

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
2018 OCT 25 PM 2:57  
SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

Kristopher Bilbrey )  
 )  
 )

*Plaintiff,*

vs.

Cause No:

Shon Byrum, Individually and )  
in His Capacity as Mayor )  
of City of Winchester, Indiana )

**1:18-cv-3289 TWP-MPB**

City of Winchester, Indiana )  
 )  
 )

Tom Sells, Individually and in His )  
Capacity as City Council President )  
of City of Winchester, Indiana )  
 )  
 )

Larry "Moe" Lennington, Individually )  
and in His Capacity as City of )  
Winchester City Council Member )  
 )  
 )

Leesa Friend, Individually and in Her )  
Capacity as City of Winchester )  
City Council Member )  
 )  
 )

Melissa Williams, Individually and )  
in Her Capacity as City of Winchester )  
City Council Member )  
 )  
 )

Rich Tucker, Individually and in His )  
Capacity as Winchester Police Chief )  
 )  
 )

Jon Reed, Individually and in His Capacity )  
as Winchester Assistant Police Chief )  
 )  
 )

Gary Moore, Individually and in His )  
Capacity as Winchester Fire Chief )  
 )  
 )

*Defendants.*

**COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983  
and COMPLAINT FOR FALSE ARREST, MELICIOUS PROSECUTION, and  
TORTIOUS INTERFERENCE WITH EMPLOYMENT CONTRACT**

**I. INTRODUCTION**

1. This case seeks damages for violation of his fundamental constitutional rights under the First, Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Defendants engaged in retaliatory actions against Plaintiff for his exercise of his right to freedom of speech in expressing his opposition to a drug rehabilitation center to be developed in a former church located near Plaintiff's home. Such actions included efforts to intimidate and harass Plaintiff through such actions as false arrest, malicious prosecution, exclusion of Plaintiff from public events, police harassment, and efforts to silence Plaintiff through interference with Plaintiff's employment.
2. Further, Plaintiff seeks damages for Defendants' tortious conduct pursuant to the supplemental jurisdiction of this Court, for false arrest, malicious prosecution and tortious interference with contract.

**II. JURISDICTION and VENUE**

- 3 This action arises under the Constitution and laws of the United States, pursuant to 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331.

4 This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §1331  
in that the controversy arises under the United States Constitution and  
under 42 U.S.C. §1983.

5 This Court has authority to award attorney's fees pursuant to 42 U.S.C.  
§1988.

6 Plaintiff further invokes the supplemental jurisdiction of this Court under 28  
U.S.C. §1367(a) to hear and adjudicate state law claims so related to claims  
within such original jurisdiction that they form part of the same case or  
controversy.

7 Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the  
events or omissions giving rise to Plaintiffs' claims occurred in this district.  
In fact, all such events or omissions occurred in this district.

### III. PARTIES

9. Plaintiff Kristopher Bilbrey is a citizen of the State of Indiana residing in  
Winchester, Indiana.

10. Defendant City of Winchester, Indiana is a municipality under the laws of  
the State of Indiana.

11. Defendant Shon Byrum is a citizen of the State of Indiana and a resident of  
Winchester, Indiana. He is now, and at all times relevant to this lawsuit has  
been, Mayor of the City of Winchester, Indiana.

12. Defendant Tom Sells is a citizen of the State of Indiana and a resident of Winchester, Indiana. He is now, and at all times relevant to this lawsuit has been, President of the City Council of the City of Winchester, Indiana
13. Defendant Larry "Moe" Lennington is a citizen of the State of Indiana and a resident of Winchester, Indiana. He is now, and at all times relevant to this lawsuit has been, a Member of the City Council of the City of Winchester, Indiana.
14. Defendant Leesa Friend is a citizen of the State of Indiana and a resident of Winchester, Indiana. She is now, and at all times relevant to this lawsuit has been, a Member of the City Council of the City of Winchester, Indiana.
15. Defendant Melissa "Missy" Williams is a citizen of the State of Indiana and a resident of Winchester, Indiana. She is now, and at all times relevant to this lawsuit has been, a Member of the City Council of the City of Winchester, Indiana.
16. Upon Plaintiff's best knowledge and belief, Defendant Richard Tucker was a citizen of the State of Indiana and resident of Winchester, Indiana at all times related to this Complaint. He was at the time of certain events relevant to this lawsuit the Chief of Police of the City of Winchester, Indiana. He is now retired and living in Sebastian, Florida.
17. Defendant Jon Reed is a citizen of the State of Indiana and a resident of Winchester, Indiana. He was at the time of certain events relevant to this lawsuit, the Assistant Police Chief of the City of Winchester, Indiana.

18. Gary Moore is a citizen of the State of Indiana and a resident of Winchester, Indiana. He was at the time of certain events relevant to this lawsuit the Fire Chief of the City of Winchester, Indiana. He remains a member of the Winchester Fire Department

#### IV. BACKGROUND TO DISPUTE

19. At all times relevant to this Complaint, Kris Bilbrey (hereinafter "Bilbrey") was politically active in the Winchester community, regularly attending City Council and other community meetings and posting about the meetings on social media.
20. Bilbrey was an unsuccessfully candidate in the Republican Primary in 2015 for At-Large Member of the Winchester City Council against current Council Person Melinda "Missy" Williams (hereinafter "Williams").
21. In approximately 2016, Mayor Byrum and certain Members of the City Council proposed establishment of a Drug Rehabilitation Center (hereinafter "Rehab Center") in the former sanctuary for the Winchester United Methodist Church (hereinafter "Former Sanctuary").
22. Bilbrey and his family reside only a short distance from the Former Sanctuary.
23. Bilbrey opposed the proposed Rehab Center in the Former Sanctuary, expressing his view that the Rehab Center and those that it serviced were

inappropriate for the location in the middle of a residential area that included many elderly and families with children.

24. Bilbrey spoke against the project at public meetings. He also spoke against the project to fellow citizens, wrote and posted on social media against the project, and organized opposition to the Project.

**IV DEFENDANTS VIOLATED PLAINTIFF'S CIVIL RIGHTS  
BY RETALIATORY ACTION, FALSE ARREST AND EXCESSIVE FORCE AT  
SPECIAL MEETING OF WINCHESTER CITY COUNCIL**

25. Plaintiff hereby incorporates Paragraphs 1-24 of this Complaint as if fully set out.
26. A Special Meeting of the Winchester City Council was held on November 27, 2017 solely to address the Rehab Center Project.
27. Standard procedure of Winchester City Council meetings at that time was to include a period for comments by the public.
28. The legal notice for the meeting failed to state that public comment would not be allowed.
29. At the beginning of the Special Meeting, those attending were notified that public comments would not be permitted.
30. The Special Meeting was well attended, with nearly all seats taken. The meeting lasted approximately 90 minutes.
31. The majority of the meeting was informational, dealing with Proposed Ordinance 2017-17 which was the Ordinance approving the Rehab Center Project.

32. An audio recording of the meeting is posted on the City of Winchester website. The time reference in the following paragraphs are to that recording.
33. At 1:22:30 into the meeting, a roll call vote was taken on the proposed ordinance, which passed by a 4-0 vote (one member absent).
34. At 1.22.58, the presiding officer announced "I'll entertain a motion to adjourn."
35. At that point, all the business of the meeting was done.
36. Despite the request to adjourn, Council Members continued a free-form discussion of the recently passed ordinance.
37. At 1:24:27, someone on the Council begins talking to the audience about the location of the project and breaking down the cost of the project divided by Winchester households over the life of the needed land to fund the project.
38. Councilor Friend said, "We're not taking questions from the audience so please don't raise your hand."
39. At 1:25:28, Councilor Friend followed her earlier admonition by asking the audience, "How much would you pay to save someone's life?"
40. Ms. Joan Ashley, a Winchester resident, stood up and responded to the question by stating, "Save ours."
41. Councilor Friend responded, saying, "Let me finish. Let me finish."
42. Two seconds later, at 1:25:47, Police Chief Tucker shouted "Sit down," followed immediately by, "You can't disrupt a public meeting."
43. At 1:26:06, Joni Bilbrey (Plaintiff's wife) said, "The problem is the location."

44. Over the next ten seconds, there are louder voices both from the audience and from Council Member.
45. During this time, no one was asked to leave the meeting, nor was anyone arrested.
46. During the hubbub, Councilor Friend said, "We're not taking things from the audience."
47. Joni Bilbrey responded "I get that."
48. Kristopher Bilbrey commented, "It was just a statement." Even though others in the audience and on the Council were speaking, it was Bilbrey's only statement made in the meeting that night.
49. Joni Bilbrey made a comment that the Council was expecting her to raise her children next to a Rehab Center.
50. This was followed by numerous people talking over one another.
51. Councilor Lennington singled out Mrs. Bilbrey from all the people in the audience who were talking, shouting to Police Chief Tucker, "Let's go. Take them out of here."
52. Chief Tucker moved toward Mrs. Bilbrey, however Mrs. Bilbrey was already getting up to leave, along with Rhonda DeFrees (Bilbrey's mother).
53. At 1:26:06, Lennington again shouted, "No! You're out of order. Let's go!"
54. Lennington's shout to the Police Chief was just over thirty seconds after Councilor Friend's question to the audience about "How much would you pay to save a life?"



55. Mrs. Bilbrey and Rhonda DeFrees walked out of the meeting room unassisted.
56. Mr. Bilbrey also walked to the door. As Mr. Bilbrey was walking through the doors and leaving the room, he said, "You're out of order. This whole place is out of order. This is a joke."
57. The statement took less than three seconds and was made as Mr. Bilbrey exited the room.
58. Mr. Bilbrey was walking down the hall to join his wife when Chief Tucker said "Bilbrey, you're under arrest for disorderly conduct." Bilbrey stopped at which time Tucker grabbed him.
59. Despite a total absence of resistance from Mr. Bilbrey, Chief Tucker and Assistant Chief Jon Reed shoved Mr. Bilbrey against the wall, grabbed his hands and painfully twisted his arms behind him. Fire Chief Moore also took part in forcefully arresting Bilbrey.
60. There was no resistance at any time from Bilbrey, nor did he make any threat of violence or non-cooperation.
61. The treatment of Bilbrey was excessive force and not reasonable.
62. Bilbrey was singled out among all the audience members who made comments to be assaulted and arrested.
63. The excessive force used on Bilbrey was an intended to send a message to Mr. Bilbrey and to punish him for his political speech in opposition to the positions of the Mayor and Council.

64. Bilbrey's arrest and the excessive force was orchestrated by Byrum, the City Council Members, Tucker, Reed and Moore.
65. The orchestrated nature of the arrest and assault on Bilbrey were demonstrated by the fact that Chief Tucker, Assistant Chief Reed and Fire Chief Moore immediately undertook a violent arrest of Mr. Bilbrey at his first words, and did so even though Bilbrey had already left the meeting.
66. The actions of Tucker, Reed and Moore left the assembled crowd in the city council meeting room without any security officers even though the general hubbub among the crowd continued.
67. No one else who spoke up or expressed opposition to the Rehab Project was arrested or threatened with arrest.
68. The impropriety of the arrest was admitted by Chief Tucker, who at the jail told Mr. Bilbrey that the arrest would never be prosecuted.
69. Mr. Bilbrey's arrest and physical assault was an orchestrated plan intended to intimidate and silence political opposition to the Mayor, the Council and the Rehab Project.
70. Union County Prosecutor Andrew J. Bryson was appointed Special Prosecutor concerning the arrest of Bilbrey.
71. Bryson, as Special Prosecutor, dismissed the charges as unfounded, noting that Mr. Bilbrey was engaging in protected political speech.
72. The actions of the Defendants were intended to harass, intimidate and silence Bilbrey in the exercise of his First Amendment right of free speech

and his First Amendment right to petition the government for redress of grievances, as applicable to the states through the Fourteenth Amendment.

73. Defendants are liable to Plaintiff under 42 U.S.C. § 1983, for which Plaintiff is entitled to an award of compensatory damages, punitive damages and attorneys' fees.

**V DEFENDANT BYRUM VIOLATED PLAINTIFF'S CIVIL RIGHTS  
BY RETALIATORY ACTION FOR PLAINTIFF'S FREE SPEECH  
BY MAKING THREATS AND ATTEMPTING INTIMIDATION MADE  
THROUGH PLAINTIFF'S EMPLOYER**

74. Plaintiff hereby incorporates by reference all facts and allegations of Paragraphs 1-73 of Plaintiff's Complaint.
75. In January 2018, Bilbrey was employed as a car salesman at Bill Gaddis Chrysler Dodge Jeep Ram in Muncie, Indiana.
76. At approximately 1 p.m. on January 22, 2018, Winchester Mayor Byrum, individually and as Mayor of the City of Winchester, called the general number at Bill Gaddis Chrysler Dodge Jeep dealership.
77. Mayor Byrum asked for sales, then asked for manager. He was connected with Steve Gaddis, owner of the dealership.
78. Mayor Byrum advised Mr. Gaddis that he was Mayor of Winchester and a past customer of the Gaddis dealership. Mayor Byrum went on to state that Bilbrey was a Gaddis dealership employee. Byrum had a problem with what Bilbrey had been posting on social media, including Facebook, about the Byrum and the City of Winchester.

79. Byrum stated that there would be adverse consequences for the Gaddis dealership if Mr. Bilbrey continued posting adverse statements and speaking out concerning the Mayor and the City of Winchester on social media.
80. As a consequence of this meeting, Mr. Gaddis met with Bilbrey and advised Bilbrey to “be careful” about his posts and to keep his business posts separate from his personal page. He also told Bilbrey that he needed to remove the fact that he was employed at the Gaddis dealership from his Facebook page.
81. Byrum’s actions were intended to threaten, harass and silence Bilbrey from criticizing Byrum and his administration by threatening Bilbrey’s employment and ability to make a living.
82. The actions of the Defendant Byrum were intended to harass, intimidate and silence Bilbrey in the exercise of his First Amendment right of free speech and his First Amendment right to petition the government for redress of grievances, as applicable to the states through the Fourteenth Amendment.
83. Defendant Byrum and the City of Winchester are liable to Plaintiff under 42 U.S.C. § 1983, for which Plaintiff is entitled to an award of compensatory damages, punitive damages and attorneys’ fees.

**VI DEFENDANTS VIOLATED PLAINTIFF’S CIVIL RIGHTS BY  
RETALIATORY ACTION FOR PLAINTIFF’S FREE SPEECH BY  
EXCLUDING PLAINTIFF FROM PUBLIC OPEN HOUSE**

84. Plaintiff hereby incorporates by reference all facts and allegations of Paragraphs 1-83 of Plaintiff’s Complaint.

85. On August 1, 2018, the City of Winchester and the Volunteers of America hosted an Open House at the Winchester House Rehabilitation Center, located in the former United Methodist Church sanctuary.
86. The Open House was advertised as being open to the public
87. On August 1, 2018, Bilbrey attempted to attend the Open House.
88. Approximately seven police officers from the Winchester Police Department were present at the entrance to the Winchester House
89. The police officers stopped Bilbrey from entering.
90. The Winchester police officers advised that they had been ordered to not allow anyone except invited guests in to the Open House was for invited guests only.
91. Bilbrey's belief and understanding is that the police officers were ordered by the Mayor and / or Police Chief to exclude Bilbrey from the Open House due to his stated opposition to the Rehab Center project.
92. Other persons who were not "invited guests" were permitted to enter and attend the Open House.
93. The actions of the City of Winchester Police as directed by Defendant Byrum were intended to harass, intimidate and retaliate against Bilbrey in the exercise of his First Amendment right of free speech and his First Amendment right to petition the government for redress of grievances, as applicable to the states through the Fourteenth Amendment.

94. Defendant Byrum and the City of Winchester are liable to Plaintiff under 42 U.S.C. § 1983, for which Plaintiff is entitled to an award of compensatory damages, punitive damages and attorneys' fees.

**VII SUPPLEMENTAL JURISDICTION CLAIM:  
FALSE ARREST AND MALICIOUS PROSECUTION**

95. Plaintiff hereby incorporates by reference all facts and allegations of Paragraphs 1-94 of Plaintiff's Complaint.
96. It is Plaintiff's belief and understanding that Bilbrey was singled out for special treatment at the Winchester City Counsel Special Meeting on November 27, 2017.
97. It is Plaintiff's belief and understanding that Defendants Byrum and Defendants City Council Members Sells, Lennington, Friend and Williams ordered and directed Police Chief Tucker, Assistant Police Chief Reed and Fire Chief Moore to arrest Bilbrey if he spoke at the Special Meeting of the Winchester Town Council on November 27, 2017.
98. Upon speaking as he left the Special Meeting, Bilbrey was arrested in the hallway outside the meeting by Tucker, physically assisted by Reed and Moore.
99. Bilbrey was singled out for arrest even though numerous other people spoke during the meeting, and continued to speak at the meeting after Bilbrey had exited the meeting room.

100. The arrest and prosecution of Bilbrey for disorderly conduct was without probable cause or any basis in law or fact.
101. The charge against Bilbrey was dismissed by Special Prosecutor Bryson as unfounded, noting that Mr. Bilbrey was engaging in protected political speech
102. Defendants including the City of Winchester engaged in false arrest and malicious prosecution of Plaintiff.
103. On March 29, 2018, Plaintiff timely filed a Notice of Claim pursuant to Indiana's Tort Claim Act, a copy of which is attached as Exhibit 1, which NOTICE was timely properly served by certified mail pursuant to the Indiana Tort Claims Act.
104. More than ninety days expired after the Tort Claims Notice and no response was made.
105. Plaintiff is entitled to an award of compensatory damages under Indiana state law for Malicious Prosecution and False Arrest.

**IX SUPPLEMENTAL JURISDICTION CLAIM:  
EXCESSIVE FORCE**

106. Plaintiff hereby incorporates by reference all facts and allegations of Paragraphs 105 of Plaintiff's Complaint.
107. When arrested in the hallway outside the Special Meeting, Bilbrey did not offer any resistance to Chief Tucker or those assisting him.
108. Despite Bilbrey's failure to offer any resistance, Tucker, with the assistance of Reed and Moore, physically pulled Bilbrey's arms up high behind his back in such a way as to purposefully inflict pain while putting on handcuffs.
109. Further, Tucker, with the assistance of Reed and Moore, threw Bilbrey against the wall in such a manner to inflict unnecessary pain and discomfort on Bilbrey.
110. The actions of Tucker, Reed and Moore were done in such a way as to intimidate, punish and retaliate against Bilbrey for his exercise of free speech and not for any legitimate purpose.
111. Defendants including the City of Winchester engaged in excessive force.
112. Plaintiff is entitled to an award of compensatory damages.

WHEREFORE, Plaintiff Kristopher Bilbrey, by counsel, requests Judgment in favor of the Plaintiff and against Defendants, and requests that the Court award damages for violation of 42 U.S.C. §1983 in the form of compensatory damages in the amount of \$500,000.00, punitive damages in an amount determined by the Court and Jury to sufficiently punish the Defendants and deter others from similar



conduct and attorneys' fees, and compensatory damages for malicious prosecution, false arrest and excessive force brought pursuant to this Court's supplemental jurisdiction in the form of compensatory damages in the amount of \$500,000.00, for the costs of this action, and for all other just and proper relief.

/s/ Stephen M. Terrell, #543-42

TERRELL LAW OFFICE, LLC  
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Indianapolis, IN 46256  
Phone: 317-856-8702  
Fax: 866-236-9480  
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March 29, 2018

Mayor Shon Byrum,  
City of Winchester  
113 E. Washington St  
Winchester, IN 47394

Tom Sells,  
City Council President  
City of Winchester  
113 E. Washington St  
Winchester, IN 47394

**SENT BY: CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Office of the Indiana Attorney General  
Attn: Tort Claims Investigations  
IGCS – 5<sup>th</sup> Floor  
402 West Washington Street  
Indianapolis, IN 46204

Political Subdivision Risk Management Commission  
311 West Washington Street  
Suite 300  
Indianapolis, IN 46204

**TORT CLAIMS NOTICE**

**My client:** Kristopher Bilbrey

**Defendants:** City of Winchester, Indiana; Mayor Shon Byrum; City Counsel Meeks Cockerill; Police Chief Rich Tucker; Ast. Police Chief Jon Reed; Fire Chief Gary Moore; City Councilors Tom Sells (President), Leesa Friend, Larry “Moe” Lennington, Melissa Williams

Dear Sir / Madam:

This is a Tort Claims Notice filed on pursuant to Indiana Code 34-13-3-1, et seq. I represent Kristopher Bilbrey and Joni Bilbrey, husband and wife. This claim is filed on behalf of Kristopher Bilbrey.

**CIVIL RIGHTS CLAIMS:** While this Tort Claims Notice is filed under Indiana law, Mr. Bilbrey is also asserting claims for violation of their civil rights under 42 U.S.C. §1983. The claims for violation of federal law do not require the filing of a Tort Claims Notice. While this Tort Claims Notice includes reference to the facts that constitute a violation of the Civil Rights of Mr. Bilbrey, no effort has been made to exhaustively set for the facts and basis supporting such Civil Rights Claims, which will be asserted in Federal Court, under federal

**Ex. 1**

law.

**KNOWN WITNESSES:**

Kristopher Bilbrey  
(765) 546-9796  
318 S. Meridian St.  
Winchester, IN 47394

Joni Bilbrey  
(937) 417-0788  
318 S. Meridian St.  
Winchester, IN 47394

Rhonda DeFrees  
(765)749-9497  
318 S. Meridian St.  
Winchester, IN 47394

Jakob Bilbrey  
(765) 546-0831  
318 S. Meridian St.  
Winchester, IN 47394

Mayor Shon Byrum, Mayor, City of Winchester  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Tom Sells, Winchester City Council President (Dist. #2)  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Larry "Moe" Lennington, Winchester City Council, Dist. #1  
(765) 584-6845  
113 E. Washington St.  
Winchester, IN 47394

Leesa Friend, Winchester City Council, Dist #4  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Melissa "Missy" Williams, Winchester City Council, At Large District  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

City Clerk Vicki Haney  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

City Attorney Meeks Cockerill  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Police Chief Rich Tucker  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Asst. Police Chief Jon Reed  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Fire Chief Gary Moore, Winchester Fire Dept  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

Michael Wickersham, Randolph County Commissioner  
(765) 584-6700  
100 S. Main St, Room #102  
Winchester, IN 47394

Bob McCoy: Randolph County Councilor  
(765) 584-6700  
100 S. Main St., Room #102  
Winchester, IN 47394

Alison Syme, M.D,  
(765) 584-0480  
St Vincent Care Centre  
409 E. Greenville Ave.  
Winchester, IN 47394

BILBREY TORT CLAIMS NOTICE 4

Jason Allen: Member, Winchester House Project Building Corporation  
(765) 584-6845  
113 E. Washington St  
Winchester, IN 47394

John von Arx III, Volunteers of America  
(317) 660-2830  
912 N. Delaware St.  
Indianapolis, IN 46202

Shannon Schumacher, Volunteers of America  
(317) 660-2830  
912 N. Delaware St.  
Indianapolis, IN 46202

Lynn Humphrey:  
(812) 584-3204  
312 S. Main St  
Winchester, IN 47394

David Daly, Randolph County Prosecuting Attorney  
(765) 584-2644  
Prosecutor's Office  
100 S. Main St. Room #202  
Winchester, IN 47394

Andrew J. Bryson, Special Prosecutor / Union County Prosecutor  
Prosecutor's Office  
26 West Union Street  
Liberty, IN 47353  
765-458-6131

Joan & Deeon Ashley  
(765) 546-0397  
421S. East St.  
Winchester, IN 47394

Cheryl Rohbins  
(765) 546-9918  
1895 SR 32 West  
Winchester, IN 47394

Marsha Cockerill  
400 S. Meridian St  
Winchester, IN 47394

Trevor D. Oakerson  
765-960-8857  
318 S. Meridian St.  
Winchester, IN 47394

Steve Gaddis  
Bill Gaddis Chrysler Dodge Jeep Ram  
1717 Wheeling Ave  
Muncie, IN 47303  
(844) 496-4146

Other persons attending the November 27 Special Meeting of the Winchester City Council  
Other persons currently not specifically known by Claimant but whose identity may be discovered in the process of investigation and discovery.

**CLAIMANT:** Kristopher Bilbrey. Mr. Bilbrey's residence is set forth above. His residence was the same at both the time of the various torts committed by the anticipated defendants, and at the time of filing this Tort Claims Notice.

Kris Bilbrey was a known opponent of a proposed project to convert a former United Methodist Church in Winchester into a drug rehabilitation center (hereinafter "Rehab Center" and "Rehab Center Project"). Mr. Bilbrey and his family reside only a short distance from the proposed site of the Rehab Center.

Mr. Bilbrey was politically active, unsuccessfully running for City Council in the Republican Primary against council person Missy Williams. He is also politically active on social media, where he is a vigorous opponent of the Rehab Center Project. Mr. Bilbrey is also a regular attendee at Winchester City Council meetings. He regularly publishes accounts of City Council meetings and other local government issues and actions on social media.

**DEFENDANTS:** The anticipated defendants are: City of Winchester, Indiana, its mayor Shon Byrum, its City Attorney Meeks Cockerill, the Winchester Police Department and Fire Department; City Councilors Leesa Friend, Larry "Moe" Lennington, Tom Sells and Melissa Williams; Police Chief Rich Tucker; Assistant Police Chief Jon Reed; and Fire Chief Gary Moore.

**FACTS UPON WHICH CLAIM IS BASED:**

**November 27, 2017 Special Meeting of Council and Arrest of Kristopher Bilbrey.**

A special meeting of the Winchester City Council was held on November 27, 2017 solely to address the Rehab Center Project. Standard procedure of Winchester City Council meetings is a period comments by the public. The legal notice for the meeting failed to state that public comment would not be allowed. However, those attending were notified that public comments would not be permitted.

The meeting was well attended, with nearly all seats taken. It lasted approximately 90

minutes. An audio recording of the meeting is posted on the City of Winchester website. The majority of the meeting was informational, dealing with Proposed Ordinance 2017-17 for approval of the Rehab Center Project.

At 1:22:30 into the meeting, a roll call vote was taken on the proposed ordinance, which passed by a 4-0 vote (one member absent). At 1:22:58, the presiding officer announced "I'll entertain a motion to adjourn."

At that point, all the business of the meeting was done.

Nevertheless, council members continued a free-form discussion of the recently passed ordinance. At 1:24:27, someone on the council begins talking about the location of the project and breaking down the cost of the project divided by Winchester households over the life of the needed land to fund the project. At that point, the Councilor Friend said, "We're not taking questions from the audience so please don't raise your hand."

At 1:25:28, Councilor Leesa Friend asked the audience, "How much would you pay to save someone's life?" Ms. Joan Ashley, a Winchester resident, stood up and shouted, "Save ours?"

This was then followed by the Councilor Friend saying "Let me finish. Let me finish"

Two seconds later, at 1:25:47, Police Chief Tucker shouts "Sit down," followed immediately by, "You can't disrupt a public meeting."

At 1:26:06, Joni Bilbrey said, "The problem is the location." Over the next ten seconds, there are louder voices both from the audience and the city council. Councilor Friend said, "We're not taking things from the audience." Joni responded "I get that." Kristopher Bilbrey commented "It was just a statement," to that point his only statement made that night. Joni Bilbrey then added a comment about the Council expecting her to raise her children next to a rehab center. At that point, there are numerous people talking over one another.

Councilor Lennington then singled out Mrs. Bilbrey from all the people in the audience who were talking, shouting to the police chief, "Let's go. Take them out of here." Chief Tucker moved toward Mrs. Bilbrey, but she was already getting up to leave, along with Rhonda DeFrees, Kristopher's mother. Lennington again shouted, "No! You're out of order, let's go!" This was at 1:26:06, just over thirty seconds from Councilor Friend's question to the audience about "How much would you pay to save a life?"

Mrs. Bilbrey and Rhonda DeFrees walked out of the meeting room unassisted. Mr. Bilbrey also walked to the door. As Mr. Bilbrey was walking through the doors and leaving the room, he said, "You're out of order. This whole place is out of order. This is a joke." The statement took less than three seconds as Mr. Bilbrey exited the room.

Mr. Bilbrey was walking down the hall to join his wife when he was assaulted by Chief Tucker. Tucker said, "Bilbrey, you're under arrest for disorderly conduct." Despite absolutely no resistance from Mr. Bilbrey, Chief Tucker and Assistant Chief Jon Reed shoved Mr. Bilbrey against the wall, grabbed his hands and painfully twisted his arms behind him. There was no resistance from Mr. Bilbrey, nor did he make any threat of violence or non-cooperation. The rough treatment of Mr. Bilbrey was excessive and not reasonable. This

rough treatment was an intended to send a message to Mr. Bilbrey and to punish him for his political opposition to the Mayor and Council.

Mr. Bilbrey was singled out among all the audience members who made comments. Not a single other person who spoke out was arrested or assaulted. The orchestrated nature of the arrest and assault on Mr. Bilbrey were demonstrated by the fact that Chief Tucker, Assistant Chief Jon Reed and Fire Chief Gary Moore immediately undertook a violent arrest of Mr. Bilbrey at his first words, even after he left the meeting – leaving the entire assembled crowd in the city council meeting room without any officers – despite the fact that the general hubbub among the crowd continued. But no one else who spoke up was arrested or even threatened with arrest.

Mr. Bilbrey's arrest and physical assault was an orchestrated plan intended to silence political opposition to the Mayor, the Council and the Rehab Project.

The impropriety of the arrest was admitted by Chief Tucker, who at the jail told Mr. Bilbrey that the arrest would never be prosecuted.

Union County Prosecutor Andrew J. Bryson was appointed Special Prosecutor concerning the arrest and charge against Mr. Bilbrey. He dismissed the charges as unfounded, noting that Mr. Bilbrey was engaging in protected political speech.

The action of the Defendants in this case constituted the torts of Malicious Prosecution, False Arrest, Assault, Battery, Intimidation, and Intentional Infliction of Emotional Distress. Additionally, the Defendants engaged in actions that violated Mr. Bilbrey's Civil Rights under both the United States Constitution and Indiana Constitution, including violation of his rights of free speech, right to petition the government, right to peaceably assemble, and right of freedom of association. Additionally, he has been denied these rights based upon his exercise of free speech.

### **January 22 2018: Intimidation and Tortious Interference with Contract for Employment**

At approximately 1 p.m. on January 22, 2018, Winchester Mayor Shon Bryum called the general number at Bill Gaddis Chrysler Dodge Jeep Ram, the car dealership in Muncie, Indiana where Mr. Bilbrey is employed as a new car salesperson. Mayor Byrum asked for sales, then asked for manager. He was connected with Steve Gaddis, owner of the dealership.

Mayor Byrum advised Mr. Gaddis that he was Mayor of Winchester and a past customer of the Gaddis dealership. Mayor Byrum went on to state that he has a problem with what Mr. Bilbrey, a Gaddis employee, has been posting on social media, including Facebook, about the Mayor and the City of Winchester. Mayor Byrum stated words to the effect that there would be adverse consequences for the Gaddis dealership if Mr. Bilbrey continued posting adverse statements and speaking out concerning the Mayor and the City of Winchester on social media.

As a consequence of this meeting, Mr. Gaddis met with Mr. Bilbrey and advised Mr. Bilbrey to "be careful" about his posts, to keep his business posts separate from his personal page.



BILBREY TORT CLAIMS NOTICE 8

He also told Mr. Bilbrey that he needed to remove from his Facebook page that he was employed at the Gaddis dealership.

Mayor Byrum's actions constituted intimidation and tortious interference with Mr. Bilbrey's contract for employment with Gaddis Chrysler Dodge Jeep Ram, and interference with his terms of employment. In addition, Mayor Byrum's actions were a clear intent to silence his critics by threatening employment action, which constituted a clear and present infringement upon the Civil Rights of Mr. Bilbrey, including his rights of free speech, right to petition the government and right to freedom of assembly, both under the United State Constitution and the Indiana State Constitution.

**DAMAGES:**

The physical and emotional damage to Mr. Bilbrey for the tortuous conduct of the anticipated Defendants and its employees, including their claims for loss of consortium, exceeds \$700,000.00 limit under Indiana's Tort Claims Act. Mr. Bilbrey has suffered further damage under federal law, which is not limited to the Indiana Tort Claims limit.

**CONCLUSION:**

All communications regarding this claim are to be directed to the below-signed counsel. No attempt should be made to directly communicate with Mr. and Mrs. Bilbrey regarding this claim or the events discussed in this Notice. If you have any questions regarding this matter or which to discuss its resolution, please contact me.

Very truly yours,

Stephen M. Terrell, #543-49

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Randolph (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephen M. Terrell, TERRELL LAW OFFICE, LLC, 9840 Westpoint Drive, Suite 100, Indianapolis, IN 46256

DEFENDANTS

County of Residence of First Listed Defendant Randolph (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

1:18-cv-3289 TWP-MPB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large grid of suit categories including Insurance, Personal Injury, Personal Property, Habeas Corpus, Labor, and other legal actions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC § 1983

Brief description of cause: Retaliation by City and officials for exercise of free speech opposing proposed city project

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 500,000 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10-25-2018 SIGNATURE OF ATTORNEY OF RECORD s/ Stephen M. Terrell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.