

did return shortly thereafter, Plaintiffs were told by a Statham Police Department officer to leave the area, which they promptly did. Plaintiffs had no further contact with the area, but Statham Chief of Police Allan Johnston swore out warrants for the arrest of Plaintiffs for trespass. Both Plaintiffs were arrested shortly thereafter.

2.

Following their arrest, City Attorney Thomas Mitchell and Mayor Robert Bridges issued Plaintiffs criminal trespass warnings, styled as “Notice[s] of Prohibited Entry” purporting to bar Plaintiffs “indefinitely” from “all city property – including City Hall” for an indefinite period.

3.

As a result of the criminal trespass warnings, Plaintiffs have been unable to attend or participate in any City Council meetings or events, or to even set foot in the public parks or other public areas of the City of Statham. When Plaintiff Sondra Moore attempted to attend a meeting, she was arrested again. Plaintiffs want to attend and participate in the affairs of the City and its City Council, but have been unable to do so because they believe they will be arrested if they attempt to do so.

4.

Plaintiffs bring this action for damages and injunctive relief on the basis of their unlawful arrests without legal justification in violation of the Fourth Amendment and Georgia law, for being barred from participation in local government in violation of the First Amendment and Georgia law, and for violations of the Georgia Open Meetings Act.

JURISDICTION AND VENUE

5.

This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, as well as the First, Fourth, and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343, and the aforementioned constitutional and statutory provisions. Plaintiffs further invoke the supplemental jurisdiction of this Court to hear claims arising under state law pursuant to 28 U.S.C. § 1367.

6.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the claims arose in Statham, Georgia, which is situated within the district and divisional boundaries of the Gainesville Division of the Northern District of Georgia. Further, Defendant City of Statham is located in this district and division.

7.

Plaintiff Sondra Moore is a resident of the State of Georgia.

8.

Plaintiff Tony McDaniel is a resident of the State of Georgia.

9.

Defendant Allan Johnston is the Chief of Police of the City of Statham Police Department. At all relevant times, Allan Johnston acted under color of state law.

10.

Defendant Thomas Mitchell is the City Attorney of the City of Statham. At all relevant times, Thomas Mitchell acted under color of state law.

11.

Defendant City of Statham ("Statham" or "City") is a body corporate and politic and a political subdivision of the State of Georgia, duly established under its laws and Constitution. At all relevant times, Statham acted under color of state law.

FACTUAL ALLEGATIONS

12.

Plaintiffs were frequent attendees and participants in the local government meetings and affairs of the City of Statham.

13.

Plaintiffs previously lodged criticism of high-ranking Statham officials and representatives.

14.

Beginning in January 2018, Plaintiff Sondra Moore began making audiovisual recordings of the local government meetings in Statham. *See* O.C.G.A. § 50-14-1(c) (“Visual and sound recording during open meetings shall be permitted.”)

15.

In or around April 2018, Statham City Council reinstated a subcommittee for water, sewer, and public works in response to a series of complaints from people in Statham about water quality issues.

16.

Shortly thereafter, Mayor Robert Bridges and other Statham employees led some members of the public on a tour of Statham sewer infrastructure on public property in the City, in and around Hillman-Rainwater Park.

17.

Plaintiffs were among the members of the public that attended that walk.

18.

Mayor Bridges invited the people on the walk to return, telling Plaintiff McDaniel at one point that he could return “anytime you want to.”

19.

On May 6, 2018, as authorized by the Mayor, Plaintiffs returned to the area in and around Hillman-Rainwater Park where they had previously walked with the Mayor.

20.

Plaintiffs did so for the purpose of gathering information ahead of the May 8, 2018 meeting of the water, sewer, and public works subcommittee.

21.

While walking along the sewer line, Plaintiffs were approached by Statham Police Department officer Johnny Wood.

22.

Officer Wood told Plaintiffs to leave the area, despite the previous authorization to visit the area.

23.

Plaintiffs explained that they understood that they had been told by the Mayor that they could be where they were for the purposes of examining the sewer system and because they believed they were on public parkland.

24.

Plaintiffs left the area without incident, though they understood the order to leave the area to be unlawful in light of the previous authorization to visit the area.

25.

Officer Wood did not issue any citation, written warning, or other paper to Plaintiffs at that time.

26.

On May 8, 2018, Defendant Johnston applied for and obtained warrants for the arrests of Plaintiffs for criminal trespass, in violation of O.C.G.A. § 16-7-21.

27.

Defendant Allan Johnston is the final policymaker under state and local law for the City of Statham for policing decisions by virtue of his job description and position as Chief of Police and the lack of meaningful review of his decisionmaking in this area.

28.

These warrants were facially invalid in that the warrants did not allege that Plaintiffs entered or remained on any property after having been given

notice that their presence was unlawful and did not allege that Plaintiffs entered upon the land for the purpose of violating a criminal law.¹

29.

Plaintiff Sondra Moore was arrested at her home the morning of May 10, 2018.

30.

Plaintiff Sondra Moore was released later that day after bonding out of the Barrow County Jail.

31.

Plaintiff Tony McDaniel was arrested in Clayton County because of this warrant.

32.

Plaintiff Tony McDaniel was confined without the possibility of posting bail for approximately four days in Clayton County as he waited to be transferred to Barrow County pursuant to the arrest warrant.

33.

After her release from custody on May 10, 2018, Plaintiff Sondra Moore attempted to attend the May 10, 2018 meeting of Statham City Council.

¹ Cf. *Daniel v. State*, 301 Ga. 783, 786 (2017); *Mixon v. State*, 226 Ga. 869, 870 (1970).

34.

As she was setting up her camera equipment, Plaintiff Sondra Moore was arrested by Defendant Allan Johnston and other Statham Police Department officers.

35.

Prior to the arrest, Defendant Allan Johnston spoke with Defendant Thomas Mitchell who instructed Allan Johnston that he could and should arrest Plaintiff Sondra Moore.

36.

The reason for the arrest was that Plaintiffs had been “forbidden and prohibited” from entering any “property under the control and ownership of the City of Statham, GA 30666,” including “all city property,” which specifically included “City Hall.”

37.

The documents purporting to bar Plaintiffs from all Statham property are attached hereto as Exhibit A (Ms. Moore) and Exhibit B (Mr. McDaniel).

38.

The documents purporting to bar Plaintiffs from all Statham property were issued by the City of Statham.

39.

The documents were the official policy of the City of Statham.

40.

The documents were issued to Plaintiffs because of their prior criticism of the City of Statham and some of its officials.

41.

Defendant Thomas Mitchell authored and signed the documents barring Plaintiffs from City of Statham property.

42.

Defendant Thomas Mitchell is a final policymaker under state and local law for the City of Statham for the purposes of his issuance of the documents purporting to bar Plaintiffs from the City of Statham by virtue of the authority he has as City Attorney and by virtue of the fact that his decisionmaking in this area is not subject to meaningful review.

43.

Mayor Robert Bridges is also a final policymaker and authorized the issuance of documents purporting to prohibit Plaintiffs from entering Statham property.

44.

The documents that purport to bar Plaintiffs from Satham property are indefinite in their operative duration.

45.

There is no exception in the documents that would allow Plaintiffs to attend meetings of the Satham City Council.

46.

Plaintiffs wish to attend and participate in meetings of the Satham City Council.

47.

Plaintiffs have not attended or participated in any meetings of the Satham City Council since May 10, 2018 because they reasonably believe and fear they will be arrested and prosecuted should they do so.

48.

As soon as any prohibition is lifted, Plaintiffs intend to immediately resume attending and participating in meetings of the Satham City Council.

49.

Plaintiffs have also been barred from associating with people who are important to them and from participating in other important events in their lives as a result of the documents barring them from City of Satham property.

50.

For example, Plaintiff Sondra Moore has been unable to attend the monthly meetings of a Ladies Homesteading Gathering, which meets monthly in another park in the City of Statham.

51.

Her attending of such gatherings bears no reasonable nexus with her charge of criminal trespass.

52.

Plaintiff Tony McDaniel is a longtime resident of Statham (who currently lives just outside city limits but receives Statham water) and has been unable to meet with many of his friends because he cannot go on any public property owned or controlled by the City of Statham. Additionally, Tony McDaniel cannot continue his environmental activism in the City of Statham.

CLAIMS FOR RELIEF

Count One: Unlawful Seizure

53.

There was no legal justification to arrest or to detain Plaintiffs at any juncture. Even arguable reasonable suspicion was lacking to believe that Plaintiffs had committed any offense.

54.

Plaintiffs were arrested and prosecuted without arguable probable cause.

55.

The warrants issued for the arrests of Plaintiffs were facially void in that there were insufficient allegations of criminality to make out arguable probable cause.

56.

The warrants issued for the arrests of Plaintiffs contained material falsehoods made recklessly or knowingly, in that, for example, the warrants alleged that Plaintiffs actions were without authority and that their actions posed a hazard to themselves and others when Defendant Allan Johnston knew such allegations to be false.

57.

The warrants issued for the arrests of Plaintiffs contained material omissions made recklessly or knowingly, in that, for example, the warrants did not include exculpatory facts showing that Plaintiffs had previously walked this same area with Statham officials who told them that they were free to return at any time.

58.

Defendant Allan Johnston failed to conduct a constitutionally reasonable investigation prior to swearing out a warrant for Plaintiffs' arrests because he ignored readily available and completely exculpatory facts showing that Plaintiffs had permission to walk where they were told they could not by Officer Wood, because had Defendant Johnston discussed the matter with Officer Wood he would have known that Plaintiffs were not attempting to violate any law by virtue of their presence in the area around the sewer line, and because their actions were in furtherance of a meeting of the subcommittee for water, sewer, and public works.

59.

Based upon the facts known by Defendant Allan Johnston, no reasonable officer could have believed that probable cause existed to arrest Plaintiffs, and there was no arguable probable cause for their arrests.

60.

As a result of their unlawful seizure, Plaintiffs have suffered deprivations of liberty, lost the ability to exercise First Amendment rights, have suffered monetary losses, and have experienced pain and suffering, humiliation, and fear.

61.

Defendant Allan Johnston acted with actual malice towards Plaintiffs and for the purpose of silencing their criticism of the City of Statham and to deter others from participating in matters of the Statham City Council.

62.

The actions of Defendant Allan Johnston were malicious, reckless, and callously indifferent to Plaintiff's clearly established rights, and he is not entitled to official immunity under Georgia law.

Count Two: Free Speech

63.

By not allowing Plaintiffs to engage in legal and constitutionally protected expression under penalty of arrest and criminal prosecution, Defendants have deprived Plaintiffs of their right to free speech as protected by the First and Fourteenth Amendments, as well as the Georgia Constitution's Article I, Section I, Paragraphs V and IX.

64.

Plaintiffs have been subjected to the prior restraint of their speech and have been denied entirely their right to speak at City Council meetings, or to

attend and speak to any public official on public property, or to attend any public meetings on public property.

65.

The documents barring Plaintiffs from Statham property were issued with the purpose of preventing Plaintiffs from participating in the affairs of the government of Statham because Plaintiffs were often critical of Statham officials. Statham officials, including Defendants Allan Johnston and Thomas Mitchell sought to silence Plaintiffs because of the content and viewpoint of their speech.

66.

Plaintiffs would not have been barred from the City of Statham but-for their prior protected speech that was critical of certain Statham officials.

67.

Plaintiffs have been denied their right to petition government, as guaranteed by the Petition Clause of the First Amendment, as a result of the orders barring them from all City of Statham property.

68.

The orders barring Plaintiffs from Statham property violate due process because they were issued without any finding of criminality on the behalf of Plaintiffs, and because their actions in purportedly trespassing do not share a meaningful nexus with their ability to attend and participate in meetings of city

government, or to attend and speak to any public official on public property, or to attend any public meetings on public property.

69.

Plaintiffs, as persons who have been subject to an unconstitutional order barring them from participating in the meetings of the City Council of Statham, or speaking to any public official on public property, or attending any public meeting on public property, seek declaratory and injunctive relief barring enforcement of the orders barring Plaintiffs from the City of Statham as unconstitutional under the First and Fourteenth Amendments and Georgia Constitution Article I, Section I, Paragraphs I, II, V, VII, IX, and XIII.

70.

Plaintiffs also seek monetary damages for the infringement upon their protected speech and the resulting silencing and chilling of their expression.

Count Three: Open Meetings Act

71.

The meetings of the Statham City Council and various subcommittees of the City of Statham are meetings under the Georgia Open Meetings Act.

72.

Plaintiffs were, and on a recurring basis are, denied their statutory right of access to the public meetings of the City of Statham by virtue of their having been barred from all Statham property.

73.

Plaintiffs' claims under the Georgia Open Meetings Act are timely by virtue of their ongoing inability to attend meetings of the Statham City Council.

Count Four: Punitive Damages

74.

Defendant Allan Johnston acted with conscious indifference, reckless disregard for the consequences of his actions, an intent to injure, and malice such that an award of punitive damages is authorized under federal and Georgia law.

Count Five: Negligence and *Respondeat Superior*

75.

Plaintiff sent *ante litem* notice to the Mayor of Statham on August 8, 2018, which was received on August 9, 2018.

76.

Statham has purchased comprehensive liability coverage for its officers' and agents' activities.

77.

This purchase of liability coverage acts as a waiver of sovereign immunity for state law claims, making the City of Statham liable for Defendants Allan Johnston and Thomas Mitchell's conduct under vicarious liability and *respondent superior* theories.

78.

The City of Statham is also liable under state law for its negligent supervision and negligent training of Defendant Allan Johnston, as well as for the negligent mistakes of law and fact of each Defendant that caused Plaintiffs' damages.

PRAYER FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiffs respectfully pray that this Court:

(A) Assume jurisdiction over this action;

(B) Award nominal, compensatory, and other damages against Defendants in an amount determined by a jury;

(C) Award declaratory and injunctive relief as set out herein and in Plaintiffs' Motion for Preliminary and/or Permanent Injunctive Relief;

(D) Award civil penalties under the Georgia Open Meetings Act, *see* O.C.G.A. § 50-14-6;

(E) Award reasonable attorneys' fees, expenses, and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable state and federal laws; and

(F) Award such other and further relief as this Court deems just and proper.

A JURY TRIAL IS REQUESTED.

Respectfully submitted, this 15th day of October, 2018.

/s/ Gerald Weber

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