

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

MATTHEW TORTORICE,

Plaintiff,

v.

CITY OF MARGARET; DARYL MCINTYRE;
and ANTHONY FIELDS,

Defendants.

No. _____

COMPLAINT

INTRODUCTION

1. Plaintiff Matthew Tortorice was elected as a reform candidate to the Margaret City Council in November 2020. Beginning in February 2023, he made video recordings of meetings of the City Council to post to his public YouTube channel¹ for the benefit of his constituents and the citizens of Margaret. No disruption resulted from the process of making these recordings. Nevertheless, on July 2, 2024, the City of Margaret prohibited all recording of Council meetings, and on September 17, 2024, the City replaced its original ban on recording with a new set of rules and regulations, which, while not a categorical ban on their face, are clearly intended to prevent Mr. Tortorice from making video recordings of the Council's

¹ <https://www.youtube.com/@margaretcitycouncilmeeting2746>.

meetings. The City of Margaret is attempting to silence Mr. Tortorice because of its hostility to his viewpoints. The First Amendment does not permit these actions.

JURISDICTION AND VENUE

2. This is an action arising under the Constitution and laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

3. Plaintiff seeks relief under 42 U.S.C. §§ 1983 and 1988.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all events giving rise to the claims detailed in this complaint occurred within the Northern District of Alabama and the Defendants work and/or reside in the Northern District of Alabama and are subject to the Court's personal jurisdiction.

PARTIES

5. Plaintiff Matthew Tortorice is the elected representative for District 4 on the City Council of the City of Margaret, Alabama. Mr. Tortorice is a resident of the City of Margaret, Alabama.

6. Defendant City of Margaret (the "City" or "Margaret") is a municipality of the state of Alabama. Margaret's elected and appointed officials, officers, employees, and agents act under color of state authority. Margaret is located in St. Clair County.

7. Defendant Daryl McIntyre is now and has been since September 17, 2024, the Mayor of Margaret, having been appointed on that date to fill a vacancy in the office. Prior to his appointment as Mayor, Mr. McIntyre was the City's Mayor Pro-Tem and the elected representative for District 3 on the Margaret City Council. Mr. McIntyre is a resident of Margaret.

8. Defendant Anthony Fields is the Police Chief of Margaret. He was appointed to this position on October 3, 2023, after having served as the Interim Police Chief following the resignation of the prior Police Chief, Jim Thompson. Mr. Field resides in the vicinity of Margaret.

FACTUAL BACKGROUND

9. As a city of less than 12,000 people, the City of Margaret operates under a Mayor-Council form of government. The City Council is the legislative body which establishes City policies. The City Council consists of a Mayor elected at large and five Council Members elected by district. The Mayor is the City's Chief Executive Officer. If the Mayor is absent, the Mayor Pro Tem acts as Mayor. The last elections for Mayor and City Council were held in November 2020. Although the Mayor and Council Members normally serve four-year terms, state legislation enacted in 2021 extended the terms of mayors and council members elected in 2020 by one additional year, until November 2025.

10. Plaintiff was elected Council Member for District 4 in November 2020. This was his first time serving on the City Council.

11. Isaac Howard was the Mayor of Margaret until his resignation on August 20, 2024. Mr. Howard was appointed as Mayor on April 7, 2023, as a replacement after the elected Mayor, Jeffrey Wilson, resigned in November 2022.

12. Darius Crump is the representative for District 2 on the Margaret City Council. He was appointed to this position on July 28, 2021, as a replacement for a vacancy in the office.

13. Although the population of Margaret has been increasing rapidly, growing from approximately 1,000 in 1990 to over 6,000 today, it has not redistricted its electoral wards in

many years. As a consequence, the City's districts vary greatly in population. District 4, for example, includes nearly 50% of the population of the City.

14. Plaintiff ran and has governed as a reform candidate.

15. Plaintiff has attempted to impose fiscal transparency and proper budgeting on the City.

16. In this regard, Plaintiff has concerns about possible self-dealing by members of the City Council. For example, Mr. Howard, the former Mayor, was (and still is) the Water Operator for the City, while Defendant McIntyre, the current Mayor, has a first cousin, Teja McIntyre, who is employed as City Clerk & Magistrate, as well as a brother-in-law and a business partner who are both paid to perform services for the City.

17. Since early 2023, Plaintiff has been attempting to get the City to pursue the redistricting of its electoral wards. So far, the City Council has delayed or voted down Plaintiff's redistricting proposals.

18. In keeping with the spirit of Alabama's Open Meetings Act, Ala. Code §§ 36-25A-1 – 36-25A-11, Plaintiff has attempted to increase the visibility of the meetings of the City Council. In this regard, the Open Meetings Act provides: "A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section." Ala. Code § 36-25A-6.

19. At the City Council meeting held on February 7, 2023, Plaintiff initiated a first discussion of a potential motion to stream via the internet all Council meetings. At the City

Council meeting held on February 21, 2023, Plaintiff made a motion for the Council to spend up to \$1,000 to purchase equipment to live stream Council meetings; the motion was voted down. At the City Council meeting held on April 4, 2023, Plaintiff renewed this motion and it passed. Nevertheless, the City Council has never actually initiated the recording or streaming of Council meetings.

20. At the City Council meeting held on February 7, 2023, Plaintiff, acting on his own, began video recording the sessions of the Council (excluding executive sessions) and posting the resulting video to his District 4 Facebook page. Starting with the City Council meeting held on April 7, 2023, Plaintiff began posting his videos of the Council meetings to his public YouTube channel – <https://www.youtube.com/@margaretcitycouncilmeeting2746>. Plaintiff has posted his videos of the City Council meetings to his public YouTube channel in full and without edits.

21. In order to record his videos, Plaintiff has attached his camera to a tripod placed near the wall of the Council room, on the left side of the room from the perspective of the audience, in the space between the audience seating and the Council's podium or desk. This location offers a view of each of the Council members. In addition, this location is close enough to allow the camera to catch most of what is being said by the Council members during the meetings, but is out-of-the-way enough that it does not disrupt the movement or line of sight of people in the room. No disruption has ever resulted from the location Plaintiff has selected to make his video recordings.

22. Plaintiff recorded and posted all City Council meetings that he attended (excluding executive sessions) between February 2023 and June 2024.

23. Plaintiff was unable to attend the July 2, 2024, Council meeting because he was at a summer camp with his sons. A second Councilman, Jonathan Ray (representing District 5), was also absent.

24. While Plaintiff and Councilman Ray were absent, the Council, after suspending the rules (which allows passing a motion without advance discussion at a prior meeting), passed a motion prohibiting the taping of Council meetings using video or audio. This was an oral motion and was not reduced to writing.

25. A meeting of the Council was scheduled for July 16, 2024. Plaintiff noticed that the Council packet for that meeting did not include the minutes from the July 2 meeting. Plaintiff called both Mayor Howard and City Attorney Erskine Funderburg to ask about the missing minutes. They said nothing to Plaintiff about the passage of the motion to prohibit recording. The Council meeting scheduled for July 16 did not take place.

26. The next meeting of the Council was on August 6, 2024. On that date, Plaintiff still had not been provided with the minutes of the July 2 meeting. Plaintiff set up his video camera in his usual manner. At the outset of the meeting, a member of the audience complained that the presence of the camera was contrary to the Council's motion passed on July 2. Discussion ensued between certain members of the Council, including Plaintiff, and City Attorney Funderburg. The Mayor Pro Tem, Defendant McIntyre (Mayor Howard was absent), directed Plaintiff to remove the camera, and he did so. Plaintiff asked for the minutes of the motion or ordinance prohibiting recording from the July 2 meeting. His request was refused.

27. On August 8, Plaintiff emailed Mayor Howard and Mr. Funderburg requesting a copy of the minutes from the July 2 meeting. They refused to provide a copy.

28. On August 10, Plaintiff contacted Lyle Harmon, the St. Clair County District Attorney, to express his concern about what Plaintiff believed to be a violation of the Open Meetings Act.

29. The next meeting of the City Council was scheduled for August 20, 2024. Plaintiff received the packet for that meeting on August 17. The packet included the minutes for the July 2 meeting. The minutes provided: “Mayor Pro-Tem moved to prohibit the taping of the council meetings using video or audio. Councilman James Chapman seconded the motion. The motion passed unanimously.”

30. On August 20, Plaintiff set up his video camera in his usual manner. Once the meeting was underway, City Attorney Funderburg made a statement about the need to enforce the City Council’s ban on recording its meetings. Plaintiff protested that the ban was contrary to state law and the First Amendment. At the direction of the Mayor Pro Tem, Defendant McIntyre, Defendant Fields physically ejected Plaintiff and his camera from the meeting room. Applause from certain members of the audience (believed to be relatives of Defendant McIntyre) could be heard as Plaintiff was removed.

31. Following these events, Plaintiff met with District Attorney Harmon to discuss the City’s prohibition on recordings.

32. On August 22, Mr. Harmon sent the City a letter advising that its prohibition on recordings violated the Open Meetings Act. A true and correct copy of Mr. Harmon’s letter is attached hereto as Exhibit A. On August 23, City Attorney Funderburg sent Mr. Harmon a letter disagreeing with Mr. Harmon’s interpretation. A true and correct copy of Mr. Funderburg’s letter is attached hereto as Exhibit B.

33. The next meeting of the City Council took place on September 3, 2024. Plaintiff set up his video camera in his usual manner. A television news crew from WBRC Fox 6 News in Birmingham, led by investigative reporter Lauren Harksen, was present. Mr. Funderburg, ostensibly at the request of the Council (although no such request was made on the public record), began the meeting with an introductory statement about the Council's prohibition on recordings. Mr. Funderburg criticized Plaintiff's past actions in recording meetings. He discussed his correspondence with Mr. Harmon, and defended his position that the Council's ban on recording was consistent with state law. Plaintiff expressed disagreement with Mr. Funderburg's interpretation of the law. Mr. Funderburg announced that he had been asked to tell all those with recording devices to step into the hallway, or the Council would deal with it accordingly. Shortly thereafter, a motion was made to adjourn the meeting. After discussion by the Council, during which Plaintiff asserted his rights under state law and the U.S. Constitution, the meeting was adjourned.

34. The next meeting of the Council took place on September 10, 2024. This was a "Special Meeting" convened specifically to address: "Streaming and recording rules and regulations for meetings within the governmental structure of the City of Margaret."

35. At the September 10 meeting, Defendant Fields, the Police Chief, would not let anyone with a camera into the meeting room. Plaintiff, accordingly, participated in the meeting without setting up his camera. WBRC Fox 6 News and Ms. Harksen were prevented from bringing their camera into the meeting room. Two freelance YouTube reporters, publishing under the names "The J-Town Press" and "Georgia Transparency," were prevented from entering the meeting room at all.

36. During the meeting, Councilman Crump proposed new rules and regulations to govern recording to replace the prohibition that had been adopted on July 2. Plaintiff gave a speech in opposition to the proposal. A motion to suspend the rules (which would have been necessary for a substantive motion to be adopted without advance discussion of the proposal at a prior meeting) failed to pass.

37. After the September 10 meeting had ended, as people were leaving City Hall, Plaintiff was physically threatened by both Defendant McIntyre and Councilman Crump. Initially, during an extended, angry tirade, Defendant McIntyre's wife (a group of Defendant McIntyre's family members were present) complained about the videos that had been posted by the YouTubers, blamed Plaintiff for these videos, and for his own videos, and warned Plaintiff "to stop looking into the past." Defendant McIntyre – yelling loudly – threatened to "fix [Plaintiff] permanently" – gesturing with his fists from about three feet away. Defendant Fields held back Defendant McIntyre. A few seconds later, Mr. Crump also started yelling at Plaintiff, angrily accusing him of involving his kids – "You got my fucking kids involved." At this point, Defendant Fields urged Plaintiff to leave for his own safety. As Plaintiff left the building and walked towards his car, he was followed by Mr. Crump. Mr. Crump lunged at him, and was restrained by a police officer. Crump yelled out – "They won't be here for you every time" – in reference to the police officers that were holding him back.

38. The next meeting of the Council took place on September 17, 2024. Plaintiff set up his video camera in his usual manner. Under the heading of "former business," Defendant McIntyre introduced a motion to adopt a set of rules and regulations concerning the recording of

meetings. A written version of the proposed rules and regulations had been distributed to City Council Members the weekend before the meeting.

39. The exact wording of the proposal was as follows:

Rules and Regulations relating to video/audio recording or live-streaming an official public meeting or official public work session meeting of the city of Margaret or its various departments

- 1.) No employee, officer or agent of the city will be able to record a meeting other than in the designated press areas along with other members of the press.
- 2.) The City of Margaret through designated personnel, shall use its best efforts to install and maintain a recording device or devices within the council chambers of city hall and will make every effort to livestream regularly scheduled council meeting through the city website via Facebook or other council approved social streaming service provider. This shall be the designated official video/audio recording and will be made available to all of the public in its entirety.
- 3.) Representatives of recognized press as defined by Alabama law, will be able to video/audio record any and all council meetings and public work sessions, only within designated areas inside the council chambers. Such designated area shall be designated, marked and known as the "Press Area" for purposes of video/audio recording.
- 4.) Citizens of the state of Alabama shall have the right to video/audio record public meetings and work sessions only from their seated position location in such a manner as not to block or disrupt other members of the public attending and observing the meeting. If such recording causes a disruption of the meeting the recording shall be relocated to the rear of the room so as not to block any other person from attending and observing the meeting.
- 5.) Under no circumstance shall the press or any person attending the meeting attempt to make a recording in such a manner that causes disruption of the meeting, prevents or obstructs the conduct of the meeting, or in any way prevents the legitimate purpose and business for which the meeting is convened from occurring. The officers, agents and employees of the city of Margaret and members of the public and press in attendance shall conduct themselves in all public meetings within Maragaret, in a manner that recognizes the authority of the organization convened and the authority of the chairperson conducting the meeting.

40. At Defendant McIntyre's request, City Attorney Funderburg read the proposal out loud during the September 17 meeting. Mr. Funderburg acknowledged that he had drafted the proposal. Plaintiff objected that the proposal was unnecessary and was inconsistent with state law and the First Amendment. Plaintiff also objected that, in order to be enforceable, the motion would need to be recast in the form of an ordinance or resolution. The City Attorney disagreed with Plaintiff's positions, stating at one point that if Plaintiff disagreed with the City's restrictions on recording – "Your only recourse is to file a lawsuit." The City Attorney said that the location of the "designated press areas" was something that could be determined at a future meeting. After an unsuccessful motion by Plaintiff to table the proposal, Councilman Crump made a motion to adopt the rules and regulations, "with a designated press area to be determined." The motion passed by a vote of three to two. Plaintiff and Councilman Ray voted no.

41. Later during the September 17 meeting, Defendant McIntyre was appointed Mayor by motion of the Council, by a vote of four to one. Plaintiff voted against the appointment.

42. The next meeting of the City Council took place on October 1, 2024. Plaintiff set up his video camera in his usual manner (in the front of the room). No attempt was made by the City to set up its own recording device. Plaintiff observed that a sheet of paper had been posted in the back of the room stating that that was the location of the designated press area. Because of the acoustics in the room, including the presence of an air conditioning unit at the rear of the room and the fact that some members of the City Council do not use their microphones, a

recording device positioned at the rear of the room will not capture most of what is being said by the Council Members. The camera's view may also be obstructed.

43. Plaintiff spoke briefly with Defendant McIntyre and Councilman Crump about the recording rules before the Council meeting got underway. Defendant McIntyre said that Plaintiff's camera should be moved to the rear of the room. Plaintiff asked which rule applied to him. Mr. Crump responded that Rule 1 applied. Plaintiff disagreed. The City Attorney was not present, and did not attend the October 1 Council meeting. Plaintiff did not move his camera.

44. Although some discussion took place during the October 1 Council meeting about the accuracy of the draft minutes of the meeting of September 17 with respect to statements that had been made about the new recording rule, the new recording rule was not otherwise addressed during the October 1 meeting.

45. At this time, Plaintiff is uncertain about whether the September 17 recording rules apply to him as a Council Member, and if so, under which provision of the rules; about where the "designated press areas" will be placed, and about whether it will be possible to meaningfully record what is said by the Council Members from that location; and about whether it is permissible for him to make audio-only recordings of Council meetings (as has been his past practice), separate and apart from his video recordings. Plaintiff is informed and believes that the new recording rules – as well as the original July 2 prohibition on recording – were enacted specifically for the purpose of targeting him because of the viewpoints he has expressed during Council meetings, and impeding his right to record what takes place during Council meetings and communicate that information to his constituents and to the citizens of Margaret.

CLAIM FOR RELIEF
FIRST AND FOURTEENTH AMENDMENTS
42 U.S.C. § 1983

46. Plaintiff hereby incorporates all of the previous allegations of this complaint.

47. This claim for relief is directed against all Defendants.

48. “The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); accord *Glik v. Cunniffe*, 655 F.3d 78, 82-84 (1st Cir. 2011) (collecting authorities). The existence of a First Amendment right to record turns on whether the party had a right to record in a particular forum; if a place is a traditional public forum, or has been made a public forum by government action, there is a right to record, subject to reasonable time, place, and manner restrictions. *Crocker v. Beatty*, 995 F.3d 1232, 1240-42 (11th Cir. 2021); *Hamman v. Univ. of Cent. Fla. Bd. of Trs.*, 2023 U.S. Dist. LEXIS 151422, *10-*11 (M.D. Fla. Aug. 28, 2023). A city council meeting is typically considered a limited public forum; any speech restrictions must be viewpoint neutral and reasonable in light of the purposes served by the forum. *McDonough v. Garcia*, __ F.4th __, 2024 U.S. App. LEXIS 23485, *18-*20, 2024 WL 4195557 (11th Cir. Sept. 16, 2024) (en banc). A total ban on recording city council meetings is not permitted under the First Amendment. *Tisdale v. Gravitt*, 51 F. Supp. 3d 1378, 1389 (N.D. Ga. 2014); see also *Thompson v. City of Clio*, 765 F. Supp. 1066, 1071-72 (M.D. Ala. 1991) (holding that ban on recording city council meetings was not viewpoint neutral where ban was targeted at specific council member).

49. Here, Defendants violated the First Amendment (as incorporated against the states through the Fourteenth Amendment) by prohibiting Plaintiff from recording public, non-

executive sessions of the meetings of the Margaret City Council, and by threatening, detaining, and evicting Plaintiff in an attempt to deter and intimidate him from persisting with his recording activity. Accordingly, they also violated 42 U.S.C. § 1983 in doing so, and Plaintiff is entitled to recover under that statute.

50. Plaintiff has suffered damages, including reputational damages and emotional distress damages, and will continue to suffer damages as a consequence of the adverse actions taken by Defendants. Accordingly, he is entitled to damages for past harm and injunctive and declaratory relief to prevent ongoing and future harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. A declaratory judgment that the City of Margaret has violated and continues to violate the United States Constitution and 42 U.S.C. § 1983 by preventing Plaintiff from recording public, non-executive sessions of the meetings of the Margaret City Council;

B. Injunctive relief prohibiting the City of Margaret from preventing Plaintiff from recording public, non-executive sessions of the meetings of the Margaret City Council;

C. Actual and compensatory damages against all Defendants in an amount to be determined at trial;

D. Punitive damages against Defendants McIntyre and Fields for their malicious, oppressive, or reckless conduct, in an amount to be determined at trial;

E. Attorney's fees and costs pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, or any other applicable authority; and

F. Any other relief that is appropriate.

Dated: October 10, 2024

Respectfully submitted,

/s/ Raymond P. Fitzpatrick, Jr.

Raymond P. Fitzpatrick, Jr.
rpf@rfitzpatricklaw.com
1200 Corporate Drive, Suite 105
Birmingham, AL 35242
Tel: (205) 437-8846

/s/ J. Robert Renner

Michael E. Rosman (*pro hac vice* forthcoming)
rosman@cir-usa.org
J. Robert Renner (*pro hac vice* forthcoming)
renner@cir-usa.org
CENTER FOR INDIVIDUAL RIGHTS
1100 Connecticut Ave, NW, Ste. 625
Washington, D.C. 20036
Tel: (202) 833-8400

Counsel for Plaintiff Matthew Tortorice