coffee and Connections was attended by Lorrie Black and hosted at Patron's Hall, part of the Flickinger Center. After the event, Nolan Ojeda, Executive Director of Mainstreet and Claudia Loya President of the Board of Mainstreet, both stayed behind to visit with Lorrie Black. They were at a meeting the prior day and heard from Jim Klump about the accusations Dr. Moore was making about the Flickinger being an ULTRA MAGA event space and that Lorrie Black was being let go for misappropriation of funds.

64. On October 31, 2022: GB Oliver, Executive Director of Center of Commerce shared a text message he received from Ken Moore. The message states: "Don't know why I didn't realize this until now, but you and I have very similar jobs. We're the hired hitmen that execute the wishes of board members who may or may not know what they're doing. God be with us!"

65. On November 1, 2022, 12:00 pm at the Main Gate General Meeting, Lorrie Black invited Flickinger Board President Cynthia Stong to attend as her guest. Lorrie knew the MG Education Committee was going to give an update to the general body of Main Gate and in that report an update on the 20 questions that Main Gate had requested of the Superintendent to answer as well as what transpired on the evening of the APS Teacher Event.

66. Lorrie Black was surprised when she arrived at the meeting. Dr. Moore and newly appointed APS Board Member Amanda Jewell were both present. Dr. Moore is a member of Main Gate but rarely attends meetings. Vince Miller, Chair of the Main Gate Education Committee gave his update on the 20 questions that Main Gate has requested Dr. Moore to answer and an update on the APS Teacher event at the Flickinger. Mayor Susan Payne was running the meeting, as Dr.

Jim Klump was out of town. After Vince's update, Mayor Payne asked Dr. Moore if he would like to respond.

67. Dr. Moore was adamant that he does not want to respond to Main Gate's 20 questions in writing and he wants to sit down with the Education Committee. Dr. Moore also stated that he did not know about the teacher appreciation event until October 7, 2022, and that while he appreciates the effort, the Flickinger had become aligned with a political party, and he could not allow his teachers to attend such an event.

68. Mayor Payne then stated that she and Dr. Moore hold similar positions within the community and that if Main Gate had asked her as Mayor to answer questions concerning the city, she would answer them and want to work with Main Gate to fix any concerns they might have. Mayor Payne stated that Main Gate is filled with business owners that have resources to help fix problems and also a fervent desire to maintain a good relationship with HAFB.

69. Next, Mayor Payne stated that she was taking her "Mayor hats off" and talking as a citizen of Alamogordo. She stated that she attended the Flickinger Center's Children Music Theater performance the past weekend. She stated that she saw several teachers from Alamogordo Public Schools enjoying the theater. She stated that it was wrong of Dr. Moore to deny the teachers ability to attend the Flickinger Teacher Appreciation night. She also stated that it was not appropriate for Dr. Moore to state such accusations about Lorrie Black.

70. Dr. Moore was extremely mad at this point and kept stating "We're gonna play this way, huh?" Dr. Moore then stated that he had an open-door policy and if anyone had issues with him or APS to talk to him. At that point, Lorrie Black stood up and said that she did not appreciate that Dr. Moore had made the statement of her being fired for misappropriation of funds. Lorrie Black introduced Cindy Stong as Flickinger Center Board President and ask Cindy, "Am I (LB)

getting fired and have I misappropriated any Flickinger Center funds?” Cindy stated “No, we are happy and pleased to have you working for us and at no point have we ever thought you were misappropriating funds”.

71. Lorrie Black turned back to Dr. Moore and asked, “I would appreciate if you would stop the slanderous comments immediately”. Dr. Moore was extremely flustered, mad, shocked, and could barely speak, but did mutter “understood” under his breath. Then, Lorrie Black stated to Dr. Moore that she did not appreciate his comments that Main Gate had no right to help the relations with HAFB and APS. Dr. Moore looked at the APS Board Member Amanda Jewell sitting next to him and said “that’s not true, I never said that!” Lorrie Black looked at Ms. Jewell and stated we had it in writing and would forward the email from Dr. Moore stating “Main Gate does not need to be the intermediary between APS and HAFB leadership”.

72. Next, Cindy Stong stood up, introduced herself as Flickinger Center Board President and directed her question to Dr. Moore. She asked, “Dr. Moore what political party are you accusing the Flickinger Center to be aligned with?” Dr. Moore, stuttered. “What?” Ms. Stong asked the question again. And, again Dr. Moore double talked and stuttered. Ms. Stong asked a third time, “The Board members of the Flickinger Center would like to know what political party you are accusing the Flickinger Center to be aligned with?” Dr. Moore stated, “My teachers are concerned it is the Republican Party”. Then he stated loudly, “And I’m a Republican”. Dr. Moore was extremely agitated and left the meeting immediately once it was over.

73. Cindy Stong and Lorrie Black both spoke with APS Board Member Jewell before she left. Ms. Jewell’s mother is on the Board of Directors at the Flickinger, and both Cindy and Lorrie stated that we did not want this situation to affect our relationship moving forward.

74. After the meeting, Lorrie received calls or comments from the following Main Gate members supporting her taking a stand against Dr. Moore: Randy Hutchison, First National Bank, Bob Flotte, KHII Radio, Kent House, Alamogordo Funeral Home, Bob Pattillo, Alamogordo Physical Therapy, Brandon Burling, CASA Auto Group, Ed Brabson, Print Plus, Linda Gully, State Farm Insurance.

75. On November 1, 2022: Yvette Herrell campaign rented Patron's Hall for a Meet and Greet. Congresswoman Herrell was running for reelection. At event, a woman named Joni (LNU) handed out flyers she had brought to the event. Someone sent a picture of the flyer to Dr. Moore. Moore sent the picture to GB Oliver and claimed the Flickinger Center and Lorrie Black were passing out these flyers.

76. On November 4, 2022: Lorrie Black felt it best to remove herself from the Main Gate Education Committee because of the actions and statements of Dr. Moore against her and the Flickinger Center.

77. On November 15, 2022, Lorrie Black received a call from Vince Miller, Main Gate Education Committee Chair. Vince told Lorrie that he had met with Dr. Moore and that Dr. Moore stated that he would not allow APS to utilize the Flickinger Center in any way since the Flickinger Center was so political.

78. Dr. Moore further stated that the Flickinger Center is spreading propaganda. He had a picture of paper on his phone speaking out against CRT and claimed the Flickinger Center was passing this information out. The Flickinger Center had nothing to do with the writing of the literature and was not handing them out. He also stated that Lorrie Black "listened to God". And, that Lorrie wanted to establish a charter school in Alamogordo and that would be the death of the public schools.



79. On November 16, 2022: Michael Gutierrez, Program Director for the Flickinger Center received an email from APS Drama Teacher Kasi Bryant. The Flickinger Center offers free use of the Flickinger Center for all public, private and religious schools free of charge. Ms. Bryant had several dates blocked out on the FC Calendar for her high school theater class performance. Ms. Bryant told Michael that she had received an email from APS Deputy Superintendent of Teaching and Learning, Pam Renteria. Ms. Bryant was concerned that her theater group would not be able to use the FC as planned because the email stated:

“Going forward we will be working in partnership with NMSU-A to secure performance space. Please include Colleen or I in student performance planning so we can help coordinate this new possibility. No other off-campus venues will be considered. If you have anything scheduled at this time, please let us know today”.

80. On November 17, 2022, Ed Brabson (local businessman and member of Main Gate, and former Flickinger Center Board Member) asked Lorrie Black how things were going with APS. Lorrie Black told Ed Brabson about the latest development concerning APS not allowing APS to utilize the Flickinger Center. Ed told Lorrie he would sit down and visit Ken Moore.

81. As of November 17, 2022, the FC had the following dates blocked off free of charge for APS events. Holding these dates for months in advance has caused a loss in potential rental fees and loss of concession revenues on nights of APS usage.

APS Encore Theater, November 28, 2022, all day  
APS Encore Theater, November 29, 2022, all day  
APS Encore Theater, November 30, 2022, all day  
APS Encore Theater, December 1, 2022, all day  
APS Tiger Choir Christmas Concert, December 6, 2022, 6:00 pm  
AHS Tiger Band Concert, December 15, 2022, 4:00 pm  
Mountain View Middle School Play January 20, 2023  
AHS Choir Post Festival Concert March 16, 2023  
AHS Encore Theater May 17, 2023

AHS Encore Theater May 18, 2023  
AHS Encore Theater May 19, 2023  
AHS Encore Theater May 20, 2023

82. On November 17, 2022, Lorrie Black called APS Drama Teacher Kasi Bryant to discuss the email she received stating the only approved facility APS could use is NMSUA. Kasi stated she was terribly upset with the decision. Kasi is also involved in the Flickinger Center as she serves on the Board of Directors for the Alamogordo Music Theater (AMT). AMT utilizes the theater twice a year for musical plays. She realizes the incredible FREE resources that the Flickinger Center offers her students. She also stated that the APS Music Director, David Bouma had concerns about not being able to use the Flickinger Center and had requested a meeting with Ms. Renteria to discuss the issues that arise at NMSUA and wanted to know why they could not utilize the Flickinger Center.

83. On November 21, 2022, Kasi Bryant called Lorrie Black. Kasi said she had sent an email to administration asking them if she could use NMSUA for her November 28-December 1 AHS Drama Program. She did not receive an answer and now the administration was on Thanksgiving break. She was not sure if she could use the Flickinger Center on November 28 – December 1 as planned, and was afraid if she did, she would be written up for insubordination.

84. Lorrie Black kept the event blocked off on the calendar because of the unknown and she did not want to release dates on the slight chance AHS Drama could use the Flickinger stage. Lorrie asked Kasi what would happen if AHS can't use the Flickinger stage and administration does not answer her back about using the NMSUA facility and Kasi stated, "cancel the performance".

85. On November 28, 2022, Michael Gutierrez (Flickinger Center Program Director) emailed APS teacher Kasi Bryant asking if she was still using the theater November 28 – December

1. Ms. Bryant replied “Unfortunately not. We have been relegated to the AHS cafeteria for both the Theater and Choir performances. I remain hopeful for the next semester, though.”

86. On November 28, 2022, Monica Coble (Flickinger Manager) received a call from an upset AHS parent asking if the Flickinger had “rejected” APS theater to use the Flickinger Center. Monica said the Flickinger Center was prepared to work the event with staff that night and let APS use the theater free. She said the Flickinger Center had not received the reason APS was not allowing the theater to use the facility.

87. On November 29, 2022, Cindy Stong was forwarded an email from another Flickinger Board member, Claudia Powell. The email was between AHS Band Director Mr. Bouma and the Otero Art Space. Mr. Bouma requested to use Otero Art Space facility for his upcoming AHS Band Concert.

88. On November 30 & December 1, 2022 Monica Coble messaged APS Board Member Angela Cadwallader. Michael Gutierrez wanted to speak at the next APS Board meeting to present all the upcoming premier shows that the Flickinger will provide as school outreach programs free of charge to all school age children, and to explain that the Flickinger Center offers the Flickinger free of charge for all school functions. Michael came to the Flickinger as a young student, and that experience projected him on his career path. Michael finds shows that specifically offer educational school outreach programs that the Flickinger pays an extra fee to the performer to provide a free show to all area public, private and home schools. He wanted to explain to all APS board members how important it is for the students to be allowed to continue to come to our facility.

89. On December 1, 2022: Michael Gutierrez forwarded Lorrie Black an email from Mountain View Middle School teacher requesting to use Flickinger on January 20, 2023. Michael reserved the Flickinger.

90. On December 1, 2022, Michael Gutierrez received an email from AHS Band Director David Bouma stating: "I am unsure if you are aware, but we are going to have to change our venue for our concerts this year. This goes for all Alamogordo Public Schools programs. If you would like to discuss this further, please give me a call me.

91. On December 1, 2022, Michael Gutierrez spoke with David Bouma about why AHS could not utilize the Flickinger Center. Mr. Bouma said it was not made clear to him by the administration. He said it came from the superintendent saying Flickinger has political events. Michael told Mr. Bouma that they are always welcome and the Flickinger Center will continue to work with them in the future.

92. On December 1, 2022, Kasi Bryant , an APS Drama teacher called Lorrie Black. She said that the theater group was "regulated to the high school cafeteria" for their drama performance. Bryant and the kids were extremely disappointed that they could not use the Flickinger Center. She stated that they were going to use the Flickinger Center screen for a backdrop, our sound system and lighting, and now the cafeteria offered none of that. She said the orchestra was trying to use Otero Art Space. She said when she spoke with Assistant Superintendent Pam Renteria that Renteria stated she was the just "messenger" for Moore and Tagle. Bryant said that the parents were extremely upset and called the Superintendent's office and after giving their grievances the administrative person told them "Thank you for your concern".

93. On December 1, 2022, Lorrie Black emailed Dr. Moore and Judy Rabon asking them to give a reason why they were forcing the arts programs to cancel their performances at the

Flickinger. Also, that the Flickinger still had nine (9) dates scheduled for the future and would hold those dates open until Lorrie Black heard back from Dr. Moore and Judy Rabon

94. On December 1, 2022, approximately 2:44 pm: a teacher from Mountain View called Monica Coble and said that APS was requesting Flickinger to send her an email stating that the Flickinger Center had cancelled their performances. Monica stated that the Flickinger had not cancelled their performances and that we would not put her request in writing.

95. On December 1, 2022, approximately 3:00 pm: Michael Gutierrez called Mt. View teacher David McConnehey to ask him about the call. Mr. McConnehey said he was trying to close on a home and was getting pressure from the administration to get confirmation from the Flickinger stating that Flickinger had canceled the APS performances. Michael stated that he would not send such an email because the Flickinger was not the one to cancel the APS performances. Mr. McConnehey was physically crying on the phone. Michael asked him to send the Flickinger Center an email and Mr. McConnehey did. It states, "I need to cancel the reservations for Dec. 6, 2022 and Jan. 20, 2023. Mountain View Middle Schools has been asked to change venues for these dates".

96. On December 5, 2022, Lorrie Black received an email from APS Board Member Angela Calwallader stating: "I have asked for answers and clarification on the matter".

97. On December 5, 2022, Lorrie Black received a call from Flickinger Board President Cindy Stong. Ms. Stong stated that Flickinger Board member Cheryl Matherly had received a call from APS Board President, Judy Rabon. Judy wanted to meet with Cheryl Matherly to discuss Flickinger issues. Judy stated that APS had so much dirt on Lorrie Black that it would be embarrassing to the Flickinger Board. Cheryl told Judy she would pass on information to Flickinger President Stong.

98. On December 6, 2022, although Dr Moore stated that he has to remain apolitical, he chose to be the keynote speaker at the Otero County Democrat Party Monthly Meeting.

99. The Flickinger Center has hosted Democrats and Republicans over the years.

100. On December 12, 2022 an APS parent came in to Flickinger and asked if the AHS Orchestra concert would be held at Flickinger Center on 12/13/22. Monica told him no and the parent asked why, Monica stated that the APS Administration made decision not to use FC. Parent left, called school, then called FC back and said that the schools said the concert was to be held at the FC. Monica then saw a Face Book posting that it was moved to Otero Art Space (another county owned facility).

101. On December 14, 2022, Lorrie Black received a call from APS Theater teacher Kasi Bryant. Ms. Bryant told Lorrie that she and David Bouma, AHS Music Director, were told that they needed to attend separate meetings on December 15, 2022, with Assoc. Superintendent Pam Renteria. Ms. Bryant understood the meeting would be to serve discipline on her and Mr. Bouma for “delaying cancelling concerts at the Flickinger”.

102. On December 15, 2022, at an APS Board meeting the Board President, Judy Rabon refused to allow discussion concerning the use of the Flickinger Center stating that the Board does not make that decision, that it was the Superintendent of Public Schools that made that type of decision. “that’s a call that the board does not ...have a make on...” ...” I’m gonna say that that is a call that is not a board .... it’s not in our lane. that call right there” “I don’t believe so but again that is a call that is above us. that’s a call that is not in our board policy to make that’s not something that we do. we don’t micromanage” ...That’s not on us. That’s not a board issue that is an administration issue and their call”

103. Superintendent Moore also stated during the Board meeting that the decision to utilize the Flickinger Center was an administrative decision: “I ask you to allow me to handle this issue here there is nothing being kept secret but it is a superintendent issue here...”

104. On December 15, 2022: FC Board President Cindy Stong received a text message from Renee French. Renee has been a FC Board member; however, is on leave of absence until January 2023. Renee’s daughter is APS School Board Member Amanda Jewell. Renee states the following: “I think and from what I have heard... it still goes back to the one Republican meeting...people are using it as an excuse...I also heard that the lawsuits Lori put forward against the school isn’t helping. They have cost the school a lot of money.”

105. On December 15, 2022, Lorrie Black as Executive Director of the Flickinger Center requested public records pertaining to the Flickinger Center from APS, including, “all emails, text messages, internal messages, and phone calls that pertain to the Flickinger Center for the Performing Arts. Date range, January 1, 2021 to the present.”

106. On December 16, 2021, Rachel Burks, Legal Liaison, responded that the schools would be on break from December 19, 2021 through January 2, 2023 and would respond on January 3, 2023.

107. On January 3, 2023, the schools sent a 542 page response. However, Plaintiff Black is aware of several emails that they failed to send, because she has copies of them from the sources APS emailed them to, for example Jim Klump and Dr. Moores email exchange.) Black is also aware of text messages between the board and Ken Moore that were not produced. Also, there is not one mention of the APS teacher appreciation event and Black is aware that there was email and text correspondence between Dr. Calentine, Black and Nancy Hudson. This information leads Plaintiffs to aver on information and belief that there are additional emails and/or text messages

that have not been produced in accordance with IPRA. Plaintiffs therefore deem the request denied under IPRA. See NM Stat. 14-2-11

108. Additionally, on December 15, 2022, Lorrie Black requested public records pertaining to APS Board policy regarding supporting or appearing to support any political positions. None of the policies produced appear to address the request and Plaintiff Black therefore deems it denied under IPRA as further explained below. See NM Stat. 14-2-11

109. December 19, 2022, Lorrie Black received a text message from APS Theater Teacher Kasi Bryant. Ms. Bryant stated that she and Tiger Band Director David Bouma convinced Deputy Superintendent Pam Renteria to reduce their punishment down to a letter of clarification not a reprimand. The two teachers were also told to “stay out of the weeds on this (the Flickinger Center use) and trust that we have the best interests of the students at heart”.

**First Claim: Violation of New Mexico Constitution Providing for Freedom of Speech Including the right of Association against Defendants Board Of Education of Alamogordo Public School District # 1, Alamogordo Public Schools, and Dr. Kenneth Moore**

110. Plaintiffs incorporate the allegations in paragraphs 1-109.

111. This claim arises under the New Mexico Constitution, particularly under the New Mexico Bill of Rights, Article II, §17 entitled: “Freedom of speech and press; libel: Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press...”

112. The New Mexico Constitution Article II, §17 grants Plaintiffs the right to freely express their sentiments on all subjects. It also grants Plaintiffs the right to freely associate with others whether those others are of one political party or another. Retaliation by these Defendants for exercising this right, or for being perceived as exercising the right to freely speak, write and publish sentiments is a violation of the right to free speech and the right to association.



113. Defendants violated Article II, §17 by their assertions attacking Lorrie Black and the Flickinger Center for the Performing Arts because Lorrie requested public documents and spoke out on matters of public concern as more fully described above. Defendants additionally violated Article II, §17 by arbitrarily refusing to allow students and staff to perform at the Flickinger Center thereby imposing a governmental boycott of the Flickinger Center.

114. Additionally, the New Mexico Constitution, Article II, §4 of the New Mexico Bill of Rights grants to all persons certain Inherent Rights which are protected by the New Mexico Civil Rights Act. Plaintiffs as stated in the words of the Constitution possessed “certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.”

115. These Defendants violated Plaintiffs’ natural, inherent and inalienable rights as protected by Article II, §4 by their assertions attacking Lorrie Black and the Flickinger Center for the Performing Arts because Lorrie requested public documents and spoke out on matters of public concern as more fully described above. Defendants additionally violated Article II, §4 by arbitrarily refusing to allow students and staff to perform at the Flickinger Center thereby imposing a governmental boycott of the Flickinger Center.

116. The actions of the BOARD OF EDUCATION OF ALAMOGORDO PUBLIC SCHOOL DISTRICT # 1, ALAMOGORDO PUBLIC SCHOOLS, and its Superintendent, Dr. KENNETH MOORE as described above, were under color of law thus depriving Plaintiffs of their basic right to free speech and association. See e.g., *Board of County Comm'r Wabaunsee County v. Umbehr*, 518 U.S. 668, 116 S.Ct. 2342, 135 L.Ed.2d 843 (1996); *Rutan v. Republican Party of*

*Illinois Frech v. Rutan*, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d. 52 (1990); *Umbehr v. McClure*, 44 F.3d 876 (10th Cir. 1995).

117. In depriving Plaintiffs of these rights, Defendants, and each of them were "acting on behalf of, under color of or within the course and scope of the authority of the public body..." and the laws, ordinances, regulations, and customs of the BOE and APS.

118. As a proximate result of Defendants' conduct as described herein, Plaintiffs have suffered compensatory and special damages, including the loss of past and future earnings.

119. Plaintiff Lorrie Black has suffered emotional distress and loss of enjoyment of life.

120. As a result of Defendants' conduct, Plaintiffs' reputations have been damaged for which damages should be awarded.

121. The acts of the Defendant Dr. Moore were knowingly and with deliberate indifference to Plaintiffs' constitutional rights in a manner that is conscience-shocking, motivated by evil motive or intent, or involved reckless or callous indifference to the constitutionally protected rights of Plaintiffs.

122. Defendants' actions subject Plaintiffs to irreparable injury for which they have no adequate remedy at law. Plaintiff Flickinger Center for the Performing Arts requests that the Court enter an injunction prohibiting the unlawful boycott of the Center by Moore.

123. As a result of these Defendants' conduct, Plaintiffs have had to hire an attorney and have incurred legal fees. Pursuant to NMSA 41-4A-5, Plaintiffs are entitled to attorney fees and costs.

WHEREFORE, premises considered, Plaintiffs pray that this Court award compensatory and special damages against all Defendants (except Defendant Rachael Burks) and post judgment interest and attorney fees and such other and further relief as this Court may deem just and proper.

Plaintiffs further pray for an injunction to be entered prohibiting the unlawful boycott of the Flickinger Center by The Board of Education of the Alamogordo Public School District No. 1, the Alamogordo Public Schools and Dr. Kenneth Moore and a declaration under the New Mexico Declaratory Judgment Act that these Defendants have violated the New Mexico Constitution as set out in this claim.

**Second Claim: Violation of New Mexico Constitution Providing for Due Process of Law and Equal Protection against Defendants Board Of Education of Alamogordo Public School District # 1, Alamogordo Public Schools, and Dr. Kenneth Moore**

124. Plaintiffs incorporate the allegations in paragraphs 1-109.

125. Article II, Section 18. of the New Mexico Bill of Rights grants Plaintiffs, the right not to “be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.” This provision includes substantive due process rights or liberty rights not to be defamed without a due process hearing. See *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). (“Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”)

126. The New Mexico Constitution, Article II, Section 4 of the New Mexico Bill of Rights also grants to all certain Inherent Rights which are protected by the New Mexico Civil Rights Act. Plaintiffs as stated in the words of the Constitution possessed “certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.”

127. The claim herein is that Defendants deprived Plaintiffs of their good name, reputation, honor or integrity in violation of the New Mexico Bill of Rights, under color of statute,

regulation or custom of THE BOARD OF EDUCATION OF THE ALAMOGORDO MUNICIPAL SCHOOL DISTRICT # 1 and THE ALAMOGRODO PUBIC SCHOOLS and Dr. KENNETH MOORE without a due process hearing. Defendants additionally violated Article II, §4 by arbitrarily refusing to allow students and staff to perform at the Flickinger Center thereby imposing a governmental boycott of the Flickinger Center without a due process hearing.

128. Plaintiffs had a substantive due process right to their good name, reputation, honor, and integrity which was violated by Dr. Kenneth Moore and endorsed or allowed by Defendant THE BOARD OF EDUCATION OF THE ALAMOGORDO MUNICIPAL SCHOOL DISTRICT # 1 and THE ALAMOGRODO PUBIC SCHOOLS as described herein.

129. As a proximate result of these Defendants' conduct, Plaintiffs have been damaged by the loss of past and future earnings and other compensatory damages.

130. Plaintiff Black has suffered emotional distress and loss of enjoyment of life.

131. The acts of the Defendant Dr. Moore were knowingly and with deliberate indifference to Plaintiffs' constitutional rights in a manner that is conscience-shocking, motivated by evil motive or intent, or involved reckless or callous indifference to the constitutionally protected rights of Plaintiffs.

132. Plaintiff Flickinger Center for the Performing Arts requests that the Court enter an injunction prohibiting the unlawful boycott of the Flickinger Center.

133. As a result of these Defendants' conduct, Plaintiffs have had to hire an attorney and have incurred legal fees.

WHEREFORE, premises considered, Plaintiffs pray that this Court award compensatory and special damages, punitive damages and post judgment interest and attorney fees and such other and further relief as this Court may deem just and proper.

Plaintiffs further pray for an injunction to be entered prohibiting the unlawful boycott of the Flickinger Center by The Board of Education of the Alamogordo Public School District No. 1, the Alamogordo Public Schools and Dr. Kenneth Moore and a declaration under the New Mexico Declaratory Judgment Act that these Defendants have violated the New Mexico Constitution as set out in this claim.

**Third Claim: Violation of New Mexico Inspection of Public Records Act.**

134. Plaintiffs incorporate by reference the allegations in paragraphs 1-109.

135. This claim is brought by Plaintiffs against Defendant RACHEL BURKS as the Records Custodian for the Alamogordo Public Schools to enforce the provisions of the New Mexico Inspection of Public Record Act, NMSA 1978 § 14-2-1 *et. seq.* (“IPRA”).

136. To date, the full requested records as set out in paragraph 21 and 105-107 have not been received and Defendant has violated the New Mexico Inspection of Public Records Act NMSA 1978 14-2-8D by failing to provide for inspection of the requested public records within three (3) business days or at the outside within fifteen (15) days of the request.

137. Under IPRA, an action to enforce IPRA can be brought by a person whose request has been denied. NMSA §14-2-12(A). The requestor may deem the request denied if the records are not produced within fifteen days. See NM Stat. 14-2-11 Procedure for denied requests (New Mexico Statutes (2022 Edition)) "a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied."

138. Defendant has violated IPRA by failing to produce to Plaintiffs the public records requested by Plaintiffs without adequate justification under the law, Plaintiffs are entitled to a writ of mandamus or an injunction ordering Defendant to produce the relevant documents or other

appropriate remedy to enforce the provisions of the Inspection of Public Records Act. See NMSA 14-2-12(B).

139. Under IPRA, “The court shall award damages, costs and reasonable attorneys’ fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.” NMSA §14-2-12(D).

WHEREFORE, Plaintiffs respectfully request that the Court exercise its jurisdiction and enter, pursuant to the Court’s original jurisdiction, and the New Mexico Inspection of Public Records Act:

- A. A finding adjudicating that the failure to provide the public record requested by Plaintiffs is in violation of the New Mexico Inspection of Public Records Act, and if necessary, issue a writ of mandamus requiring the production of the requested records;
- B. Judgment in favor of Plaintiffs on Defendant’s violation of the Inspection of Public Record Act;
- C. An injunction to enforce the provisions of the New Mexico Inspection of Public Records Act;
- D. An Order awarding Plaintiffs’ statutory damages for violation of the Inspection of Public Records Act of \$100.00 per day from date of denial;
- E. An Order awarding Plaintiffs’ costs and reasonable attorneys’ fees as provided by law;
- F. Such other and further relief as the Court deems just.

**Fourth Claim: Unlawful Retaliation in Violation of New Mexico Inspection of Public Records Act against all Defendants.**

140. Plaintiffs incorporate by reference the allegations in paragraphs 1-109 and 133-137.

141. This court should recognize an implied right of action for unlawful retaliation by a public bodies, public officers or public employees against a person submitting an IPRA request and availing themselves of the fundamental rights provided by IPRA.

142. The New Mexico legislature has made it clear that production of public records is the rule and secrecy the exception, in IPRA:

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] is to ensure, and it is **declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.** It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

NM Stat. 14-2-5 Purpose of act; declaration of public policy (New Mexico Statutes (2022 Edition))

143. Plaintiffs are persons within the meaning of IPRA and thus members of the class to whom IPRA guarantees the greatest possible access to public records.

144. IPRA Section 1, evinces a legislative implicit intent to create a private remedy for retaliation against a person submitting an IPRA request. See e.g., *Yedidag v. Roswell Clinic Corp.*, 2015 NMSC 12, 346 P.3d 1136 (N.M. 2015)

145. The plain language of IPRA makes clear that Plaintiffs “are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.”

146. Persons, including Plaintiffs cannot exercise or enjoy the rights provided by IPRA if they are subject to retaliation by public bodies, public officers or public employees.

147. Retaliation against persons by public bodies, public officers or public employees for submitting IPRA requests has an undue chilling effect on the willingness of reasonable persons to exercise their rights under IPRA.

148. IPRA also makes clear that it is an “essential function of a representative government and an integral part of the routine duties of public officers and employees” to provide the greatest possible access to public records. *Id.*

149. Public bodies, public officers and public employees, including Defendants herein, violate an “essential function” of their duty to the public by retaliating or threatening to retaliate against persons for submitting an IPRA request.

150. IPRA also regulates the procedures that public bodies and records custodians must follow to deny IPRA requests. NMSA 1978, Section 14-2-11. Public bodies, public officers and public employees, including IPRA records custodians violate these requirements when they seek to constructively deny an IPRA request by threatening retaliation or by actually retaliating against a person seeking public records.

151. A private remedy for unlawful retaliation would thus assist in the underlying purpose of the legislative scheme laid out in IPRA which simply put is to guarantee the greatest amount of access to public records possible.

152. Holding public bodies, public officers and public employees accountable for retaliation against a person, including Plaintiffs for availing themselves of the rights afforded to them by IPRA will prevent the erosion or chilling of the public’s fundamental right to access the greatest possible number of public records.

153. Plaintiffs have been damaged by the unlawful retaliation described above in violation of IPRA in an amount to be determined at trial.



WHEREFORE, Plaintiffs respectfully request that the Court exercise its jurisdiction and enter, pursuant to the Court's original jurisdiction, and the New Mexico Inspection of Public Records Act such damages, special and consequential, costs and fees as the Court determines is just and equitable:

**Fifth Claim: Defamation claim against Defendant Dr. Kenneth Moore Individually by Lorrie Black and Flickinger Center for the Performing Arts**

154. Plaintiffs incorporate by reference the allegations in paragraphs 1-109.

155. Defendant Moore, published communications containing statement of fact concerning Plaintiffs, knowing that the statements of fact were false and defamatory.

156. The persons receiving the communication from Moore understood then to be defamatory and Defendant Moore knew that the communication was false or negligently failed to recognize that it was false and/or acted with malice.

157. The communications caused actual injury to plaintiffs' reputation, including loss of profits, harm to plaintiffs' good name and character among friends, neighbors and acquaintances and harm to plaintiffs' standing in the community and personal humiliation as well as mental anguish and suffering.

158. Dr. Moore made the communications in retaliation for Plaintiff Black's IPRA requests and her subsequent communication with the New Mexico Attorney General's Office seeking their assistance in enforcing the IPRA laws, thus warranting the imposition of punitive damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for compensatory and special damages and punitive damages against Defendant Dr. Moore.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

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