

THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

**JAMES RICHARDSON, individually,
and as a Representative of a Class
of all similarly situated others, and
MICHAEL HOWARD and NANCY HOWARD
his wife, individually, and
as a Representative of a Class
of all similarly situated others,**

CASE NO. 2012 CA _____

Plaintiff,

Class Representation

v.

**CITY OF FRUITLAND PARK, FLORIDA,
a political subdivision of the State of
Florida,**

Defendants.

_____ /

COMPLAINT

Plaintiffs, James Richardson, individually, and as a representative of a class of all similarly situated others, and Michael Howard and Nancy Howard, his wife, individually, and as a representative of a class of all similarly situated others, by and through their undersigned counsel, sue Defendant, City of Fruitland Park, Florida, a political subdivision of the State of Florida (hereinafter the "City") and allege as follows:

COUNT I

42 U.S.C. §1983 Violation, First Amendment Retaliation

1. Plaintiff, James Richardson (hereinafter "Mr. Richardson"), by and through the undersigned counsel, sues the City for the City's 42 U.S.C. §1983 violation, First Amendment Retaliation.
2. This Circuit Court has jurisdiction over this action pursuant to *Howlette v. Rose*, 496 U.S. 356 (1990); and *Haywood v. Drown*, 556 U.S. 729 (2009).
3. Venue is proper in Lake County. Mr. Richardson resides in Lake County. The City is in Lake County. Almost all of the City's violations of Mr. Richardson's First Amendment rights occurred in Lake County.
4. Mr. Richardson is a citizen of the United States and is protected by the First and Fourteenth Amendments of the United States Constitution. Mr. Richardson exercised

his First Amendment rights and the City committed the below acts in retaliation (hereinafter "retaliatory acts").

5. On or about January 20, 2011, Mr. Richardson commented on and questioned the City's expenditures and the performance of its City Manager, Ralph Bowers. Shortly thereafter in retaliation, the City accessed government data bases to obtain confidential information about Mr. Richardson and provided that information to the Mayor of the City, Chris Bell, and the City Clerk, Diane Gibson, who made the confidential information public. The City Manager in retaliation also instructed the Public Works Director's spouse, Pam Bostick, to interrupt Mr. Richardson whenever he began commenting on City business at City Commission meetings.

6. In June of 2011, Mr. Richardson exercised his First Amendment rights by commenting on the City's potential purchase of an electric system and questioned the City's expenditure of approximately \$93,000.00 on an electric system which did not result in any perceivable benefit. Shortly thereafter in retaliation, the City, through its City Manager, made false statements about Mr. Richardson's mother to Mr. Richardson's mother's employer violating Mr. Richardson's association rights.

7. On or about January 26, 2012, Mr. Richardson exercised his First Amendment rights by commenting on the City Manager's expenditure of \$37,000.00 without City Commission approval. Shortly thereafter in retaliation, the City, through its City Manager, falsely accused Mr. Richardson of abusing his position as an elected public official and falsely accused Mr. Richardson of violating Florida law by tampering with the City's computers. Also in retaliation, the City, under the direction of City's Manager and Police Chief, placed Mr. Richardson under surveillance.

8. In further retaliation, the City, through its City Manager, also falsely accused Mr. Richardson of violating his professional ethical rules as a realtor by attempting to take advantage of a lady, Toni Mikol, who was dying of cancer and who desired to sell her home (Mr. Richardson is a licensed real estate agent). The City, through its Police Chief, City Clerk and City Manager, attempted to obtain arrest warrants from the Florida Department of Law Enforcement regarding the City's false allegations that Mr. Richardson attempted to take advantage of Toni Mikol. The Florida Department of Law Enforcement refused to issue any arrest warrants. The Affidavit of Toni Mikol is attached hereto as Exhibit "A."

9. The City, through its Police Chief and City Manager, repeated the false allegations regarding Toni Mikol to numerous media outlets in Central Florida. The news media broadcasted the City's false statements concerning Mr. Richardson's alleged abuse of Toni Mikol throughout Central Florida.

10. Although the City Attorney determined Mr. Richardson did not create a hostile work environment, the City, through its City Manager, hired a private attorney to render an opinion that Mr. Richardson somehow created a "hostile work environment" at City Hall and engaged in inappropriate behavior. The City's allegations were false and the

City provided the private attorney with false statements. Based on the City's false statements and instructions, the private attorney rendered the opinion that Mr. Richardson created a hostile work environment and engaged in inappropriate behavior, but concluded he did not violate the employee code of conduct because he "was not a City employee."

11. On March 8, 2012, Mr. Richardson exercised his First Amendment rights by commenting on the City's failure to comply with Florida's Public Records law and the City Manager's poor job performance. Shortly thereafter in retaliation, the City published at a public meeting its private attorney's opinion that Mr. Richardson created a hostile work environment and that he should be disciplined except for the fact that he "is not a City employee." The City in further retaliation, through its City Mayor, City Manager and Police Chief, attempted to obtain an arrest warrant for Mr. Richardson on the grounds that he somehow breached the City's computer system.

12. On June 14, 2012, Mr. Richardson exercised his First Amendment rights, by speaking about the City Manager's behavior and expenditure of City funds. A copy of the Lake County Sheriff's report concerning Mr. Bowers is attached hereto as Exhibit "B." Shortly thereafter in retaliation, the City, through its City Manager, requested that two female City employees and the spouse of the Public Works Director, Pam Bostick, file false charges against Mr. Richardson for sexual harassment. In further retaliation for Mr. Richardson's June 14, 2012 exercise of his First Amendment rights, the Mayor requested that the City Attorney initiate a reprimand against Mr. Richardson and shortly thereafter, Chief Isaacs, while armed and on duty, harassed Mr. Richardson.

13. On July 19, 2012, Mr. Richardson exercised his First Amendment rights and expressed his disagreement with the City's claim that there was a \$100,000.00 in additional revenue to balance the budget when there was not. Shortly thereafter in retaliation, the City, through its City Manager, published false statements to numerous media outlets about Mr. Richardson that he created a hostile work environment at the City. The media broadcasted these false statements throughout Central Florida. The City, through its City Commission, in an attempt to inhibit Mr. Richardson from exercising First Amendment rights, also instituted "A Code of Ethics" which the City intended to use against Mr. Richardson if he spoke critically of the City.

14. On August 6, 2012, Mr. Richardson exercised his First Amendment rights and raised the issue of the City's unfair taxes and issues concerning utility customers' water bills. Mr. Richardson again opposed raising the unlawful police and fire fees. Shortly thereafter in retaliation, the City, through its Chief of Police, City Manager and Mayor, attempted to obtain arrest warrants against Mr. Richardson based on false statements that Mr. Richardson had again violated Florida law by inappropriately tampering with the City computer. The City, through its Police Chief, City Mayor and City Manager, published the false statements regarding Mr. Richardson's alleged inappropriate tampering with the City computer to media outlets throughout Central Florida. Those media outlets broadcasted the false statements throughout Central Florida. The State Attorney refused to prosecute.

15. On September 13, 2012, Mr. Richardson exercised his First Amendment rights by questioning the City's water and sewer fees and the City's budget practices. Mr. Richardson also again commented on the \$100,000 in unsubstantiated revenue to balance the budget. Shortly thereafter in retaliation, the Chief of Police while armed and on duty detained Mr. Richardson on City property, and threatened Mr. Richardson, without any basis, with criminal charges. During this detention, Mr. Richardson was physically threatened by the City's Building Inspector who refused to allow Mr. Richardson to leave. The City, through its Chief of Police, Mayor and City Manager, again attempted to obtain arrest warrants and met with the State Attorney to press charges against Mr. Richardson for disorderly conduct and obstruction of justice and now claimed that Mr. Richardson deleted public records from his computer. The State Attorney refused to prosecute.

16. On or about November 13, 2012, Mr. Richardson exercised his First Amendment rights by answering questions from Orlando Sentinel columnist Lauren Ritchie regarding City business and other matters of public concern.

17. On November 16, 2012, the Orlando Sentinel published Lauren Ritchie's column regarding City business and matters of public concern including the criminal investigation of City Manager, Ralph Bowers. A copy of Lauren Ritchie's November 16, 2012 column is attached hereto as Exhibit "C."

18. Shortly thereafter in retaliation for Mr. Richardson's exercise of his First Amendment rights and 4 days before the runoff election in which Mr. Richardson was a candidate, the City, through its Police Department, wrongfully accused Mr. Richardson of illegal acts (including witness tampering and further victimizing a rape victim), held a public retaliation protest against Mr. Richardson while armed and on duty and in uniform with an official police vehicle emergency lights flashing. Photographs of the Police Department's protest are attached hereto as Exhibit "D." Photographs of the police chief in uniform on duty actively campaigning and protesting against Mr. Richardson and threatening Mr. Richardson with imprisonment are attached hereto as Exhibit "E." A copy of the City's "Media Release" where it falsely stated that Mr. Richardson illegally tampered with a witness and further victimized a rape victim is attached hereto as Exhibit "F." Mr. Richardson never interfered with any investigation and did not tamper with any witnesses as verified by the alleged victim and the Lake County Sheriff's office.

19. The City's campaign against Mr. Richardson violates Section 104.31 Florida Statutes and Title V USC, Section 1502 (a)(1). The City Police Department and the individual officers of the City Police Department, including the Chief of Police, work in connection with programs financed in whole or in part by federal grants. Such grants include financial assistance from the federal government for City law enforcement programs (FY 2010 Justice Assistance Grant Program), criminal justice grants and other JAG Grants.

20. By accepting financial assistance from the federal government for law enforcement programs, the law enforcement officers and police department were prohibited from using their official authority and influence for the purposes of attempting to affect the result of Mr. Richardson's election for office in violation of Title V USC, Section 1502. The City, through its Mayor and Christopher Cheshire, in retaliation for Mr. Richardson's exercise of his First Amendment rights also mailed notice of the election to only those citizens the City expected to vote against Mr. Richardson and did not mail notices of the election to all City residents. The City also perpetuated the false allegations against Mr. Richardson that he somehow interfered with an investigation or tampered with a witness in violation of Florida law. As a result, many of Mr. Richardson's political signs were removed and some defaced. The City officers encouraged and supported statements that Mr. Richardson "supports rape." Some photographs of Mr. Richardson's defaced campaign signs are attached hereto as Exhibit "G."

21. On December 11, 2012, Mr. Richardson complained to the City about the Police Department's retaliation protest and also complained to the City about its unlawful charging of water utility customers "Police and Fire Fees" on their water bills when they already pay for such services through their ad valorem taxes. This was a matter of great public concern as the City imposed these unlawful police and fire fees on each water customer in the City.

22. On December 13, 2012, in retaliation for Mr. Richardson's exercise of his first amendment rights, the City, through its City Commissioners and staff, again accused Mr. Richardson of illegally disclosing information concerning an investigation and requested and directed the City Attorney to draft a resolution containing the false statements and resolving that the City found Mr. Richardson violated ethical rules.

23. The City, also in retaliation for Mr. Richardson's exercise of his First Amendment rights, destroyed the public records the City used in its retaliation protest against Mr. Richardson in violation of Chapter 119, Florida Statutes.

24. On January 10, 2013, Mr. Richardson exercised his First Amendment rights by speaking to a reporter from Channel 13 about matters of public concern. In retaliation, the City, through its Police Chief, armed and in uniform, physically confronted Mr. Richardson, instructed Mr. Richardson to cease speaking and yelled, "I'm in charge here."

25. In deliberate indifference to Mr. Richardson's First Amendment rights and even after repeated violations of Mr. Richardson's rights, the City failed to train its officials and employees with respect to their clear constitutional duty to not retaliate against citizens for exercising First Amendment rights.

26. The City's retaliatory acts were possible only because the City is clothed with the authority of State law and possesses the power it has by virtue of State law.

27. The City Officials who committed the above retaliatory acts had final decision making authority whether or not to commit those acts. The City delegated policy making authority to the City Officials who committed the retaliatory acts against Mr. Richardson.

28. By virtue of the numerous City Officials who repeatedly participated in many retaliatory acts against Mr. Richardson, the City had a persistent wide spread practice and custom of retaliatory action against Mr. Richardson whenever he exercised his First Amendment rights about matters of public concern and City business.

29. In each instance prior to the City's retaliatory acts, Mr. Richardson exercised his First Amendment rights relating to matters of important political, social and community concern.

30. The City adversely affected Mr. Richardson First Amendment protected speech. Each of the City's retaliatory acts would likely deter a person of ordinary firmness from the exercise of First Amendment Rights. Furthermore, it is settled law that no government may retaliate against citizens for exercise of First Amendment rights.

31. In violation of the First Amendment, the City's retaliatory acts were motivated by a spiteful effort to harm Mr. Richardson for reasons wholly unrelated to any legitimate government objective.

32. Each of the City's retaliatory acts subjected Mr. Richardson to a deprivation of his First Amendment rights and damaged him. Such damages include, but are not limited to, economic, and non economic losses, nominal damages, loss of income, mental anguish and emotional pain and suffering.

WHEREFORE, Mr. Richardson requests the Court enter a judgment for damages, including lost profits, against the Defendant, costs, interest, and attorney's fees and grant such other relief as the Court deems proper.

Demand for Jury Trial

Mr. Richardson demands trial by jury on all issues so triable.

COUNT II

Declaratory Judgment Class Action to Declare "Police Fees" and "Fire Fees" Invalid and Establish Common Fund

33. Plaintiffs, James Richardson, individually, and as representative of a class of all similarly situated others and Michael Howard and Nancy Howard, his wife, individually and as representative of a class of all similarly situated others (hereinafter jointly and severally "Class Representative") file this suit against the City and alleges a declaratory judgment action with supplemental relief to establish a common fund comprised of all the unlawful taxes paid by the Class Representative and each class member.

Class Representative Allegations

34. Class Representative is a member of a class defined as the City water utility customers who paid Law Enforcement Fees (hereinafter "Police Fees") and Fire Fees to the City.

35. On or about October 1, 2009, the City decided to spend more on police and fire services than its ad valorem tax revenue could support.

36. Rather than raise the ad valorem tax rate or cut the level of services, the City decided to impose upon each of its water utility customers "user fees" for Police and Fire services.

37. Whether the City's water customers use police and fire services or do not use police and fire services, the City's water customers are still charged the police and fire fee on each monthly water bill.

38. In 2009, the Fire Fee was \$2.00 per month for each water customer and the Police Fee was \$2.00 a month for each water customer.

39. These "user fees" for police and fire services are not authorized by the Florida Constitution, Florida General law or Florida special law.

40. The City did not conduct any studies to justify the fee and did not hire any experts to set the fee, evaluate the fee or fairly apportion the fee.

41. Article 7 § (1)(a), of the Florida Constitution provides "no tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted through the state except as provided by general law."

42. Article 7 § (9)(a) of the Florida Constitution provides "counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes for their respective purposes..."

43. The City is not authorized by the Florida Constitution or general law to levy Police Fees or Fire Fees and the City's imposition of Police Fees and Fire Fees is contrary to Florida established ad valorem taxation methodology.

44. The Police and Fire Fees, like the City's ad valorem taxes, support the general public services of police and fire protection. The City's general police and fire services can be used by all in the City whether they are water users or not.
45. The City's Police and Fire Fees are imposed on the City's water customers for the general benefit of all those who receive City police and fire general public services.
46. Rather than raise its ad valorem taxes to support its existing level of police and fire services or decrease the level of fire services or police services, the City increased the unlawful fees.
47. On October 1, 2010, the City, again without a study or any legal right, decided to arbitrarily increase its monthly Fire Fee to \$3.00 per month and increase its Police Fee to \$4.00 a month for every City water customer.
48. A year later, rather than raise its ad valorem taxes to support its existing level of police and fire services or decrease the level of fire services or police services, the City again increased the unlawful fees.
49. On or about October 1, 2011, again without a study or any legal right, the City decided to arbitrarily increase its Fire Service Fee to \$4.00 per month for every City water utility customer.
50. The Class Representative and each member of the class paid ad valorem taxes for general public police and fire protection, yet also paid additional fees for police and fire services as City water customers.
51. The City does not impose "Police Fees" and "Fire Fees" on individual properties or individual citizens. The City assesses "Police Fees" and "Fire Fees" on only those who are City water utility customers.
52. There is no logical relationship between charging police and fire fees based on whether one is a City water customer. The Police Fees and Fire Fees are not valid user fees and are unlawful taxes. Each water customer pays the same police and fire fee, regardless of how much or little the water customer uses police or fire services and regardless of the size or value of the property using the water services.
53. The Police Fees and Fire Fees are not properly approved and were arbitrarily established with no study, no evidence and no logical justification.
54. The Police Fees go to the City's General Fund. The City's Budget Summary is attached hereto as Exhibit "H."
55. The Fire Fees go to the City's General Fund. The City's Budget Summary is attached hereto as Exhibit "H."

56. For those water customers who owned improved property in the City, the additional Fire Fees and Police Fees provide no special benefit to the City water customer's assessed real property and pay for services provided to all in the City.

57. The Class Representative brings this action pursuant to Florida Rule of Civil Procedure 1.220(b)(2), or alternatively, Rule 1.220 (b)(3), on the Class Representative's behalf and all other similarly situated.

58. The relief sought is appropriate to the Class as a whole, as each member was subject to and did pay the unlawful Police Fees and Fire Fees.

59. Pursuant to the Florida Rule of Civil Procedure 1.220, Class Representative satisfies the following:

A. Numerosity: While the exact number of class members can be determined only by appropriate discovery from Defendant, on information and belief, there are approximately 1850 utility customers upon whom the City imposed approximately \$500,000 in unlawful taxes.

B. Common Questions of Law and Fact: There are common questions of law and fact to the claims of each member of the Class and the Class Representative, which include, but are not limited to (1) Whether the Police Fees are unlawful or unconstitutional; and (2) Whether the Fire Fees are unlawful or unconstitutional;

C. Typicality: The Class Representative's claims are typical of the claims of each member of the Class. Each member of the Class is or was a water customer who was charged and paid the unlawful Police Fees and Fire Fees. Each Class Member is entitled to a refund of all unlawful Police Fees and Fire Fees.

D. Adequate Representation: The Class Representative will fairly and adequately protect and represent the interests of each member of the class, the Class Representatives are claims identical to each Class Member's claims and they have no adverse interest to any Class Member. The Class Representative has a financial interest in this matter because of paying the unlawful fees and will litigate vigorously to obtain a successful result for each Class Representative and all others similarly situated. The Class Representative is aware of the responsibilities of Class representation. Class counsel is experienced in class action litigation and will vigorously pursue the claims of the Class. Class counsel has successfully defended and prosecuted Class action cases and complex litigation cases in State and Federal court. Lead Class counsel is Board Certified in local government law and is an expert on local government matters.

60. This action may be maintained pursuant to Rule 1.220(b)(2). The City's imposition of illegal taxes has an effect on all putative Class Members. The City illegally charged and collected Police Fees, and illegally charged and collected Fire Fees.

61. This class should also be maintained under Rule 1.220(b)(3) because questions of law and fact are common to Class Representative and other putative Class Members.

62. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The damages suffered by each class member will be relatively small although not insignificant. The expense and burden of individual litigation makes it virtually impossible for members of the class to effectively obtain redress individually for Defendant's wrongful imposition of illegal taxes.

Declaratory Judgment and Common Fund Allegations

63. Pursuant to §86.011, Florida Statutes, this Court may render a Declaratory Judgment on whether the City has the power or right to impose upon its City water customers a monthly Police Fee and Fire Fee.

64. The Class Representative is interested in the invalidity of the City's practice of charging its water customer Police and Fire Fees. All putative Class Members should be made parties to this case as they each have a claim and interest which would be affected by this Court's declaration that the City's practice of charging its water customers Police Fees and Fire Fees and that the putative Class Members are entitled to refunds.

65. The City contends the Fees are valid user fees and also contends that the payment of these Fire Fees and Police Fees are "voluntary" donations to help the City. However, the water bills submitted to the City's water customers state on every bill to every water customer "WATER SERVICE WILL BE SHUT OFF ON THE 21ST IF THE BILL IS NOT PAID BY 5:00 PM ON THE 20TH." Two true and correct copies of the Class Representative's water bills showing the Fire Fee charge and Police Fee charge are attached hereto as Exhibit "I."

66. Pursuant to Section 86.101, Florida Statutes, this Court should resolve the City's uncertainty regarding whether it has the legal right to tax Police Fees or Fire Fees to its water customers. The Florida Legislature empowers the Court to settle and afford relief from "insecurity and uncertainty with respects to rights, status, and other equitable or legal relations and its to liberally administered and construed."

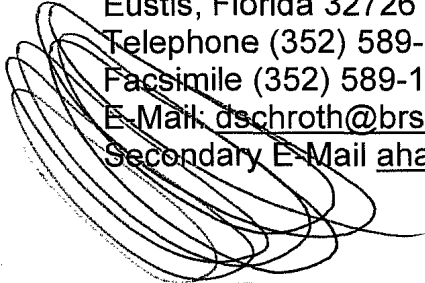
WHEREFORE, the Class Representative, James Richardson, individually and as a Class Representative and Michael Howard and Nancy Howard, his wife, individually and as Class Representative of a Class of all similarly situated others, respectfully requests the Court enter judgment:

A. Certifying the class described herein as represented by the Class Representative and Class counsel, pursuant to Florida Rule of Civil Procedure 1.222(b)(2), or alternatively, Rule 1.220(b)(3) and providing notice to all class members,

B. Declaring Defendants' Fire Fees void, invalid, illegal and unconstitutional,

- C. Declaring Defendants' Police Fees void, invalid, illegal and unconstitutional,
- D. Directing the City establish a common fund comprised of all illegally collected Police and Fire Fees plus interest to be distributed to the class less Class Counsel's attorney's fees,
- E. Refunding all amounts paid, plus interest less Class Counsel's attorney's fees on the unlawful Police and Fire Fees,
- F. Awarding attorney's fees to Class Counsel from the common fund of refunds,
- G. Awarding Costs,
- H. Providing additional compensation to the Class Representative pursuant to Florida law, and
- I. Awarding such other and further relief as the Court deems proper to render justice.

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