

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JOHN GARBER,

Plaintiff

Case No.

vs.

Hon.

MITCHELL DEISCH, individually and in his official capacity as the City Manager for Defendant, **CITY OF MANISTEE**; **DAVID BACHMAN**, individually and in his official capacity as Chief of Police/Director of Public Safety for Defendant, City of Manistee; **EDWARD BRADFORD**, individually and in his official capacity as Treasurer for Defendant City of Manistee, **JEFFREY MIKULA**, individually and in his official capacity as the DPW Director for Defendant City of Manistee, **PAUL R. SPANIOLA**, individually and in his official capacity as the Prosecuting Attorney for Mason County, Michigan and Special Prosecuting Attorney for the County of Manistee, Michigan, and **CITY OF MANISTEE**, a Municipal Corporation joint and severally,

Defendants

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VERIFIED COMPLAINT & JURY DEMAND

Jurisdiction Venue and Parties

This is a civil rights action brought pursuant to 42 USC 1983, 42 USC 1985 seeking declaratory and injunctive relief and money damages against the Defendants for purposefully discriminating, under color of law, in violation of the 1st, 4th, 5th and 14th Amendments and Equal Protection Clause of the United States Constitution. For his complaint against the Defendants, joint and severally; Plaintiff states as follows:

1. This court has jurisdiction pursuant to 28 USC 1331, 1343(a)(3), and 1343(a)(4). Jurisdiction for the declaratory relief sought is also permitted upon 28 USC 2201 and 2202. Venue lies in the Western District of Michigan pursuant to 28 USC 1391(b).
2. Plaintiff at all times relevant to this complaint was a citizen of the City of Manistee, Manistee County, Michigan, within the Western District of Michigan.
3. Defendant, City of Manistee, is a Municipal Corporation organized and existing under the Constitution and the laws of the State of Michigan.
4. Defendant, Mitchell Deisch, at all times relevant to this complaint was a resident of the City of Manistee, Manistee County, Michigan and was the City Manager for Defendant, City of Manistee.
5. At all times relevant to this complaint, Defendant David Bachman was a resident of the City of Manistee Chief of Police/Director of Public Safety for the Defendant, City of Manistee.
6. At all times relevant to this complaint, Defendant Edward Bradford was the Treasurer for the City of Onkama, Manistee County, Michigan.

7. At all times relevant to this complaint, Defendant Jeffrey Mikula was a resident of the City of Manistee, Manistee County, Michigan, employee of Defendant, City of Manistee and replaced Plaintiff as the Director of The Department of Public Works.
8. At all times relevant to this complaint, Defendant Paul R. Spaniola was a resident of the City of Ludington, County of Mason, Michigan and was the duly elected Prosecutor for Mason County, Michigan and was appointed Special Prosecutor by the Attorney General of the State of Michigan for the purpose of prosecuting Plaintiff in Manistee County, Michigan.

COMMON ALLEGATIONS

Plaintiff hereby incorporates paragraphs 1-8 above to avoid repetition .

9. Plaintiff John Garber, as of March 26, 2013, had worked for the Defendant, City of Manistee for forty three years and most recently was the Director of the Department of Public Works for approximately fifteen years.
10. On a regular basis, employees of the DPW would pick up scrap metal which had been abandoned within the City of Manistee, collected a sufficient quantity of said scrap metal and would take the metal to a junkyard and sell it for cash.
11. The money received from the junkyard was used to fund the DPW annual Christmas party, retirement parties for DPW workers, end of summer parties for summer DPW employees and to purchase items for the employees to use in the DPW.
12. The annual Christmas party was attended by members of the City Council, governmental officials and the City Manager.

13. Prior to March of 2013, Defendant Mitchell Deisch, on two occasions, went before the City Council asking the members of the City Council to terminate Plaintiff's employment in order that he could hire his friend, Defendant Jeffrey Mikula. On each occasion, the City Council denied Defendant Deisch's request.
14. In February of 2013, Defendant Jeffrey Mikula was terminated from his position with a local engineering company and was immediately hired by Defendant Deisch as the Utility Director.
15. On or about March 26, 2013, Defendants Deisch, Bradford, and Mikula went to Defendant Bachman and requested Bachman to do an investigation as to the scrap being sold by the DPW.
16. On or about March 27, 2013, Defendant Deisch ordered Plaintiff not to return to work and placed him on administrative leave.
17. On or about March 28, 2013, Defendant Bachman acting under the direct orders of Defendants Deisch and Mikula told Plaintiff that he was going to be arrested for embezzlement and that he should immediately retire or he would be in a position of losing his pension.
18. Defendant Bachman, on or about March 27, 2013 told Plaintiff what to put in his resignation letter.
19. Immediately upon Plaintiff resigning the Defendants Deisch, Bachman, Bradford and Mikula jointly determined that they would release to the local newspaper the fact that Plaintiff was being investigated for embezzling city funds.
20. On or about March 27, 2013, operating under the orders of Defendant Deisch,

Defendant Bachman contacted the Michigan State Police and requests that they do a formal investigation as to the alleged embezzlement of city funds by Plaintiff.

21. In May of 2013, Plaintiff gives notice to the City Clerk of his intent to run for a position on the City Council in the upcoming November, 2013 election.
22. On or about October 8, 2013, Defendant Spaniola was appointed Special Prosecutor by the Michigan Attorney General.
23. On October 21, 2013, Detective Miller sends a complaint to Defendant Spaniola suggesting that Plaintiff be charged with the commission of three misdemeanors involving embezzlement of city funds.
24. On October 29, 2013, a warrant is issued by Defendant Spaniola for Plaintiff's arrest. On November 2, 2013, just four days prior to the city election, the Defendants conspired to release to the local news media that a warrant had been issued for Plaintiff's arrest. This same article appeared in the Monday, November 4th edition of the local newspaper, stating that Plaintiff would be arrested and arraigned on the embezzlement charge.
25. On Tuesday, November 5, 2013, Plaintiff lost the election by sixteen votes.
26. On February 15, 2014, Defendant Spaniola sent a letter to Plaintiff's counsel threatening to dismiss the misdemeanor charges and to bring criminal felony charges against Plaintiff for embezzling city funds; if Plaintiff did not accept a plea offer made by Defendant Spaniola.
27. On and after February 15, 2014, Plaintiff refused to plead guilty to the misdemeanor embezzlement charges and defendant Spaniola dismissed the

misdemeanor charges.

28. On April 3, 2014, Defendants Deisch, Bachman, Bradford and Mikula, working in concert with Defendant Spaniola, had three felony warrants issued by Spaniola, calling for the arrest of Plaintiff ,on felony embezzlement charges.
29. On or about April 9, 2014, the local news media, once again reported that Plaintiff was to be arrested on new felony charges, alleging embezzlement of city funds.
30. On May 7, 2014, Plaintiff had to go through the excruciating embarrassment of going through a preliminary examination.
31. On May 7, 2014, after sitting through the preliminary examination, Plaintiff was bound over to Circuit Court.
32. In May of 2013, Defendant Spaniola filed in Mason County an application to be placed on the ballot for the upcoming Circuit Court Judge election.
33. In June of 2014, Plaintiff, through his attorney Mark Quinn, filed a Motion to Quash the Preliminary Examination.
34. On November 20, 2014, a hearing on the Plaintiff's Motion to Quash was held before the Honorable James Betzer, Manistee County Circuit Court Judge; Judge James Betzer, after hearing arguments from both sides entered an Order to Quash the Findings at the Preliminary Exam.
35. In January of 2015, Defendant Spaniola sent an email to Detective Miller of the

Michigan State Police advising him to destroy all the evidence as Spaniola would not be seeking an appeal.

COUNT 1

VIOLATION 42 U.S.C. § 1985 (2)

36. Plaintiff hereby incorporates paragraphs 1 through 35 above to avoid repetition.
37. Defendants Deisch, Bachman, Bradford, Mikula and Spaniola knew or should have known that it was a violation of 42 U.S.C. 1985 (2) to conspire in setting the timing for the release of the warrant for Plaintiff's arrest on November , 2013.
38. These five named Defendants in furtherance of the conspiracy to deprive Plaintiff of his right to free expression; that being the right to run for public office was a clear violation of Plaintiff's rights as secured under 42 U.S.C. 1985 (2).
39. At the time of the issuance of the misdemeanor warrant, Defendant Spaniola had already informed friends and family that it was his intent to run for the Circuit Court Judge position, which was being vacated by the incumbent jurist who, based upon his age was unable to run for reelection.
40. It was the intent of the Defendants in furtherance of the conspiracy to deprive Plaintiff of his rights to free expression, that being the right to run for public office, did ask Detective Miller to conduct additional investigations in order to delay the issuance of the warrant, to coincide with the city election, in which Plaintiff was running for a City Council position.
41. Defendants Deisch, Bachman, Bradford, Mikula and Spaniola did on and before the city election, conspire and act in furtherance of said conspiracy to directly and

indirectly deprive Plaintiff of his rights to freedom of expression; that being running for public office.

42. As a direct and proximate cause of the Defendant's actions, as herein set forth, Plaintiff lost the election by sixteen votes due primarily, due to the timing of the issuance of the arrest warrant and the release of the issuance of the arrest warrant to the local media.
43. As a direct and a proximate cause of Defendant's actions, Plaintiff's right to freedom of expression was chilled, abridged, and otherwise diminished out of causing him never to run for public office again.

WHEREFORE, Plaintiff requests damages for emotional distress based upon the unconscionable conduct of the Defendants in an amount of excess of \$75,000.00.

Plaintiff requests that this Court enter judgment against the Defendants for the following relief:

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government officials as a result of the reckless indifference with which they violated Plaintiff's right to equal protection of the laws

4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT II

VIOLATION OF 1st AMENDMENT RIGHTS ACTIONABLE UNDER 42 U.S.C. § 1983

44. Plaintiff hereby incorporates paragraphs 1-43 above to avoid repetition
45. The right to be a candidate for public office is protected under the 1st Amendment to the United States Constitution and a deprivation of said right is actionable under 42 U.S.C. § 1983.
46. In May of 2013, Plaintiff filed to be a candidate for a position on the City Council of the Defendant City of Manistee.
47. In order to delay the issuance of the misdemeanor warrant against Plaintiff, for allegedly embezzling city funds, the Defendants prolonged the issuance of the arrest warrant, until just before the date of the election was to take place for the City Council election.
48. As a citizen of the United States and State of Michigan, Plaintiff had a lawful right to run for a position on the City Council; said right was guaranteed and otherwise protected under the 1st Amendment to the United States Constitution which forbids discrimination against a individual for exercising his rights under

the 1st Amendment.

49. On and after October 8, 2013, Defendant Spaniola, did conspire with the other Defendants in order to delay the issuance of the warrant, ordered Detective Miller of the Michigan State Police to conduct needless, additional questioning of witnesses.
50. There was no reason why the issuance of the arrest warrant could not have taken place after the election which took place on November 4, 2013. Timing was everything in destroying Plaintiff's chances to be elected to the City Council.
51. As a direct and proximate result of the Defendant's unlawful acts individually and on a conspiratorial basis, Plaintiff lost the election and has suffered great emotional distress and economic loss.

WHEREFORE, Plaintiff requests damages for emotional distress based upon the unconscionable conduct of the Defendants in an amount of excess of \$75,000.00.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws

4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT III

VIOLATION OF 4TH AMENDMENT RIGHTS ACTIONABLE UNDER 42 USC§ 1983

52. Plaintiff hereby incorporates paragraphs 1-51 above to avoid repetition .
53. In May, 2013, the Defendants Deisch, Bachman, Bradford and Mikula, not acting in good faith and without probable cause, did conspire to institute an investigation against Plaintiff which they knew, or should have known was not based upon fact or evidence that Plaintiff had embezzled city funds.
54. The Defendants, acting under color of law, did cause Plaintiff to be arrested for a misdemeanor embezzlement charge, for personal and malicious reasons without adequate proof or facts to support the charge.
55. In order to embarrass and humiliate Plaintiff, and for the purpose of providing employment for Defendant Mikula, the Defendants did conspire to release the fact that the Defendant City of Manistee's Police Department was investigating Plaintiff for alleged embezzlement of city funds. At the time the Defendants released the embezzlement information to the local news media, the Defendants had not requested the Michigan State Police to start its formal investigation.
56. In order to force Plaintiff to retire from the Defendant City of Manistee,

Defendant Bachman told Plaintiff that he should immediately retire, because if he was arrested, he may not obtain his city pension benefits; further, Defendant Bachman advised Plaintiff as to what to write in his resignation letter.

57. The Defendants will not be able to show that they reasonably believed, in good faith, that the arrest of Plaintiff was constitutionally sound and warranted.
58. As a further violation of Plaintiff's rights under the 4th Amendment, Plaintiff is able to show that the actions of the Defendants, in May of 2014 when they threatened Plaintiff with a dismissal of the misdemeanor charge and the institution of felony charges, using the same evidence, would take place if he refused to plead guilty to the misdemeanor charge.
59. This form of extortion on the part of the Defendants, further demonstrates that the Defendants were acting in bad faith and that their actions were not constitutionally grounded and were an act of conspiring to violate Plaintiff's 4th Amendment Rights.
60. As a direct and proximate result of the Defendants actions, as herein set forth, Plaintiff has suffered extreme emotional distress, and has suffered great economic loss.

WHEREFORE, Plaintiff requests damages for emotional distress based upon the unconscionable conduct of the Defendants in an amount of excess of \$75,000.00.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him

2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws
4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT IV
CIVIL CONSPIRACY

61. Plaintiff hereby incorporates paragraphs 1-60 above to avoid repetition.
62. Defendants illegally, maliciously and wrongfully conspired with one another with the intent to and for the illegal purpose of having Plaintiff falsely arrested and preventing Plaintiff from being elected to a public office.
63. Defendants, in combination, conspired to deprive Plaintiff of his constitutional rights as above set forth, and to have Plaintiff arrested in order to destroy his good name and reputation in the community and to prevent Plaintiff from being elected to a public office.

64. This conspiracy resulted in the illegal, unlawful or tortious activities as herein set forth including but not limited to ruining Plaintiff's reputation, causing Plaintiff to be falsely arrested and other tortious or criminal acts as herein set forth.
65. As a result of the conspiracy and Defendant's illegal, wrongful, or tortious acts, Plaintiff sustained the following damages which include but are not limited to loss of wages, loss of retirement accrued benefits, emotional distress and related damages.
66. The Defendants are jointly, severally and/or alternatively liable to Plaintiff for all of his injuries and damages.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against the Defendants in any amount in excess of \$75,000.00 plus reasonable costs and attorney fees.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws
4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act

of 1976, 42 U.S.C. 1988(b)

5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT V
MALICIOUS PROSECUTION

67. Plaintiff hereby incorporates paragraphs 1-66 above to avoid repetition.
68. Defendants instituted and initiated the allegations of criminal activity against Plaintiff without probable cause and with malice.
69. Upon information and belief, Defendants instituted the investigation for personal reasons, which include but are not limited to the following:
 - A. Vexation
 - B. Damage to Plaintiff's professional reputation
 - C. Damage to Plaintiff's community reputation
 - D. Retaliation for Plaintiff's efforts to run for a position on the City Council.
70. MCL 600.2907 provides for civil and criminal liability for every person who, for vexation, trouble, or with malice, causes another to be arrested, attached or in any way proceeded against by any process of civil or criminal action without that person's consent.
71. The Michigan State Police closed the investigation of Defendants allegations on or about January 15, 2015 and no criminal charges have been brought relative to

the allegation nor has an appeal been taken by the Defendants as it relates to the Circuit Court granting Plaintiff's Motion to Quash the Preliminary Examination.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against the Defendants in any amount in excess of \$75,000.00 plus reasonable costs and attorney fees.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws
4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT VI

ABUSE OF PROCESS

72. Plaintiff hereby incorporates paragraphs 1-71 above to avoid repetition.
73. Defendant abused the criminal investigatory process by using it for their ulterior motives or purpose to cause vexation, trouble, embarrassment, damage to Plaintiff's professional reputation, damage to Plaintiff's community reputation and as retaliation for Plaintiff running for public office. Such use of the process was not legitimate, regular or legal.
74. As a corroborating act of Defendant's improper purpose, Defendants through Sergeant Riley of the Manistee Police Department who then provided information to Detective Sergeant Miller of the Michigan State Police when Defendants knew or should have known that the information contained in that report was false.
75. As a further corroborating act, Defendant repeated the false allegations against Plaintiff contained in Exhibit 1 when Detective Sergeant Miller interviewed the Defendants during the course of the investigation.
76. Defendants submission of the initial police report to Sergeant Miller, as well as their false statements to Sergeant Miller were wilful and intentional.
77. The allegations and misuse of the criminal investigatory process was improper since Defendants knew, or should have known that the allegations regarding Plaintiff's actions were false.
78. As a direct result of Defendants abuse of the criminal investigatory process, Plaintiff's professional reputation and status within the community have been damaged and he has suffered mental anguish.

WHEREFORE, Plaintiff requests damages against the Defendants in any amount in excess of \$75,000.00 plus costs and attorney fees; further, Plaintiff requests such economic loss as determined at time of trial and other damages which are provided by law, statute and court rule.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws
4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

COUNT VII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

79. Plaintiff hereby incorporates paragraphs 1-78 above to avoid repetition.

80. The actions taken by the Defendants as set forth in paragraphs xx through xx above constitute extreme and outrageous conduct which is not sanctioned or otherwise condoned by society.
81. The actions of the Defendants as set forth in paragraphs xx through xx above were done with full intent and/or recklessness knowing that the consequences of their actions would cause Plaintiff to suffer extreme economic hardship and extreme anxiety and emotional distress.
82. The actions taken by the Defendants as set forth in paragraphs xx through xx above and concurred in by Defendant, City of Manistee, was cause for Plaintiff suffering extreme emotional distress, fear of being arrested by the Michigan State Police and the loss of his ability to make a living.
83. The actions taken by the Defendants as set forth in paragraphs 9 through 33 above caused Plaintiff to suffer severe emotional distress which is not to be condoned and it is recognized as extreme and outrageous conduct by society.

WHEREFORE, Plaintiff demands damages in any amount in excess of \$75,000.00 plus costs, interest and attorney fees.

1. an award to Plaintiff of back pay or damages for lost earnings in the amount he would have earned, with interest, from the date that he would have been employed but for the unlawful discrimination against him
2. an award to Plaintiff of compensatory damages sufficient to compensate him for his mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Defendants' actions.
3. an award to Plaintiff of punitive damages against Defendant government official

as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws

4. an award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b)
5. an award to Plaintiff of other and additional legal and/or equitable relief to which he may be entitled.

Respectfully submitted,

By: /S/ Jamil Akhtar

Jamil Akhtar

DEMAND FOR JURY TRIAL

Demand for trial by jury is hereby made.

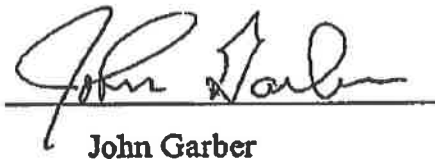
By: /S/ Jamil Akhtar

Jamil Akhtar

VERIFIED COMPLAINT

The following facts are within my personal knowledge and, if called to testify, I could and would competently testify thereto. I, John Garber, hereby adopt each and every paragraph above as my declaration of said statements being truthful. I am over twenty-one years of age. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 29 day of April, 2016


John Garber