

1 **Paul V. Avelar**  
AZ Bar No. 023078  
2 INSTITUTE FOR JUSTICE  
3200 N. Central Ave., Ste. 2160  
3 Phoenix, AZ 85012-1114  
4 Tel: (480) 557-8300  
Email: pavelar@ij.org

5 **Michael Greenberg\***  
DC Bar No. 1723725  
6 **Benjamin A. Field\***  
NY Bar No. 5430129;  
7 DC Bar No. 1046902  
8 **McCarley Maddock\***  
SC Bar No. 106372  
INSTITUTE FOR JUSTICE  
9 901 N. Glebe Road, Ste. 900  
Arlington, VA 22203-1854  
10 Tel: (703) 682-9320  
11 Email: mgreenberg@ij.org;  
bfield@ij.org; mmaddock@ij.org

12 *Attorneys for Plaintiff Madrid*  
13 \*Motions for Admission *Pro Hac Vice*  
to be filed

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Fernando Madrid,

No. \_\_\_\_\_

17 *Plaintiff,*

COMPLAINT

18 v.

19 Michael Whiting, individually and in  
his official capacity as Apache County  
20 Attorney; Daryl Greer; Trent Jensen;  
Apache County, Arizona; Apache  
21 County Attorney's Office,

22 *Defendants.*

1 INTRODUCTION

2 1. This civil-rights lawsuit seeks to vindicate Plaintiff Fernando (“Fernie”) Madrid’s First and Fourteenth Amendment rights to be free from government suppression  
3 of, and retaliation against, his constitutionally protected expressive activity.

4  
5 2. Fernie has spent decades as an educator. He holds a master’s degree in  
6 educational leadership, and he has served as a teacher, assistant principal, principal,  
7 assistant superintendent, and interim superintendent. He specialized in helping to turn  
8 around under-resourced, predominantly Native American schools.

9 3. It was only fitting that the next step in his education career was to run for  
10 Superintendent of Schools in Apache County, Arizona, his home county and a county  
11 whose land contains multiple tribal reservations. Fernie first ran for that office in 2016.  
12 Although he did not win the primary election, he ran without issue.

13 4. Fernie decided to run for superintendent again in 2024. He filed paperwork  
14 to begin his candidacy for the November 2024 election in late February of that year. In the  
15 primary election, his opponent would have been the incumbent superintendent, Joy  
16 Whiting. Joy Whiting is married to Michael Whiting, who was then the Apache County  
17 Attorney.

18 5. Fernie’s electoral challenge to Joy Whiting did not sit well with Michael  
19 Whiting. Rather than allow the race to play out at the ballot box, Michael Whiting launched  
20 a campaign of intimidation and harassment against Fernie and Fernie’s family to make  
21 Fernie drop out. He used two henchmen on his County Attorney’s Office payroll, Daryl  
22 Greer and Trent Jensen, in this campaign. Michael Whiting, Greer, and/or Jensen obtained

1 records not readily available to the public about Fernie, his family, and his property;  
2 surveilled and photographed Fernie and his home; threw rocks at Fernie’s home at  
3 nighttime; physically assaulted Fernie while he was publicly collecting signatures to appear  
4 on the ballot (with one henchman declaring, “Michael Whiting is just getting started with  
5 you”); and sent to Fernie’s home a mysterious, anonymous letter that threatened both legal  
6 action against Fernie and his family and the dissemination of private information about  
7 Fernie and his family to various government and media agencies if Fernie did not drop out  
8 of the race by a set deadline.

9           6.       The intimidation campaign succeeded, and Fernie was forced out of the race  
10 for fear of his own and his family’s safety. With her competition cleared, Joy Whiting sailed  
11 to reelection as Superintendent of Schools unopposed in both the primary and general  
12 election. Michael Whiting, too, was reelected to the County Attorney post unopposed. But  
13 Michael Whiting no longer holds that office because he is no longer eligible: The State Bar  
14 suspended his law license after he was indicted for his harassment and intimidation of  
15 Fernie, among other alleged abuses of his office. The criminal case against Michael  
16 Whiting remains ongoing. One of the henchmen (Daryl Greer) has already pleaded guilty  
17 to a misdemeanor for his actions against Fernie.

18           7.       The democratic principles enshrined in our Constitution are meant to ensure  
19 that elections are settled at the ballot box with free and open discourse, not with harassment  
20 campaigns. Declaring one’s candidacy for local office is a protected expressive act—  
21 indeed, core political speech protected by the First Amendment. When government  
22 officials suppress and retaliate against such protected speech, as the Defendants did here,

1 they violate the First and Fourteenth Amendments. This lawsuit seeks to hold Michael  
2 Whiting, Greer, Jensen, and Apache County accountable for violating Fernie’s rights.

3 **JURISDICTION & VENUE**

4 8. This is a civil-rights action brought under the First and Fourteenth  
5 Amendments to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and  
6 the Declaratory Judgment Act, 28 U.S.C. § 2201.

7 9. This court has jurisdiction under 28 U.S.C. §§ 1331 (federal-question  
8 jurisdiction) and 1343 (civil-rights jurisdiction).

9 10. Venue lies in this Court, in its Prescott Division (for which filings are made  
10 in the Phoenix Division) because, as described below, a substantial part of the events giving  
11 rise to the claims in this action occurred in Apache County, Arizona. *See* 28 U.S.C.  
12 § 1391(b)(2); L.R. Civ 5.1(a), 77.1(a).

13 **PARTIES**

14 11. Plaintiff Fernando (“Fernie”) Madrid is a citizen of the United States. He was  
15 born in, grew up in, and resides in Apache County, Arizona.

16 12. Defendant Michael Whiting is the former Apache County Attorney. He is  
17 sued both in his individual capacity and in his official capacity as the holder of that office  
18 during the events at issue here.

19 13. Defendant Daryl Greer is a former employee of the Apache County  
20 Attorney’s Office. He is sued in his individual capacity.

21 14. Defendant Trent Jensen is a former employee of the Apache County  
22 Attorney’s Office. He is sued in his individual capacity.



1           23. Also by 2024, Daryl Greer and Trent Jensen were both employees of the  
2 Apache County Attorney’s Office.

3           24. Greer held the title of “lead investigator.”

4           25. Yet Greer had no certification from the Arizona Peace Officer Standards and  
5 Training Board, no law-enforcement training, and no law-enforcement experience, all of  
6 which one would typically expect someone performing investigative duties for a law-  
7 enforcement agency to possess.

8           26. Jensen held the title of “legal assistant.”

9           27. Yet Jensen did not assist with the typical responsibilities of a legal assistant  
10 and, on information and belief, did not have the training typically associated with a legal  
11 assistant.

12           28. Indeed, on information and belief, when employees of the Apache County  
13 Attorney’s Office other than Michael Whiting, Greer, and Jensen were interviewed by the  
14 Arizona Attorney General’s Office in June 2024, no one could identify the duties or  
15 responsibilities Greer or Jensen fulfilled for the County Attorney’s Office for which they  
16 were employed.

17           29. Both Greer and Jensen took orders and assignments concerning their  
18 employment with the Apache County Attorney’s Office directly from Michael Whiting.

19           **B. Fernie Madrid**

20           30. Fernie is 66 years old. He was born and spent much of his childhood in and  
21 around St. Johns, Arizona, the county seat of Apache County.

22

1           31. For generations, many branches of Fernie’s family have lived in the St. Johns  
2 area. Today, much of Fernie’s family lives in either St. Johns or the Phoenix metropolitan  
3 area, or both. The two areas are just a few hours’ driving distance apart.

4           32. Fernie’s elderly father fits that mold: He lives in the Phoenix area during the  
5 colder months and in St. Johns during the warmer months. Much of Fernie’s family chips  
6 in to help take care of Fernie’s father, including Fernie.

7           33. Fernie likewise splits his time between the Phoenix area (specifically, in  
8 Laveen) and St. Johns. But he considers St. Johns his principal home and residence. He is  
9 registered to vote in St. Johns, for example, and has been for as long as he can remember.

10           34. Fernie’s family has a long history of public service. For many years, Fernie’s  
11 father worked for the Arizona Department of Transportation. Earlier in life, Fernie served  
12 in the Army Reserve before receiving an honorable discharge. And all of Fernie’s  
13 immediate family members, including Fernie himself, have worked in education for long  
14 periods.

15           35. Fernie started his education career as a middle-school science teacher.

16           36. Throughout his career, Fernie served as an assistant principal, principal,  
17 assistant superintendent, and interim superintendent. He also holds a master’s degree in  
18 educational leadership.

19           37. About 75% of Fernie’s education career took place in Apache County  
20 schools.

21           38. Apache County is situated in Arizona’s northeast corner. It has the most land  
22 designated as Indian reservation of any county in the United States.

1 39. Over his time as an educator, Fernie developed a specialty in helping to turn  
2 around underserved predominantly Native American schools.

3 40. Today, Fernie is mostly retired from education work. But he remains  
4 passionate about education and student success, and he maintains his teaching credentials  
5 and occasionally substitute teaches.

6 41. Before that, Fernie sought to use his decades of educational-leadership  
7 experience by seeking election as the Apache County Superintendent of Schools.

8 42. In 2016, Fernie ran for Apache County Superintendent of Schools for the first  
9 time. He garnered nearly 40 percent of the vote in a contested primary election.

10 43. Fernie decided to seek election as school superintendent once again in 2024,  
11 but this soon triggered Michael Whiting's intimidation campaign.

12 **C. Fernie begins to seek election as Superintendent of Schools in 2024.**

13 44. After his unsuccessful run for Superintendent of Schools in 2016, Fernie  
14 decided to run again in 2024.

15 45. Before publicly launching his campaign in 2024, Fernie spent substantial  
16 time formulating his platform, coming up with a campaign social-media plan, and  
17 generating commitments from stakeholders to support him.

18 46. Succeeding in the 2024 election would require Fernie to defeat the  
19 incumbent, Joy Whiting.

20 47. Joy Whiting was first elected Apache County Superintendent of Schools in  
21 2020. She ran unopposed in both the primary and general elections.

22 48. Joy Whiting is married to Michael Whiting.

1           49. Both Fernie (and Fernie’s family) and the Whitings call the small town of St.  
2 Johns home, so Fernie was long familiar with the Whitings.

3           50. Before 2024, Fernie had never had a problem with either Joy Whiting or  
4 Michael Whiting.

5           51. In fact, Fernie actively supported Michael Whiting’s initial campaign for  
6 County Attorney in 2008.

7           52. Candidates for a primary election must file a nomination petition 120 to 150  
8 days before the primary election. The nomination petition must be supported by a number  
9 of qualified signers set by statute. A.R.S. §§ 16-311(a), 16-322.

10           53. And before obtaining signatures on a nomination petition, the would-be  
11 candidate must file a “statement of interest.” A.R.S. § 16-311(H).

12           54. Fernie filed his statement of interest to appear on the Democratic primary  
13 ballot for the 2024 election for Apache County Superintendent of Schools. It was marked  
14 as received by the Apache County Elections Department on February 26, 2024.

15           55. Fernie’s statement of interest complied with every requirement in section 16-  
16 311(H).

17           56. Over the next few weeks, Fernie worked toward obtaining the number of  
18 signatures required under section 16-322. He drove all over Apache County to appear in  
19 public spaces around the county, where he alerted people to his candidacy and solicited  
20 signatures.

21           57. The initial reception to his campaign was strong. Within a few weeks, he had  
22 garnered the required number of signatures to support a valid nomination petition.

1           58. He continued seeking additional signatures around the County, both in an  
2 abundance of caution in case any signatures were challenged and to build support with  
3 voters for his campaign.

4           **D. Michael Whiting’s intimidation and harassment campaign forces Fernie out of**  
5           **the race.**

6           59. Sometime after Fernie filed his statement of interest with the Apache County  
7 Elections Department, Michael Whiting learned of Fernie’s filing and his candidacy to  
8 challenge Michael Whiting’s wife for Superintendent of Schools.

9           60. Michael Whiting concocted a scheme intending to intimidate, harass, and  
10 retaliate against Fernie so that Fernie would end his campaign.

11           61. Michael Whiting’s intimidation and harassment tactics against Fernie played  
12 out in several acts. Several were executed by Greer and Jensen—employees of the Apache  
13 County Attorney’s Office—at Michael Whiting’s direction.

14           62. First, on or around March 7, 2024, Michael Whiting personally submitted a  
15 records request to the Maricopa County Recorder’s Office.

16           63. The records request sought voter information and property records  
17 concerning Fernie and his wife and records concerning anyone else affiliated with the  
18 address of Fernie’s property in Laveen.

19           64. The documents that Michael Whiting sought were not readily accessible, for  
20 example, on the internet. Someone would need to affirmatively and specifically request  
21 them via a public-records request to access them.

22

1           65. Michael Whiting’s records request asked that the records be returned to  
2 Michael Whiting via email by March 15, 2024.

3           66. On or around that same day, March 7, Daryl Greer—who lived and worked  
4 hours away—drove to Fernie’s Laveen property.

5           67. Greer surveilled the property, taking photographs of the property, of the  
6 vehicle in the driveway, and of the mailboxes where mail at the property is received.

7           68. The photographs were later found on a camera-storage card in Greer’s  
8 possession.

9           69. Greer was acting in his capacity as lead investigator for the Apache County  
10 Attorney’s Office in surveilling and photographing Fernie’s Laveen property. Greer’s  
11 surveillance and photographing of Fernie’s Laveen property was conducted at Michael  
12 Whiting’s direction. At the time, Michael Whiting was Apache County’s final policymaker  
13 for the Apache County Attorney’s Office because he was the County Attorney.

14           70. Over the next couple of weeks, Fernie noticed strange men following him  
15 around and taking photos of him, both in Apache County and in Laveen.

16           71. The two strange men were Daryl Greer and Trent Jensen.

17           72. Greer and Jensen were acting in their respective capacities with the Apache  
18 County Attorney’s Office—lead investigator and legal assistant—in following and taking  
19 photos of Fernie. Greer’s and Jensen’s following and taking photos of Fernie was at  
20 Michael Whiting’s direction. At the time, Michael Whiting was Apache County’s final  
21 policymaker for the Apache County Attorney’s Office because he was the Apache County  
22 Attorney.

1           73. Fernie was not used to having strangers follow him or take his picture. He  
2 began to feel anxious and uneasy, and he struggled to reconcile those feelings with  
3 simultaneous worries that he was just being paranoid or merely imagining that people were  
4 following him.

5           74. That same month, a stranger came to Fernie's property in Laveen,  
6 unannounced and uninvited. Fernie was not there; Fernie's son was. The stranger, a man,  
7 was looking for Fernie. When Fernie's son explained that Fernie was not there, the man  
8 attempted to give a large bunch of documents to Fernie's son.

9           75. Fernie's son did not accept the documents. Fernie's son also called Fernie,  
10 who spoke with the strange visitor and asked the man to identify himself. The man refused  
11 to identify himself and left.

12           76. On information and belief, the man who attempted to give Fernie's son the  
13 documents was either Daryl Greer or Trent Jensen.

14           77. The man who showed up unannounced and uninvited to Fernie's Laveen  
15 property looking for Fernie, attempted to serve Fernie's son documents, and refused to  
16 identify himself to Fernie on the phone was acting in his capacity as an employee with the  
17 Apache County Attorney's Office. He was acting at Michael Whiting's direction. At the  
18 time, Michael Whiting was Apache County's final policymaker for the Apache County  
19 Attorney's Office because he was the Apache County Attorney.

20           78. Following the uninvited and unannounced visit, Fernie's son and Fernie felt  
21 that their privacy and the sanctity of their private property had been invaded. Fernie's  
22 anxiousness and uneasiness increased; he began to fear for both his own and his family's

1 safety. The incident so creeped out Fernie and his son that Fernie bought a new home-  
2 security system for the Laveen property.

3 79. Fernie did not yet connect these odd events to his budding campaign for  
4 Superintendent of Schools, much less to Michael Whiting. He continued gathering  
5 signatures for his nomination petition and campaigning around Apache County.

6 80. That is what Fernie was doing on March 17, 2024: standing in front of a  
7 church on a main thoroughfare in St. Johns, gathering signatures and publicizing his  
8 campaign.

9 81. Fernie was holding a clipboard with paperwork for people to sign in support  
10 of his nomination petition when two men approached him.

11 82. Fernie explained to the men who he was and what he was campaigning for,  
12 and he asked the men if they'd like to sign his petition.

13 83. The men told Fernie that they knew who he was.

14 84. Fernie did not know who the men were.

15 85. The two men were Daryl Greer and Trent Jensen.

16 86. One of the men started to reach for the clipboard, acting as if he was going  
17 to sign Fernie's petition.

18 87. The other man knocked the clipboard out of Fernie's hands and pushed him  
19 in the chest, knocking him back toward the street.

20 88. One of the men then told Fernie: "Michael Whiting is just getting started with  
21 you."  
22

1           89. Greer and Jensen were acting in their respective capacities with the Apache  
2 County Attorney’s Office—lead investigator and legal assistant—in their March 17  
3 physical attack on Fernie. Greer and Jensen were acting at Michael Whiting’s direction. At  
4 the time, Michael Whiting was Apache County’s final policymaker for the Apache County  
5 Attorney’s Office because he was the Apache County Attorney.

6           90. This was the first time Fernie had reason to believe that Michael Whiting or  
7 others in the Apache County Attorney’s Office might be trying to intimidate him to drop  
8 out of the race.

9           91. Fernie suffered myriad negative feelings after Greer and Jensen’s physical  
10 attack. He felt physical pain from the clipboard being smacked out of his hand and from  
11 being violently shoved in the chest. He felt humiliation and embarrassment from being  
12 publicly degraded, especially by those in the local-government ecosystem he was trying to  
13 break into. And his anxiety and fear continued to increase, as he dreaded what Michael  
14 Whiting, with his significant political power, might do to him next.

15           92. Because the men had invoked the name of the Apache County Attorney—the  
16 public prosecutor for the County—in knocking his clipboard out of his hands and pushing  
17 him, Fernie reported the intimidating actions to the Arizona Attorney General’s Office.

18           93. At night on March 17—the same day that Greer and Jensen physically  
19 attacked Fernie—someone (or some group of people) threw rocks at Fernie’s St. Johns  
20 home.

21           94. On information and belief, Greer and/or Jensen threw the rocks at Fernie’s  
22 St. Johns home.

1           95. On information and belief, Greer and/or Jensen acted in their respective  
2 capacities with the Apache County Attorney’s Office—lead investigator and legal  
3 assistant—in throwing rocks at Fernie’s St. Johns home. On information and belief, Greer  
4 and Jensen acted at Michael Whiting’s direction in throwing rocks at Fernie’s St. Johns  
5 home. At the time, Michael Whiting was Apache County’s final policymaker for the  
6 Apache County Attorney’s Office because he was the Apache County Attorney.

7           96. Fernie immediately connected the rock-throwing to the physical attack  
8 earlier in the day. The attack on his home magnified his anxiety and his fear for both his  
9 own and his family members’ safety. Greer and/or Jensen had, by now, encroached on both  
10 of Fernie’s homes in a short span. Fernie’s cousin lives directly behind Fernie’s St. Johns  
11 home, Fernie’s nephew lives across the street from it, and Fernie’s father was set to move  
12 back into the St. Johns home for the warmer months just a few weeks later. Fernie spiraled  
13 at the thought that Michael Whiting would begin directing intimidation tactics or attacks  
14 on Fernie’s family members next. He began contemplating dropping out of the race for his  
15 and his family’s safety.

16           97. Finally, the last act in the intimidation campaign was the sending of ominous  
17 and mysterious packages.

18           98. Five days later, on March 22, two mysterious packages, each from a sender  
19 and address that Fernie did not recognize, arrived at both of Fernie’s homes—in St. Johns  
20 and in Laveen.

21           99. The packages frightened Fernie. Given the escalating actions he’d faced over  
22 the previous two weeks, he feared that the packages might contain arsenic or some other

1 harmful substance. So he did not open them and instead reported them and turned them  
2 over to the Attorney General’s Office for investigation, since he’d already reported Greer  
3 and Jensen’s physical attack to that office.

4 100. Under the duress of this string of intimidating and harassing actions—the  
5 tailing and photographing, the physical assault in front of the church, the verbal threat, the  
6 rock-throwing, and the mysterious packages—Ferne dropped out of the race for  
7 Superintendent of Schools on March 28, 2024.

8 101. In his letter to the Apache County Elections Director explaining his  
9 withdrawal, he stated that he had given “the matter careful consideration” and that his  
10 decision was “heartfelt.” His withdrawal letter specifically cited “coercive tactics by  
11 Apache County Attorney Michael Whiting concerning his commitment to assure that his  
12 wife Joy Whiting remains in office,” including “a recent assault which [Ferne] experienced  
13 []and reported[.]” “I *DO NOT WANT* to place myself in harm’s way,” his withdrawal letter  
14 advised. “My father’s health, my safety and health[,] and the safety and welfare of my  
15 family have led to this unprecedented decision which I have been forced to make,” he  
16 continued.

17 102. Ferne then ceased campaigning or otherwise publicly speaking about his  
18 desire to become Apache County Superintendent of Schools in 2024.

19 103. Ferne learned later, from the Attorney General’s Office, that the packages  
20 and their contents were still more intimidation tactics and threats directed by Michael  
21 Whiting and carried out by his henchmen.  
22

1           104. The packages indicated that they were sent from “Ranch LLC.” At the time,  
2 “Ranch LLC” was not a registered agency with the Corporation Commission of Arizona.  
3 The packages were also marked as being sent from P.O. Box 137 in Overgaard, Arizona.  
4 But a postal inspector confirmed that this postal address did not exist at the time the  
5 packages were sent.

6           105. The contents of the two packages were materially identical. They contained  
7 an anonymous, unsigned letter addressed to Fernie along with nearly 200 pages of deeply  
8 intrusive photos and documents attached.

9           106. The letter was an attempt to force Fernie from the race for Superintendent of  
10 Schools. It threatened legal action against Fernie to challenge whether Fernie was a valid  
11 candidate and attendant ruinous litigation costs. It also threatened to make intrusive  
12 subpoenas seeking personal documents from and about Fernie and his family. The sender  
13 would follow through on these threats, the letter stated, *unless* Fernie dropped out of the  
14 race by April 1, 2024. In threatening fashion and to demonstrate the breadth of the  
15 anonymous sender’s knowledge of Fernie’s loved ones, it identified a dozen of his family  
16 members by their first, middle, and last names along with their dates of birth.

17           107. Among the nearly 200 pages of intrusive attachments were numerous photos  
18 of Fernie’s home in Laveen and records about his and his family’s properties. The photos,  
19 it turned out, were surveillance photos Greer had driven all the way to Laveen to take on  
20 or around March 7 and which were later found on his camera-storage card.

21

22

1           108. The last document in the packet was a candidate-withdrawal form that  
2 would—if Fernie filled it out, notarized it, and sent it back to the Apache County Elections  
3 Director—end his candidacy for superintendent.

4           109. Michael Whiting drafted and compiled the letter’s contents and attachments  
5 or, at least, directed Greer to compile them. At Michael Whiting’s direction, Greer sent the  
6 packages to Fernie. He sent them from America One Mail and Ship in Show Low, Arizona,  
7 and he used a credit card in Michael Whiting’s name to pay for the shipping. In taking these  
8 actions, Greer and Michael Whiting were acting in their capacities with the Apache County  
9 Attorney’s Office—lead investigator and County Attorney, respectively. At the time,  
10 Michael Whiting was Apache County’s final policymaker for the Apache County  
11 Attorney’s Office because he was the Apache County Attorney.

12           110. The purported basis for the threatened legal action to challenge Fernie’s  
13 validity as a candidate was an insinuation that Fernie was not an Apache County resident.  
14 That insinuation was false. Fernie resided in Apache County during both of his runs for  
15 Superintendent of Schools in 2016 and 2024. He has been validly registered to vote in  
16 Apache County for well over a decade—indeed, for as long as he can remember. No one  
17 had questioned Fernie’s residency before, including when he ran for office in Apache  
18 County in 2016 (against an opponent who was not Joy Whiting).

19           111. Even if someone—whether Michael Whiting or anyone else—held a genuine  
20 concern over Fernie’s eligibility for office in Apache County, Arizona law provides a civil  
21 process for bringing eligibility challenges in court. In light of their professional experience  
22

1 and their own use of such processes in their personal election campaigns in the past,  
2 Defendants are (and were in March 2024) well aware of that civil process.

3 112. It is categorically *not* lawful to resolve election eligibility concerns through  
4 stalking, physical assaults, verbal threats, and extorting opponents to drop out (among other  
5 intimidation tactics), as Michael Whiting directed and Greer and Jensen carried out against  
6 Fernie throughout March 2024. Arizona's prosecution of Michael Whiting and Greer  
7 (detailed in the next section) makes that plain.

8 113. On information and belief, the County Attorney's office under Michael  
9 Whiting's leadership had never taken such an interest in a candidate's eligibility concerns  
10 as Michael Whiting, Greer, and Jensen did with Fernie in 2024. Nor, certainly, had the  
11 office under Michael Whiting's leadership ever used intimidating tactics, like the stalking,  
12 physical assaults, verbal threats, and extortion employed against Fernie, in seeking to  
13 resolve election eligibility concerns. (Again, doing so would likely yield criminal charges,  
14 as it did here.) On information and belief, the County Attorney's office under Michael  
15 Whiting's leadership did not file legal challenges to any candidate's eligibility or prosecute  
16 alleged residency fraud with any regularity. Both the County Attorney's Office's legal  
17 filings under Michael Whiting's watch and Greer's civil challenge to an opposing  
18 candidate's eligibility (in a personal campaign for city council years earlier) were well-  
19 covered in the White Mountain Independent newspaper, but the newspaper's coverage does  
20 not reveal any candidate-eligibility challenges by the County Attorney's office under  
21 Michael Whiting's leadership.

22

1           114. Against that backdrop, the string of intimidating actions Michael Whiting,  
2 Greer, and Jensen took against Fernie throughout March 2024 were clearly motivated by a  
3 desire to suppress Fernie’s political activity because it challenged Joy Whiting’s reelection  
4 as superintendent.

5           **E. The Arizona Attorney General’s Office Investigates and Indicts the Whittings**  
6           **and Greer.**

7           115. The Attorney General’s Office opened an investigation into the harassment  
8 and intimidation of Fernie.

9           116. The Attorney General’s Office was also investigating both Michael Whiting  
10 and Joy Whiting for potential crimes involving the misuse of their offices.

11           117. In June 2024, the Attorney General’s Office executed a search warrant at both  
12 the Apache County Attorney’s Office and the Whittings’ home.

13           118. The Attorney General’s Office obtained and executed the search warrant in  
14 part because the Attorney General’s Office, after issuing a subpoena earlier, had reason to  
15 believe that Michael Whiting had been destroying or hiding evidence pertinent to the  
16 investigation.

17           119. Specifically, the Attorney General’s Office believed that Michael Whiting  
18 had been using WhatsApp (an encrypted phone application) for official County business,  
19 had replaced his cell phone, and had replaced County Attorney’s Office staff computers.

20           120. Michael Whiting was not at the County Attorney’s Office when the search  
21 warrant was executed. When his staff called him to let him know about the search, he told  
22 his chief deputy that he was nearby and would be at the office soon.

1           221. But Michael Whiting never came to the office that day, and he lied about his  
2 whereabouts over the next several days. He or his attorney inconsistently told people who  
3 were present at the search that he was on pre-planned family leave or conducting meetings  
4 with the Navajo Nation elsewhere in the county. Neither story was true. His staff tried to  
5 find him using the GPS on his county-issued vehicle, but Michael Whiting had turned off  
6 the GPS.

7           222. Citing the Attorney General’s Office’s search of the County Attorney’s Office  
8 and Michael Whiting’s erratic behavior during and after, all three of Michael Whiting’s  
9 deputy attorneys publicly called on him to resign.

10           223. In response, Michael Whiting, Greer, and Jensen engaged in retaliatory and  
11 intimidating behavior toward the deputies.

12           224. Specifically, Michael Whiting, Greer, and Jensen slowly and menacingly  
13 drove past the deputies’ houses and tailed them around town.

14           225. All three of the deputies obtained injunctions against Michael Whiting,  
15 Greer, and Jensen, prohibiting further harassment of the deputies.

16           226. The injunctions required Michael Whiting, Greer, and Jensen to stay away  
17 from the deputies’ workplace—the Apache County Attorney’s Office.

18           227. In August 2024, a grand jury indicted Michael Whiting and Greer.

19           228. The grand jury’s indictment included one count against each of Michael  
20 Whiting and Greer for misdemeanor “Harassment” and one count for misdemeanor  
21 “Sending Threatening or Anonymous Letter.” These were based on their conduct towards  
22 Fernie.

1           129. The indictment also included three counts against Michael Whiting for  
2 felony “Misuse of Public Monies,” one count for felony “Theft,” one count for  
3 misdemeanor “Theft,” one count for felony “Conflict of Interest,” and one count for felony  
4 “Stealing, Destroying, Altering or Secreting Public Record.” Greer was also indicted on  
5 two of the felony “Misuse of Public Monies” counts. The indictment alleged that Michael  
6 Whiting and Greer illegally (a) used County Attorney’s Office funds to purchase shirts and  
7 bags promoting Joy Whiting’s status as Superintendent of Schools and (b) used an Apache  
8 County credit card to purchase over \$10,000 in gym equipment for the County Attorney’s  
9 office.

10           130. The indictment accused Michael Whiting, moreover, of illegally (a) stealing  
11 over \$10,000 from his office’s “pending forfeiture” account (where assets seized for  
12 potential forfeiture are held until a court declares whether they should be returned to the  
13 owner or forfeited to law-enforcement agencies) to help purchase cars for his office; and  
14 (b) using his personal Gmail account for official county business.

15           131. The indictment also charged Joy Whiting with one count for felony “Misuse  
16 of Public Monies” and one count for felony “Conflict of Interest.” The indictment alleged  
17 that Joy Whiting and Michael Whiting had illegally (a) used Superintendent of Schools  
18 office funds to purchase a new Ford Expedition (worth about \$80,000) that was assigned  
19 to Michael Whiting’s office and primarily used by Michael Whiting, and (b) failed to  
20 disclose to the County Board of Supervisors the conflicts of interest arising from their use  
21 of their respective office’s funds for the benefit of the other (or other’s office).

22

1           132. A true and correct copy of the combined indictment against Michael Whiting,  
2 Joy Whiting, and Greer is attached to this complaint as Exhibit 1.

3           133. In January 2025, Greer accepted a plea deal in which he pleaded guilty to  
4 misdemeanor “Sending Threatening or Anonymous Letter.”

5           134. The factual basis for Greer’s guilty plea to that offense reads: “On or between  
6 March 7, 2024 and March 22, 2024, in the jurisdictions of Apache County and Maricopa  
7 County, Arizona. Defendant, Daryl Greer, while employed at the Apache County  
8 Attorney’s Office, knowingly aided and assisted co-defendant, Michael Whiting, in taking  
9 photos of Fernando Madrid’s Maricopa County residence and vehicle, conducted  
10 surveillance on said residence and performed general investigative background work on  
11 Fernando Madrid, with the reasonable knowledge that such information would be used by  
12 co-defendant, Michael Whiting, in part and parcel with Whiting’s own investigation on  
13 Fernando Madrid, culminating into a rather lengthy threatening letter and attachments sent  
14 to Fernando Madrid in a concerted effort to deter Fernando Madrid from seeking political  
15 office in Apache County.”

16           135. Michael Whiting’s and Joy Whiting’s criminal cases remain ongoing.

17           136. The chief deputy county attorney also filed a complaint against Michael  
18 Whiting with the Arizona State Bar in June 2024.

19           137. In August 2024, the Apache County Board of Supervisors voted to fund  
20 Michael Whiting’s defense against the bar complaint.

21

22

1 138. A disciplinary judge placed Michael Whiting's bar license on interim  
2 suspension, effective November 1, 2024, and lasting at least until the criminal charges  
3 against Michael Whiting are resolved.

4 139. Michael Whiting was reelected as Apache County Attorney in November  
5 2024. No other candidate appeared on the ballot in either the primary or general election.

6 140. The suspension of his law license makes him ineligible for the office,  
7 however, and he has since been replaced as County Attorney.

8 141. Joy Whiting, too, was reelected as Superintendent of Schools in November  
9 2024. No other candidate appeared on the ballot in either the primary or general election.

10 142. Joy Whiting remains in office as Apache County Superintendent of Schools.

11 **INJURY TO PLAINTIFF**

12 143. Defendants' string of intimidating, harassing, and retaliatory actions directed  
13 at Fernie throughout March 2024 directly and proximately caused severe harms to Fernie.

14 144. Defendants' string of intimidating, harassing, and retaliatory actions directed  
15 at Fernie throughout March 2024 were designed to force Fernie to drop his efforts toward  
16 becoming Apache County Superintendent of Schools.

17 145. Defendants' string of intimidating, harassing, and retaliatory actions directed  
18 at Fernie throughout March 2024 caused Fernie to drop his efforts toward becoming  
19 Apache County Superintendent of Schools.

20 146. But for Defendants' string of intimidating, harassing, and retaliatory actions  
21 directed at Fernie throughout March 2024, Fernie would have successfully and lawfully  
22

1 submitted a nomination petition to appear on the ballot as a candidate in the 2024 primary  
2 election for Apache County Superintendent of Schools.

3 147. But for Defendants' string of intimidating, harassing, and retaliatory actions  
4 directed at Fernie throughout March 2024, Fernie would have continued campaigning and  
5 communicating with the public about his ideas for public education in Apache County  
6 through at least the July 2024 primary election.

7 148. But for Defendants' string of intimidating, harassing, and retaliatory actions  
8 directed at Fernie throughout March 2024, Fernie would have continued exercising his core  
9 political speech rights for longer and more often.

10 149. Defendants' string of intimidating, harassing, and retaliatory actions directed  
11 at Fernie throughout March 2024 chilled Fernie's core political speech.

12 150. Fernie also spent significant time and resources preparing and conducting his  
13 campaign *through* March 28, 2024.

14 151. Specifically, Fernie spent a significant amount of time talking with  
15 education-field stakeholders around Apache County before noticing his intent to become a  
16 candidate to ensure he would have a base of support. He spent significant time creating a  
17 platform of issues and ideas that he would run on and convey to the public whose signatures  
18 and votes he sought. He spent significant time formulating a social-media plan for his  
19 campaign. And he invested much time driving to and appearing in various places in Apache  
20 County, to inform the public of his campaign and the ideas he was running on and to seek  
21 ballot-nomination signatures.  
22

1           152. Fernie also spent a significant amount of money (in the form of gas) and  
2 resources (in the form of wear on his vehicle) driving all around Apache County to seek  
3 support from education-field stakeholders, inform the public of his campaign, and obtain  
4 signatures for his nomination petition.

5           153. That is not a small matter in Apache County. Apache County contains over  
6 11,000 square miles. It is the sixth-largest county in the contiguous United States. The drive  
7 from its northern end to its southern end traverses over 200 miles and can take about four  
8 hours. Fernie repeatedly campaigned in northern Apache County communities like Chinle,  
9 St. Michaels, and Window Rock to reach the predominantly Navajo voters there. These  
10 communities are a three- or four-hour drive—around 200 or more miles—roundtrip from  
11 Fernie’s residence in St. Johns.

12           154. By directly and proximately causing Fernie to cease his budding campaign,  
13 Defendants’ string of intimidating, harassing, and retaliatory actions directed at Fernie  
14 throughout March 2024 ensured that the time, money, and resources Fernie had spent on  
15 his campaign through March 28, 2024, were wasted.

16           155. The string of intimidating, harassing, and retaliatory actions Defendants  
17 directed at Fernie throughout March 2024 caused Fernie pain and suffering, including  
18 shame, embarrassment, humiliation, anxiety, fear, and loss of confidence in his community  
19 standing, as well as physical pain from Greer and Jensen’s physical attack upon him.

20           156. Specifically:

21           a. Fernie was not used to having strangers follow him or take his picture.

22           Greer’s and Jensen’s following Fernie and taking photos of him made him

1 feel anxious and uneasy. Fernie struggled to reconcile those feelings with  
2 simultaneous worries that he was just being paranoid or merely imagining  
3 that people were following him.

4 b. Following the uninvited and unannounced visit to Fernie's property, Fernie's  
5 son and Fernie felt that their privacy and the sanctity of their private property  
6 had been invaded. Fernie's anxiousness and uneasiness increased; he began  
7 to fear for both his own and his family's safety. The incident so creeped out  
8 Fernie and his son that Fernie bought a new home-security system for the  
9 Laveen property.

10 c. Fernie suffered myriad negative feelings after Greer and Jensen's physical  
11 attack. He felt physical pain from the clipboard being smacked out of his  
12 hand and from being shoved in the chest. He felt humiliation and  
13 embarrassment from being publicly degraded, especially by those in the  
14 local-government ecosystem he was trying to break into. And his anxiety and  
15 fear continued to increase, as he worried what Michael Whiting, with his  
16 significant political power, might do to him next.

17 d. The rock-throwing attack on Fernie's home magnified his anxiety and his  
18 fear for both his own and his family members' physical safety. Greer and/or  
19 Jensen had, by now, encroached on both of Fernie's homes in a short span.  
20 Fernie's cousin lives directly behind Fernie's St. Johns home, Fernie's  
21 nephew lives across the street from it, and Fernie's father was set to move  
22 back into the St. Johns home for the warmer months just a few weeks later.

1 Fernie spiraled at the thought that Michael Whiting would begin directing  
2 intimidation tactics or attacks on Fernie’s family members next. He began  
3 contemplating dropping out of the race for his and his family’s safety.

4 e. Ultimately, Fernie had to choose between two painful options: the  
5 embarrassment of having to succumb to a bully and withdraw from a race in  
6 which he’d invested substantial time and resources and been publicly asking  
7 for support, or the fear that he’d be continuing to put himself and his family  
8 in harm’s way if he pressed on. Both required suffering.

9 157. Even after he dropped out of the race, Fernie often remained paralyzed by  
10 fear because he knew that Michael Whiting, Greer, and Jensen remained in public office  
11 and did not know whether or when they might inflict additional harassment on him or his  
12 family. At times, Fernie’s fear made it difficult for him to perform daily tasks and help to  
13 take care of his family.

14 158. Fernie remains passionate about education and believes that his leadership  
15 and passion could improve education outcomes in Apache County. But Fernie still feels  
16 fear, anxiety, shame, embarrassment, humiliation, and loss of confidence in his community  
17 standing today because of the string of intimidating, harassing, and retaliatory actions  
18 Defendants directed at him throughout March 2024.

19 159. Fernie remains worried that speaking out about public-education issues in  
20 Apache County or pursuing a run for Apache County Superintendent of Schools against  
21 Joy Whiting in the future will subject him to intimidating, harassing, and retaliatory actions  
22 by Defendants like those directed at him throughout March 2024. In other words, Fernie

1 now knows that he must weigh the benefit of exercising his First Amendment rights against  
2 the very real chance that he could be subject to government officials' intimidation,  
3 harassment, and retaliation in response to his doing so.

4 160. Punitive damages are justified against the individual defendants because their  
5 conduct was motivated by evil motive or intent, or it involved reckless or callous  
6 indifference to Fernie's federally protected rights.

7 **CAUSES OF ACTION**

8 **Count I**

9 **42 U.S.C. § 1983 – First and Fourteenth Amendments**

10 **Free Speech Clause claim against Michael Whiting, Greer, and Jensen individually**

11 161. Fernie realleges and incorporates by reference the allegations in paragraphs  
12 1 through 160 as if fully stated herein.

13 162. Fernie's campaigning to become Apache County Superintendent of  
14 Schools—including his noticing his intent to become a candidate for office, his  
15 communicating to the public about his campaign and his ideas if elected to office, and his  
16 solicitation of signatures for his nomination petition—constitutes core political speech that  
17 warrants the highest protection under the First Amendment.

18 163. Using their respective authorities under color of state law, Michael Whiting,  
19 Greer, and Jensen subjected Fernie to the deprivation of his First Amendment rights by  
20 harassing and intimidating him to stop engaging in First Amendment-protected activity.

21 164. Michael Whiting, Greer, and Jensen engaged in the following harmful acts  
22 intended to and proximately causing Fernie to cease exercising his First Amendment rights:

- 1 a. Surveilling Fernie’s property, including by taking photos of the property, the  
2 vehicle in the property’s driveway, and the mailbox where mail is received at  
3 the property. (*See* ¶¶ 66-69.)
- 4 b. Repeatedly following and taking photographs of Fernie. (*See* ¶¶ 70-73.)
- 5 c. Approaching Fernie’s property uninvited and unannounced, attempting to  
6 leave strange packages/documents with Fernie’s son, then refusing to  
7 identify oneself. (*See* ¶¶ 74-78.)
- 8 d. Approaching Fernie while he was soliciting signatures for his nomination  
9 petition, knocking his clipboard from his hands, forcefully pushing him in  
10 the chest, then warning, “Michael Whiting is just getting started with you.”  
11 (*See* ¶¶ 80-92.)
- 12 e. Throwing rocks at Fernie’s home. (*See* ¶¶ 93-96.)
- 13 f. Sending threatening, anonymous letters to Fernie’s homes, from a fictitious  
14 sender and address, attempting to force Fernie to drop his political campaign;  
15 threatening Fernie with legal action, including ominous threats to expose his  
16 and his family’s personal information and documents to view and ominous  
17 insinuations that the sender had been investigating Fernie’s extended family  
18 (by using their middle names and dates of birth in the letter). (*See* ¶¶ 97-109.)

19 165. Michael Whiting personally articulated a goal to Greer and Jensen, who were  
20 his direct subordinates in the County Attorney’s Office, that they get Fernie to drop his  
21 campaign for Superintendent of Schools that challenged Michael Whiting’s wife, Joy  
22 Whiting.

1           166. Michael Whiting personally directed, or was at least aware of and ratified,  
2 each of the acts described in paragraph 164.

3           167. Michael Whiting understood and intended that those acts would intimidate  
4 Fernie into dropping his campaign for Superintendent of Schools.

5           168. Greer personally participated in each of the acts described in paragraph 164.

6           169. Greer understood and intended that those acts would intimidate Fernie into  
7 dropping his campaign for Superintendent of Schools.

8           170. On information and belief, Jensen personally participated in each of the acts  
9 described in paragraph 164, or at least personally participated in the acts described in  
10 paragraphs 164.b and 164.d.

11           171. Jensen understood and intended that those acts would intimidate Fernie into  
12 dropping his campaign for Superintendent of Schools.

13           172. The intimidating acts described in paragraph 164 were plainly outside of  
14 Michael Whiting's, Greer's, and Jensen's legitimate authority as members of the Apache  
15 County Attorney's Office.

16           173. Explicit efforts to chill a person's First Amendment-protected expression  
17 were plainly outside of Michael Whiting's, Greer's, and Jensen's legitimate authority as  
18 members of the Apache County Attorney's Office.

19           174. In their actions seeking to intimidate Fernie into dropping his campaign for  
20 Superintendent, Michael Whiting, Greer, and Jensen proceeded outside of the ordinary  
21 investigative, prosecutorial, and judicial process expected of their office. Indeed, they acted  
22 criminally, as Greer's guilty plea demonstrates.

1           175. Through the acts described in paragraph 164, Michael Whiting, Greer, and  
2 Jensen chilled Fernie’s First Amendment-protected expression, and Fernie’s choice to self-  
3 censor was an objectively reasonable one under the circumstances.

4           176. But for the acts described in paragraph 164, Fernie would have continued  
5 with his campaign and related First Amendment-protected activity through at least the  
6 primary election several months later.

7           177. Michael Whiting’s, Greer’s, and Jensen’s actions under color of state law  
8 were also unconstitutional First Amendment retaliation because they exercised official  
9 authority in retaliation for Fernie’s exercise of his First Amendment rights.

10           178. Michael Whiting personally articulated a goal to Greer and Jensen, who were  
11 his direct subordinates in the County Attorney’s Office, that they retaliate against Fernie  
12 for seeking election as Superintendent of Schools and challenging Michael Whiting’s wife,  
13 Joy Whiting.

14           179. Michael Whiting, Greer, and Jensen engaged in the harmful acts against  
15 Fernie described in paragraph 164 because they were motivated to punish and intimidate  
16 Fernie for exercising his First Amendment right to run against Joy Whiting for  
17 Superintendent of Schools.

18           180. Michael Whiting, Greer, and Jensen understood and intended that the acts  
19 described in paragraph 164 would retaliate against Fernie for exercising his First  
20 Amendment right to run against Joy Whiting for Superintendent.

21           181. Any purported concern over Fernie’s residency or eligibility for office was,  
22 at best, a pretext for Michael Whiting, Greer, and Jensen’s real motivation: to retaliate

1 against Fernie for exercising his First Amendment right to run against Joy Whiting for  
2 Superintendent. Their unorthodox (and illegal) actions, the fact that no one raised any  
3 concern over Fernie’s residency or eligibility until he was running against Joy Whiting, and  
4 the (on information and belief) lack of any similar prior interest in candidate-eligibility  
5 challenges (much less with this level of illegality and aggression) by the County Attorney’s  
6 Office under Michael Whiting’s leadership all make that clear. (See ¶¶ 110-114.)

7 182. Had Fernie not engaged in the First Amendment-protected act of seeking  
8 election against Joy Whiting, Michael Whiting, Greer, and Jensen would not have engaged  
9 in the acts described in paragraph 164.

10 183. Retaliating against a person because of their First Amendment-protected  
11 expression was plainly outside of Michael Whiting’s, Greer’s, and Jensen’s legitimate  
12 powers.

13 184. As a result of the retaliatory acts described in paragraph 164, Michael  
14 Whiting, Greer, and Jensen chilled Fernie’s First Amendment-protected expression, and  
15 Fernie’s choice to self-censor in response to those acts was an objectively reasonable one  
16 under the circumstances.

17 185. But for the retaliatory acts described in paragraph 164, Fernie would have  
18 continued his campaign and related First Amendment-protected activity through at least  
19 the primary election several months later.

20  
21  
22

**Count II**

**42 U.S.C. § 1983 – First and Fourteenth Amendments**

**Free Speech Clause claim against Apache County, the Apache County Attorney’s Office, and Michael Whiting in his (former) official capacity as Apache County Attorney (collectively, Apache County)**

186. Fernie realleges and incorporates by reference the allegations in paragraphs 1 through 185 as if fully stated herein.

187. Apache County is liable for violation(s) of Fernie’s First Amendment rights described in Count I.

188. The Apache County Attorney (and the County Attorney’s Office) acts on behalf of Apache County, rather than the State of Arizona, at least when acting in a capacity other than prosecuting crimes for the State.

- a. The Apache County Attorney enforces the law within Apache County’s borders on behalf of Apache County.
- b. The Apache County Attorney acts as a legal advisor to the County Board of Supervisors.
- c. The Apache County Attorney is elected by Apache County’s voters; is defined by statute as a county officer; and is required to reside within Apache County’s borders.
- d. The County Board of Supervisors must consent to the County Attorney’s appointment of deputies and other assistants and staff members. The State of

1 Arizona plays no role in the County Attorney’s appointment of deputies and  
2 other assistants and staff members.

3 e. Apache County pays its County Attorney a salary out of the county treasury,  
4 just as the salaries of other county employees are paid. Similarly, Apache  
5 County pays for the County Attorney’s offices, equipment, supplies, and all  
6 expenses incident to the County Attorney’s enforcement of law throughout  
7 the County.

8 f. On information and belief, Apache County has a policy of indemnifying  
9 Apache County Attorney’s Office officers and employees when those  
10 employees are accused of misdeeds in their office or employment.

11 189. Michael Whiting was (and Greer and Jensen were) acting on behalf of  
12 Apache County, and not the State of Arizona, in directing and carrying out the string of  
13 intimidating, harassing, and retaliatory actions against Fernie throughout March 2024  
14 described in paragraph 164.

15 a. Michael Whiting appointed Greer and Jensen to their roles with the Apache  
16 County Attorney’s Office.

17 b. The Apache County Board of Supervisors consented to Michael Whiting’s  
18 appointment of Greer and Jensen to those roles.

19 c. The State of Arizona had nothing to do with either Michael Whiting’s  
20 appointments of Greer or Jensen nor the Board of Supervisors’ consent to  
21 those appointments.

22

- 1 d. Michael Whiting, Greer, and Jensen were each paid a salary by Apache  
2 County, not by the State. The Board of Supervisors fixed each of their  
3 respective salaries.
- 4 e. On information and belief, Michael Whiting, Greer, and Jensen used funds  
5 and equipment provided to the Apache County Attorney's Office by the  
6 County Board of Supervisors to carry out the string of intimidating,  
7 harassing, and retaliatory acts against Fernie detailed in paragraph 164,  
8 including the use of County-issued vehicles to get to the locations needed to  
9 carry out those acts and County funds to fuel those vehicles.
- 10 f. The Apache County Board of Supervisors voted to fund Michael Whiting's  
11 defense of the bar complaint filed against him in 2024, which stemmed at  
12 least in part from allegations concerning Michael Whiting's activities in his  
13 County Attorney office.

14 190. The Apache County Attorney is the final policymaker for Apache County  
15 concerning the County Attorney's Office and the Office's activities.

- 16 a. The County Attorney is not chosen by the County Board of Supervisors but  
17 elected by Apache County's voters independently.
- 18 b. The County Board of Supervisors does not have disciplinary authority over  
19 the County Attorney. They cannot suspend or remove the County Attorney  
20 from office.

21  
22

- 1 c. The County Attorney’s powers and duties are generally not subject to the
- 2 direction of the Board of Supervisors. As far as the County Board of
- 3 Supervisors supervises the County Attorney, it is for fiscal matters alone.
- 4 d. The County Board of Supervisors’ authority over the County Attorney’s
- 5 Office’s staff is very limited: The Board of Supervisors only has power to
- 6 consent to appointments made by the County Attorney and to fix the
- 7 appointee’s salary. The Board of Supervisors lacks power to appoint staff to
- 8 the County Attorney’s office itself or to discipline or suspend the County
- 9 Attorney’s staff.

10 191. Michael Whiting was Apache County’s final policymaker for the Apache  
11 County Attorney’s Office in March 2024 (and, indeed, during his entire tenure as Apache  
12 County Attorney).

13 192. As a final policymaker, and through two County Attorney’s Office  
14 employees (Greer and Jensen), Michael Whiting authorized and directed the string of  
15 intimidating, harassing, and retaliatory actions directed at Fernie throughout March 2024  
16 detailed in paragraph 164.

17 193. Because they were conducted at the direction of a final policymaker, the  
18 string of intimidating, harassing, and retaliatory actions directed at Fernie throughout  
19 March 2024, as described in paragraph 164, represented an official policy, practice, or  
20 custom of Apache County.

21 194. Additionally, Apache County ratified Michael Whiting’s authorization and  
22 direction—and Greer’s and Jensen’s carrying out—of the string of intimidating, harassing,

1 and retaliatory actions directed at Fernie throughout March 2024, as described in paragraph  
2 164.

- 3 a. The County Board of Supervisors consented to Michael Whiting’s  
4 appointment of Greer and Jensen to the roles “lead investigator” and “legal  
5 assistant” despite their not having the training traditionally associated with  
6 such positions.
- 7 b. The County Board of Supervisors voted to fund Michael Whiting’s defense  
8 of the bar complaint filed against him in 2024, which stemmed at least in part  
9 from allegations concerning Michael Whiting’s actions against Fernie  
10 throughout March 2024. They did so despite knowing the details of the  
11 indictment secured against Michael Whiting and with knowledge that all of  
12 the county’s deputy attorneys had called on Michael Whiting to resign.
- 13 c. On information and belief, Michael Whiting, Greer, and Jensen used funds  
14 and equipment provided to the Apache County Attorney’s Office by the  
15 County Board of Supervisors in carrying out the actions against Fernie,  
16 including the use of County-issued vehicles to get to the locations needed to  
17 carry out those acts and County funds to fuel those vehicles. As far as the  
18 County Board of Supervisors by law exercises supervision over the County  
19 Attorney’s powers and duties, it is with respect to the County Attorney’s use  
20 of public funds.
- 21  
22

1           d. The actions described in paragraph 164 were part of a deliberate, ongoing,  
2           and pervasive plan that lasted for weeks—rather than being, for instance, an  
3           on-the-spot, standalone action.

4           195. Because the Board of Supervisors ratified the string of intimidating,  
5           harassing, and retaliatory actions directed at Fernie throughout March 2024, as described  
6           in paragraph 164, those actions represented an official policy, practice, or custom of Apache  
7           County.

8           196. Apache County thus enacted an official policy intending to intimidate Fernie  
9           into stopping his exercise of his First Amendment rights, and proximately causing him to  
10          do so, as further elaborated in Count I.

11          197. As a result of Apache County’s official policy of intimidating Fernie into  
12          stopping his exercise of his First Amendment-protected expression, the County chilled  
13          Fernie’s First Amendment-protected expression. His choice to self-censor was an  
14          objectively reasonable one under the circumstances.

15          198. But for the County’s official policy of intimidating Fernie into stopping his  
16          exercise of his First Amendment-protected expression, Fernie would have continued with  
17          his campaign and related First Amendment-protected activity through at least the primary  
18          election several months later.

19          199. Apache County thus also enacted an official policy of retaliating against  
20          Fernie for his exercise of his First Amendment right to run against the incumbent  
21          Superintendent of Schools, as further elaborated in Count I.

22







1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**Michael Greenberg\***  
DC Bar No. 1723725  
**Benjamin A. Field\***  
NY Bar No. 5430129;  
DC Bar No. 1046902  
**McCarley Maddock\***  
SC Bar No. 106372  
INSTITUTE FOR JUSTICE  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Tel: (703) 682-9320  
Email: mgreenberg@ij.org;  
bfield@ij.org; mmaddock@ij.org

*Attorneys for Plaintiff Madrid*  
*\*Motions for Admission Pro Hac Vice*  
*to be filed*