

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES WHITEHEAD, and
AUBREY DUNN,

Plaintiffs,

v.

Civ. No.

TRISTANNA BICKFORD,
Public Information Officer,
NM Department of Game and Fish, and
MICHAEL SLOANE, Director,
NM Department of Game and Fish,

Defendants.

**COMPLAINT TO RECOVER DAMAGES DUE TO DEPRIVATION OF CIVIL RIGHTS
VIOLATIONS OF THE UNITED STATES AND NEW MEXICO CONSTITUTIONS**

Plaintiffs bring this action to recover damages for violations of their civil rights pursuant to 42 U.S.C. 1983 and for retaliation and harassment under the color of law with the intent to bring harm;

INTRODUCTION/STATEMENT OF THE CASE

Plaintiffs are both citizens of New Mexico interested in making sure that there government functions properly and appropriately. Plaintiff Aubrey Dunn was previously the elected Commissioner of Public Lands for New Mexico. In that role and then privately, he sought information from the New Mexico Department of Game and Fish (“NMDGF”), in the form of the email addresses of persons that had applied for the big game hunt draw so that he could inform the hunting public of New Mexico about the efforts of his agency regarding conservation on state trust lands and to remind hunters using state trust lands of their responsibilities as stewards using those resources. Mr. Dunn is himself a hunter and fisherman and takes pride in the big game conservation

efforts he engages in on his own private land. Plaintiff James Whitehead is also an avid hunter and resident of New Mexico. Mr. Whitehead also prides himself a citizen watchdog with a strong interest in government transparency and accountability. To that end, Mr. Whitehead became concerned that NMDGF was not fairly or appropriately conducting the public hunt drawing and request the names and address of the successful draw applicants for a number of years to conduct an audit. Both Plaintiffs were refused their lawful request of this public information by NMDGF and two separate and unrelated lawsuits ensued. Both Plaintiffs ultimately succeeded in their Inspection of Public Records Act (“IPRA”) cases in the district courts of New Mexico, with Mr. Dunn also succeed in the Court of Appeals following the appeal of that case by the NMDGF. In response to losing those lawsuits and immediately after providing the public records to Mr. Whitehead, but before providing the public records to Mr. Dunn, the Defendants acting under the color of law disseminated a dishonest press release to over 300,000 persons via email in a blatant attempt engender the animus of the hunting public towards Plaintiff and to expose Plaintiffs to public scorn. This lawsuit address that retaliation against Plaintiffs for their First Amendment protected action to petition their government for redress first through IPRA and then through the Courts.

PARTIES

1. Plaintiff James Whitehead is a resident of Los Alamos County, NM.
2. Plaintiff Aubrey Dunn is a resident of Torrance County, NM.
3. Defendant Tristanna Bickford is a Public Information Officer for NMDGF .
4. Defendant Michael Sloane is the Director of NMDGF.

JURISDICTION AND VENUE

5. This action arises under 42 U.S.C. § 1983.

6. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Parties pursuant to 28 U.S.C. §§ 1331 and 1343.

7. The Court has authority to grant the requested relief pursuant to 28 U.S.C. § 1343(a)(1) and (2) and to redress the deprivation under 28 U.S.C. § 1343(a)(3). This Court also has authority to grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. Venue lies in this district pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

9. Plaintiff James Whitehead was the successful litigant in an IPRA Lawsuit against NMDGF for violations of IPRA in First Judicial District Court case No. *D-132-CV-2019-00049*. *See* Exhibit 1 attached hereto.

10. Plaintiff Aubrey Dunn was the successful litigant in an IPRA lawsuit, first in the Seventh Judicial District Court Case No. *D-722-CV-2017-00104*, and then in the New Mexico Court of Appeals in case No. *A-1-CA-37577*. *See* Exhibit 2 attached hereto.

11. After losing both lawsuits and immediately after providing the public records to Mr. Whitehead that had been unlawfully withheld by NMDGF, but before providing the records that had been unlawfully withheld from Mr. Dunn, on March 19, 2020, Defendants acting under the color of law disseminated a press release via email to over 300,000 hunters that purposefully misled and inspired the ire of the hunting public against Plaintiffs. *See* Exhibit 3 attached hereto.

12. The press release result achieved the desired result of widespread outrage and anger towards Plaintiffs, subjecting them improperly and unnecessarily to public ridicule and scorn. *See* Exhibit 4 attached hereto for reference.

13. The individual actions of Defendants acting under the color of law were maliciously done for the purpose of retaliating against Plaintiffs for their exercise of their First Amendment right to petition their government for redress of grievances.

**FIRST CAUSE OF ACTION:
VIOLATION OF FIRST AMENDMENT RIGHTS BY DEFENDANTS – FIRST
AMENDMENT RETALIATION**

14. Plaintiffs re-allege each of the above paragraphs as if fully set forth herein.

15. The First Amendment of the United States Constitution protects an individual's freedom of expression/freedom of speech and the individual's right to petition their government for redress.

16. As a government actors working on behalf of a state agency, the act of disseminating misleading information designed to give the impression that Plaintiffs had done something improper or untoward to the public was retaliatory.

17. The public records information sought by Plaintiffs was not novel, nor was it the first time that the NMDGF had disseminated such information to a member of the public, but in contrast to that fact Defendants misrepresented to the public as a fact that these two Plaintiffs were the first to have received this information. Such a misrepresentation was purposefully crafted to inspire the ire of the public towards Plaintiffs.

18. Defendants' retaliatory and malicious actions against Plaintiffs violated the Plaintiffs' rights to freedom of speech and to petition the government for redress guaranteed under the United States and New Mexico Constitutions.

19. As a direct and proximate result of the retaliatory actions, Plaintiffs suffered injuries consisting of their deprivation of a Constitutional Right and loss of reputation for which Defendants are liable .

20. The Defendants are also subject to punitive damages for their conduct.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for:

- A. A trial on the merits before a jury;
- B. A declaration that the actions of identified Defendants described in this Complaint violated Plaintiffs' First Amendment Rights by chilling their protected speech and interfering with their right to petition their government for redress.
- C. General and specific compensatory damages according to proof;
- D. Punitive damages in such amount as will sufficiently punish defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- E. Interest on such damages awarded at the legal rate from the date of judgment until paid;
- F. An order granting Plaintiffs' costs and attorney fees pursuant to 42 USC §1988; and
- G. Any and all other relief that may be appropriate as deemed by this Court.

Respectfully submitted this 20th day of March 2020.

WESTERN AGRICULTURE, RESOURCE
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.
400 Gold Ave SW, Suite 1000

Albuquerque, NM 87102
(505) 750-3060
abdunn@ablairdunn-esq.com

and

Law Offices of Marshall J. Ray

/s/ Marshall J. Ray
Marshall J. Ray, Esq.
201 12th St. NW
Albuquerque, NM 87102
(505) 312-7598
mray@mraylaw.com