



409. While it is true that Sheriff Soyez was not physically present during the raids, he actively participated in planning the raids, suggested the search of Joan and Eric Meyer’s home, and personally participated in the decision to have all of the *Record*’s newsroom’s computers seized, even though the sham “preview” search conducted by his own deputy found no evidence of criminal wrongdoing.

410. Sheriff Soyez made these misleading statements to Zorn in an intentional—and wrongful—attempt to divert attention from his personal involvement in the illegal raids.

The Falsified Search Warrant Return

411. As part of the transfer, Nevins was provided with an inventory of items seized from the *Marion County Record* during the raid.

412. As each of the eight items on the list were returned, Nevins both checked and initialed the item on the inventory.

NO.	Quantity	Description of Property	Est. Value
X 1	1	DEB GRUVER CELL PHONE IPHONE (JW)	
X 2	1	PHYLLIS TOWER THERMALTAKE CASE (JW)	
X 3	1	PHYLLIS PHONE MOTOROLA (JW)	
X 4	1	ERIC TOWER COOLMASTER (JW)	
X 5	1	SERVER TOWER ANTEC CASE (JW)	
X 6	1	KISOR RECORD (JW)	
X 7	1	DEB GRUVER THERMALTAKE TOWER (JW)	
X 8	1	WESTERN DIGITAL EXTERNAL DRIVE (JW)	
9			

413. Later, when an inventory of items seized from the *Record* was filed with the District Court, it contained an additional ninth item not included in the inventory of items used to document the transfer of seized items to Nevins.

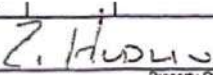
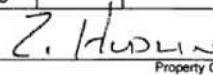
NO.	Quantity	Description of Property	Est. Value
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2	1	PHYLLIS TOWER THERMALTAKE CASE	
3	1	PHYLLIS PHONE MOTOROLA	
4	1	ERIC TOWER COOLMASTER	
5	1	SERVER TOWER ANTEC CASE	
6	1	KISOR RECORD	
7	1	DEB GRUVER THERMALTAKE TOWER	
8	1	WESTERN DIGITAL EXTERNAL DRIVE	
9	1	OS TRIAGE DIGITAL DATA	

414. The new item, “OS Triage Digital Data,” was the digital drive that Det. Christner had used to extract data from Phyllis Zorn’s desktop computer during the raid on the *Record*’s offices.

415. As noted above, that drive revealed that the required “preview search” in fact showed no criminal activity, but instead produced “hits” for an advertisement for an animated children’s movie, the district court’s logo, and other innocent files.

416. That drive was not given to Nevins when he came to retrieve the items which the Court had ordered released.

417. Both the inventory which the Det. Christner provided to Nevins and the inventory filed with the District Court bear the same control number (791), are signed by Officer Zach Hudlin, and are dated “08/11/2023.”

Inventory provided to Nevins			
	08/11/2023	No	791
Property Officer	Date		
<small>Reorder from Marion County Record, #6-016</small>			
Inventory filed with District Court			
	08/11/2023	No	791
Property Officer	Date		
<small>Reorder from Marion County Record, #6-016</small>			

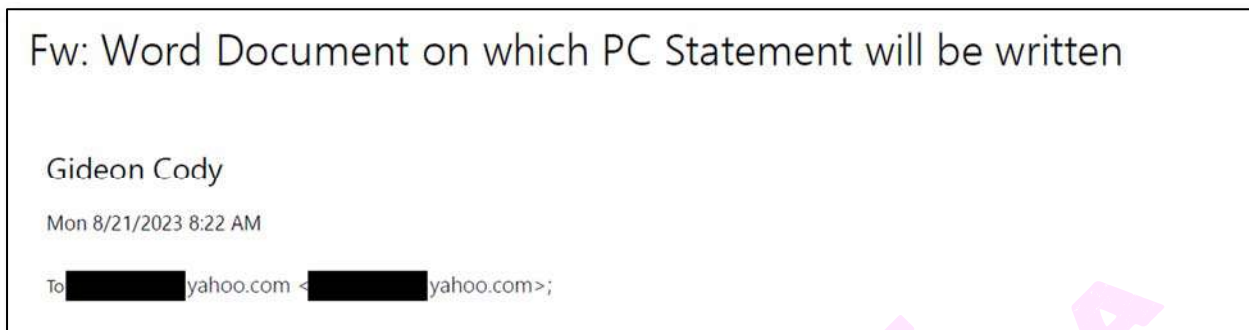
418. It was not until August 29, 2023—after the *Record*’s attorney threatened to hold Sheriff Soyez in contempt—that the contents of the drive were finally released to the *Record* pursuant to a second order from Chief District Court Judge Benjamin Sexton.

Chief Cody Destroys Evidence of His Wrongdoing

419. As the unprecedented, unconstitutional, and illegal raids—and the resulting death of Joan Meyer—triggered growing international condemnation, Chief Cody became concerned his wrongdoing would be exposed.

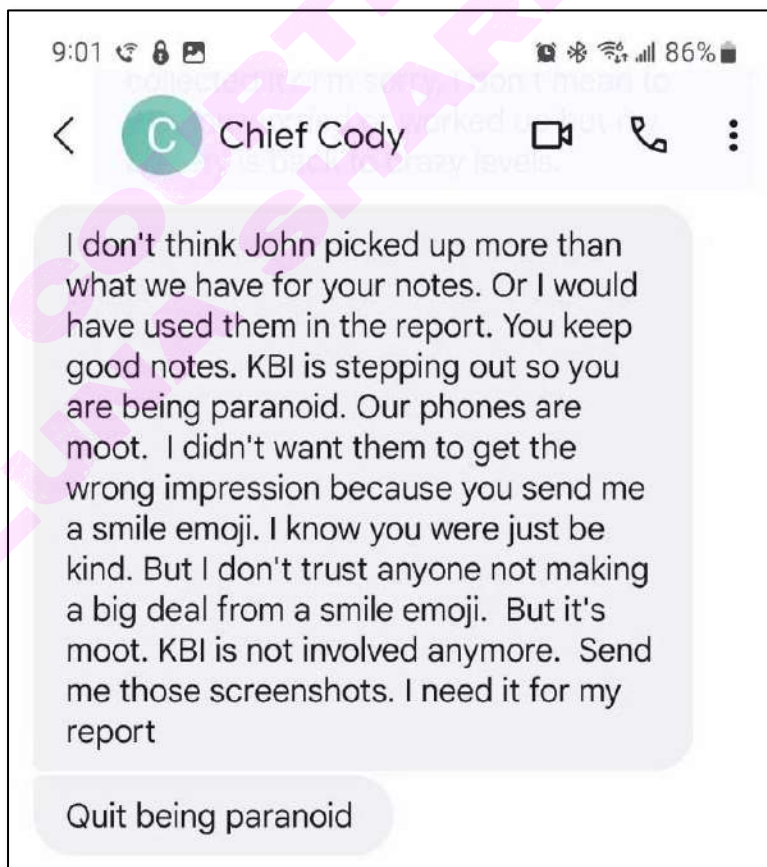
420. Accordingly, Chief Cody began e-mailing the contents of his official law enforcement file to his personal e-mail address.

421. Here, for example, is Chief Cody forwarding the draft probable cause statement from his police e-mail account to his personal e-mail account.



422. In addition, Chief Cody asked Kari Newell to destroy her text messages with him.

423. After Kari Newell became concerned with her own criminal liability for deleting her text messages and asked Chief Cody “If attorneys or kbi go digging and see I deleted the texts as you asked me to, will I get in trouble?,” Cody responded:



424. Thus, Chief Cody admits he asked Newell to destroy text messages between the two of them because he “didn’t want the[attorneys] to get the wrong impression” about their relationship.

Chief Cody Refuses to Defend Himself

425. On October 2, 2023, Marion Police Chief Gideon Cody resigned.

426. In his resignation e-mail—which he sent from his personal e-mail address to Mayor Mayfield’s personal e-mail address—Chief Cody stated he intended to resign effective October 15, 2023.

427. In his e-mail Cody wrote: “I do not want to defend my actions to the Council and I do not want for everyone to have to formally discuss any discipline.”

The City Council Ratifies Hudlin’s Rampant Illegal Actions

428. Also on October 2, 2023, the Marion City Council appointed Officer Zach Hudlin as Acting Police Chief.

429. At the time the City Council made the appointment of Officer Hudlin as Acting Police Chief, its members were already aware of Hudlin’s role in the illegal raids and, specifically, the City Council members were aware of Hudlin’s role in (a) directing Chief Cody to inspect Deb Gruver’s file containing the confidential tips the *Record* had received about Cody when he was employed by the Kansas City, Missouri Police Department, (b) physically removing the computers from the *Record*’s newsroom and the Meyer home in violation of the “preview search” requirement in the search warrant, (c) physically seizing the cell phones of Eric Meyer, Phyllis Zorn, and Deb Gruver in violation of the “preview search” requirement in the search warrant, and (d) nearly arresting Joan Meyer for throwing her walker.

430. In appointing Officer Hudlin the Acting Police Chief, the City Council ratified the rampant illegal actions taken by Officer Hudlin on August 11, 2023.

431. The decision of the City Council to appoint Officer Hudlin the Acting Police Chief after its members were aware of Officer Hudlin's role in directing Chief Cody to inspect Deb Gruver's file containing the confidential tips the *Record* had received about Cody when he was employed by the Kansas City, Missouri Police Department was tantamount to direct authorization by the City Council to Officer Hudlin to commit these illegal actions.

432. Officer Hudlin remains the Acting Police Chief.

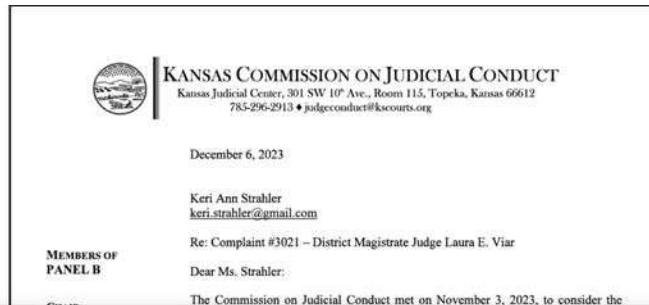
The Kansas Commission on Judicial Conduct Takes Action

433. Following the raids, a concerned citizen—not connected with the *Marion County Record*—made a complaint with the Kansas Commission on Judicial Conduct about Judge Viar's decision to sign the search warrants.

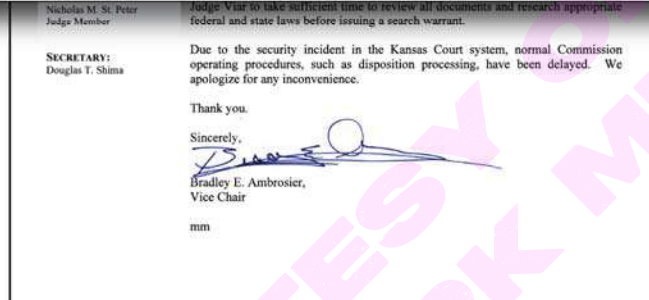
434. On November 8, 2023, the Commission took action against Judge Viar.

435. Specifically, the Commission advised Judge Viar to spend sufficient time to fully review search warrant applications, and to “research appropriate federal and state laws before issuing a search warrant.”

436. The Commission also explicitly stated that while it found there was insufficient evidence to conclude that Judge Viar's signing of the search warrants “crossed the line of incompetence,” the Commission was not agreeing the issuance of the search warrants was proper.



line of incompetence. This is not to say that the Commission agrees that the issuance of the search warrant in this instance was reasonable or legally appropriate. The Commission, under Supreme Court Rule 614(b)(1)(B), issued informal advice to Judge Viar to take sufficient time to review all documents and research appropriate federal and state laws before issuing a search warrant.



Jurisdiction and Venue

437. This Court has subject matter jurisdiction of Plaintiffs’ claims under the federal Civil Rights Act and the federal Privacy Protection Act pursuant to 28 U.S.C. §§ 1331 & 1343(a); this Court has supplemental jurisdiction of Plaintiff *Marion County Record*’s claim under the Kansas Open Records Act pursuant to 28 U.S.C. § 1337(a).

438. This Court has personal jurisdiction over each of the Defendants because each of the individual Defendants were Kansas residents at the time of the events described herein and Defendant City of Marion, Kansas, is a city in the State of Kansas.

439. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to Plaintiffs’ claims occurred in this District.

440. Eric Meyer was duly appointed the executor of the estate of Joan Meyer by Marion County District Court Judge Susan Robson on March 18, 2024.

441. Eric Meyer brings this action both individually and on behalf of Joan Meyer's estate.

Count I
First Amendment – Direct Violation (42 U.S.C. § 1983)
(All Defendants)

442. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-441.

443. The First Amendment to the United States Constitution guarantees that “Congress shall make no law ... abridging the freedom of ... the press.”

444. The Fourteenth Amendment to the United States Constitution extends the protections of the First Amendment to actions taken by local governments and by local government officials.

445. Prior to the August 11, 2023, unprecedented raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the First Amendment guaranteed the freedom of the press to gather and report information about matters of public concern.

446. Prior to the August 11, 2023, unprecedented raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the First Amendment prohibited government officials, including the police, from interfering with the freedom of the press to gather and report information about matters of public concern.

447. Prior to the August 11, 2023, unprecedented raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that “[w]here the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with ‘scrupulous exactitude.’” *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978).

448. The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

449. When the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer were raided, Defendants knew that Eric Meyer, Joan Meyer, Phyllis Zorn, and Deb Gruver were journalists engaged in gathering and reporting information on matters of public concern.

The Search Warrants Were Not “Issue[d] ... Upon Probable Cause”

450. When the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer were raided, Defendants did not have an objectively reasonable belief that Eric or Joan Meyer, or anyone else associated with the *Record*, was in possession of contraband, fruits, instrumentalities, or evidence of any crime.

451. No arguable probable cause existed to issue the search warrants for the *Marion County Record* newsroom and the home of Joan and Eric Meyer and no reasonable police officer could have believed there was arguable probable cause to issue the search warrants.

452. The search warrants were issued based on materially false statements of fact by Chief Cody, including, but not limited to, the following:

- a. the federal Driver’s Privacy Protection Act applied to the August 1, 2023, letter from the Kansas Department of Revenue to Kari Newell;
- b. in order to access a copy of the letter someone from the *Record* had to “[i]e] about the reasons why the record was being sought;”
- c. in order to use the Kansas Driver’s License Status Check tool a user has to provide a reason (or reasons) for accessing the information;
- d. in order to use the Kansas Driver’s License Status Check tool a user has to “show a legal reason to obtain the information according to the Driver’s Privacy Protection Act of 1994;”
- e. the Kansas Driver’s License Status Check tool states: “Under the Driver’s Privacy Protection Act of 1994, as amended (DPPA) (18 U.S.C. § 2721), personal information obtained by the Kansas Department of Revenue

cannot be released unless the request for information falls within one of the exceptions within the Act;”

- f. the Kansas Driver’s License Status Check tool states: “By proceeding past this screen, I declare that I am eligible and have the express authority to receive the requested information pursuant to the Federal Driver’s Privacy Protection Act of 1994, as amended. I further declare that any personal information I received will not be used to sell or offer for sale any property or service;”
- g. the Driver’s Privacy Protection Act protects the fact Kari Newell’s driver’s license was suspended; and
- h. the Driver’s Privacy Protection Act protects the fact Kari Newell was convicted to driving under the influence.

453. The true facts are that the Kansas Driver’s License Status Check tool on the Kansas Department of Revenue’s website is available for anyone to use.

454. The Kansas Driver’s License Status Check tool does not require a log-in, does not require a username or password, and does not contain any warning about accessing information on the site.

455. The Kansas Driver’s License Status Check tool is not covered by the Driver’s Privacy Protection Act.

456. The federal Driver’s Privacy Protection Act protects what the statute calls “personal information.” 18 U.S.C. § 2721(a)(1).

457. The Driver’s Privacy Protection Act explicitly states that “personal information” “does **not** include information on vehicular accidents, driving violations, and **drivers’ status.**” 18 U.S.C. § 2725(3) (emphasis added).

458. Thus, the Kansas Driver’s License **Status** Check tool on the Kansas Department of Revenue’s public-facing website is not covered by the Driver’s Privacy Protection Act.

459. The information provided by the Driver’s License Status Check tool concerning the status of Kari Newell’s driver’s license is not protected by either state or federal law.



460. Moreover, the Driver’s Privacy Protection Act further provides that “[a] **State department of motor vehicles** ... shall not knowingly disclose or otherwise make available to any person ... personal information.” 18 U.S.C. § 2721(a)(1) (emphasis added).

461. Thus, it would be illegal for the Kansas Department of Motor Vehicles to have a public-facing website that provides protected “personal information.”

462. Chief Cody either knew the statements he made in the applications were false or acted with reckless disregard for whether they were false.

463. Chief Cody made these false statements for the purpose of inducing Magistrate Judge Viar to issue the search warrants for the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer.

464. Magistrate Judge Viar issued the search warrants for the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer based on these materially false statements.

465. Had the affidavits included truthful facts—and included the material facts that were omitted—Magistrate Judge Viar would not have issued the search warrants.

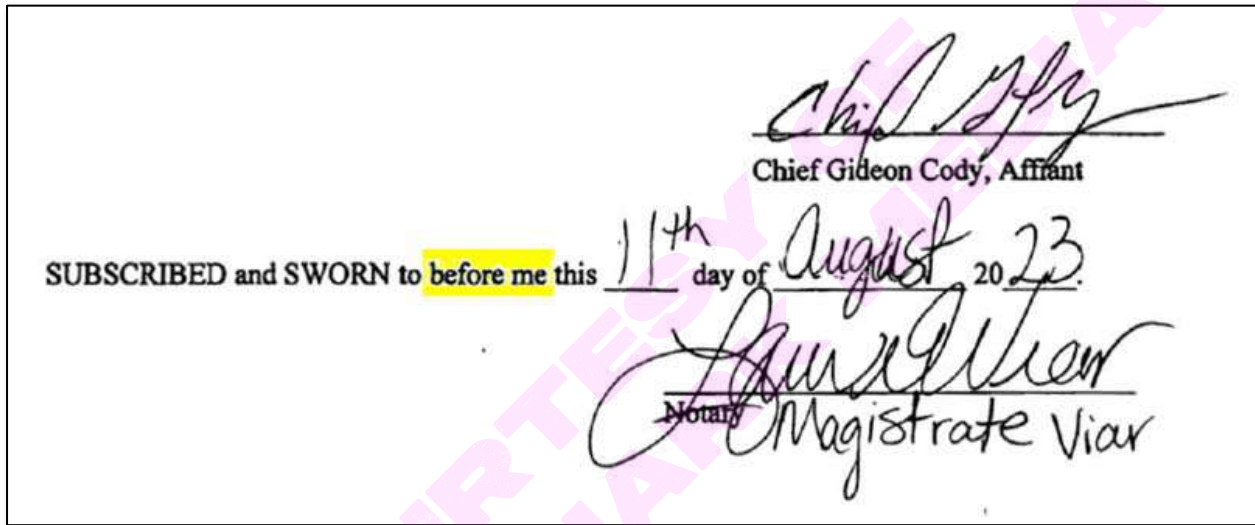
466. Thus, the search warrants were not “issue[d] ... upon probable cause,” as required by the Fourth Amendment, nor were they supported by even arguable probable cause.

467. As such, the search warrants were invalid and void.

The Search Warrants Were Not “Supported by Oath or Affirmation”

468. The search warrant applications for the *Record*’s offices and Joan and Eric Meyer’s home each had a space for a notary to sign the application.

469. However, on each of the applications, Judge Viar scratched out “Notary” and signed the applications herself, attesting that Chief Cody swore the applications had been “SUBSCRIBED and SWORN to **before me.**” (Emphasis added).



470. But Chief Cody never appeared before Magistrate Viar, making Judge Viar’s statement that Cody swore to the applications “before me” false.

471. Judge Viar’s act of notarizing the applications was invalid under Kansas law, which provides as follows: “If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear **personally** before the notarial officer.” K.S.A. 53-5a606 (a) (emphasis added).

472. Accordingly, the search warrants were not issued “upon oath or affirmation,” as required by the Fourth Amendment.

473. As such, the search warrants were invalid and void.

The Search Warrants Were Overbroad – Part 1

474. The search warrants for the *Record*'s newsroom and Joan and Eric Meyer's home did not "particularly describe the place to be searched, and the persons or things to be seized."

475. This is particularly troubling given the U.S. Supreme Court's explicit direction that "[w]here presumptively protected materials [under the First Amendment] are sought to be seized, the warrant requirement should be administered to leave as little as possible to the discretion or whim of the officer in the field." *Zurcher v. Stanford Daily*, 436 US. 547, 564 (1976); *id* at 565 ("the warrant requirement [should be applied] with particular exactitude when First Amendment interests would be endangered by the search").

476. For example, the search warrants authorized the seizure of "[d]ocuments and records pertaining to Kari Newell," as well as "[c]orrespondence or other documents (whether digital or written) pertaining to Kari Newell."

477. Newell was a prominent local businessperson in Marion and, as such, she would be the subject of numerous materials held by the *Record* that have nothing to do with the alleged crimes of identity theft and unauthorized use of a computer.

478. The search warrants also authorized the seizure of "[d]igital software and application software installation and operation media."

479. Such a search topic is plainly overbroad; for example, the *Record*'s software for creating mailing labels for its subscribers has nothing to do with the alleged crimes of identity theft and unauthorized use of a computer.

480. The search warrants also authorized the seizure of "[d]igital storage media and the digital content which are, or have been, used to store documents and items of personal information as defined by K.S.A. 21-6107."

481. K.S.A. 21-6107 defines “personal identifying information” as including “[n]ame.”

482. K.S.A. 21-6107 also defines “personal identifying information” as including “address.”

483. K.S.A. 21-6107 also defines “personal identifying information” as including “telephone number.”

484. K.S.A. 21-6107 also defines “personal identifying information” as including “credit or debit card information.”

485. Thus, every computer hard drive or portable storage device which contained copies of the newspaper’s published reports which included anyone’s “name” or the “address” of an incident, or the “address” or “telephone number” of an advertiser was subject to seizure.

486. Similarly, every computer hard drive or portable storage device which contained reporter’s work product, including the “name,” “address,” or “telephone number” of the reporter’s sources, was subject to seizure.

487. Likewise, every computer hard drive or portable storage device which includes subscribers’ “name,” “address” and “credit or debit card information” (which are used to mail and pay for subscriber’s subscription) was subject to seizure.

488. As a result, such a search violated not only the freedom of the press clause of the First Amendment, it also violates the First Amendment right of association as well. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

The Search Warrants Were Overbroad – Part 2

489. Based on the search warrant applications he submitted to Magistrate Judge Laura Viar, Chief Cody stated that Phyllis Zorn—and Zorn alone—had downloaded Kari Newell’s driver’s license record.

490. The search warrant applications do not provide any factual basis to even suggest that anyone else in the *Record* newsroom had downloaded Kari Newell’s driver’s license record or that Joan or Eric Meyer had downloaded Kari Newell’s driver’s license record.

491. Yet Chief Cody requested (and obtained) a search warrant for the entire newsroom of the *Marion County Record*, as well as a search warrant for the home of Joan and Eric Meyer.

492. As such, the search warrants for the entire newsroom and the home of the newspaper’s owners were a classic fishing expedition.

The Seizure Exceeded the Scope of the Search Warrant

493. Prior to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the Fourth Amendment prohibited the government, including the police, from conducting warrantless raids on a person’s home or a corporation’s offices except in strictly limited circumstances, such as exigent circumstances, with consent of the property owner, an item is in plain view, etc.

494. No exceptions to the warrant requirement applied to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer.

495. Yet numerous items were seized which were not listed on the search warrant.

496. For example, the search warrant authorized the seizure of “[a] computer or digital device that **has been used** to access the Kansas Department of Revenue records website.” (Emphasis added).

497. The search warrant also authorized the seizure of “[d]igital communications devices allowing access to the Internet or to cellular digital networks **which were or have been used** to access the Kansas Department of Revenue records website.” (Emphasis added).

498. Despite the requirement that any such device “has/have been used” to access the Kansas Department of Revenue website, computers and cell phones were seized that had never been used to connect to the Kansas Department of Revenue’s records website.

499. The search warrant also required officers to “conduct a preview search of all located digital communications devices and digital storage media to exclude from seizure those which have not been involved in the identity theft.”

500. Despite the fact the so-called “preview search” conducted by Det. Christner at the *Record*’s office failed to identify a single device involved in the alleged identity theft, the desktop computers of Eric Meyer, Phyllis Zorn, and Deb Gruver were seized, along with the *Record*’s network server.

501. Despite the fact the so-called “preview search” conducted by Det. Christner at the *Record*’s office failed to identify a single device involved in the alleged identity theft, Phyllis Zorn’s and Deb Gruver’s cell phones were seized.

502. Moreover, following the raid on the *Record*’s newsroom, *Record* reporter Deb Gruver went to the Marion County Sheriff’s office and asked Chief Cody to return her phone, explaining that she had nothing to do with any search of the Kansas Department of Revenue’s website.

503. Chief Cody responded, “I actually believe you,” but refused to return Gruver’s phone to her.

504. Despite the search warrant’s requirement of a preview search, no “preview search” was conducted on Joan Meyer’s home computer, Eric Meyer’s laptop, or Eric Meyer’s cell phone.

505. Despite that fact Joan Meyer’s home computer, Eric Meyer’s laptop, and Eric Meyer’s cell phone were all seized.

506. Such warrantless seizures were done without consent of any person, no exigent circumstances existed, and no other exception to the warrant requirement applied.

507. Such “rummag[ing] at large in newspaper files” is plainly unconstitutional. *Zurcher v. Stanford Daily*, 436 U.S. 547, 565 (1978).

The “Capt. Cody” File

508. Moreover, Officer Hudlin and Chief Cody’s review of the contents of Deb Gruver’s file on “Capt. Cody” was plainly overbroad.

509. Neither officer had any basis for believing that Gruver accessed the Kansas Department of Revenue website or reviewed the Newell letter and, as such, neither officer had a basis for believing that Gruver’s files would contain evidence related to the website or the letter.

510. Neither officer had any basis for believing the newspaper file on “Capt. Cody” would contain information about accessing the Kansas Department of Revenue website.

511. Moreover, both officers knew the *Record* had promised confidentiality to sources who provided information about Cody.

512. Despite that knowledge, both officers reviewed the contents of the “Capt. Cody” file.

513. The officers did so to illegally obtain the newspaper’s confidential research—and the identity of the newspaper’s confidential sources—regarding Chief Cody’s past, in retaliation for the newspaper’s investigation into, and criticism of, Chief Cody.

The Marion County Attorney Withdraws the Search Warrants

514. On Wednesday, August 16, 2023, Marion County Attorney Joel Ensey filed a motion to release the evidence seized during the raids, which Chief District Court Judge Benjamin Sexton granted the same day.

515. At the same time he filed his motion, County Attorney Ensey issued a press release stating that “insufficient evidence” exists “to establish a legally sufficient nexus” between any crime Chief Cody may have been investigating and “the places searched and the items seized.”

516. The press release stated that Marion County Attorney Ensey was asking local enforcement to return the items seized to their owners.

517. Thus, even the County Attorney agrees “the places searched and the items seized” exceeded the allowable scope under the Fourth Amendment.

“Do YOU want to look through this desk?”

518. Prior to the August 11, 2023, unprecedented raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that a reporter’s promise of confidentiality to a source was protected by the First Amendment. *See Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977); *In re Pennington*, 224 Kan. 573, 574, 581 P.2d 812, 814 (1978).

519. Moreover, the Kansas Shield Law extends the journalist’s privilege to “**any** information gathered, received or processed by a journalist, whether or not such information is actually published, and whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes and other recordings or other data of whatever sort that is gathered by a journalist in the process of gathering, receiving or processing information for communication to the public.” K.S.A. 60-480(b) & 60-481 (emphasis added).

520. The Kansas Shield Law provides that “[t]he party claiming the privilege ... shall be entitled to a hearing” before that party can be compelled to provide any protected information. K.S.A. 60-483.

521. The Kansas Shield Law also provides that “[i]f the court finds that the party seeking to compel disclosure had no reasonable basis to request such disclosure, the court may assess costs and attorney’s fees against the party seeking to compel disclosure.” K.S.A.64-484.

522. The Kansas Shield Law further provides that “[t]he rights and privileges by this act are in addition to any other rights guaranteed by the constitutions of the United States or the state of Kansas.” K.S.A. 60-485.

523. When Officer Hudlin rifled through Deb Gruver’s desk and identified Gruver’s file on “Capt. Cody,” he violated both the First Amendment and the journalist privilege enshrined in the Kansas Shield Law.

524. When Officer Hudlin beckoned Chief Cody—with his “Do YOU want to look through this desk?” invitation—he violated both the First Amendment privilege and the journalist privilege enshrined in the Kansas Shield Law.

525. When Chief Cody reviewed the *Record*’s file on him—which included both the identity of, and information from, numerous confidential sources—he violated both the First Amendment and the journalist privilege enshrined in the Kansas Shield Law.

526. When all the other Defendants searched the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, they violated both the First Amendment and the journalist privilege enshrined in the Kansas Shield Law.

The Raids Interfered with the Freedom of the Press

527. When Defendants seized the computers of Eric Meyer, Phyllis Zorn, Deb Gruver, and Joan Meyer, as well as the network server for the *Marion County Record* and the cell phones of Eric Meyer, Phyllis Zorn, and Deb Gruver, Defendants abridged the First Amendment rights of

the *Record* and its owners by restricting their ability to gather and report information about matters of public concern.

528. For example, while the *Record*'s website was hosted on an off-site computer network that was not seized, the staff had no ability to access the website to timely report the news.

529. Without their cell phones and without access to their e-mail accounts, the staff had no way to contact sources of information and obtain the news.

530. Because the *Record*'s network server was seized, the *Record*'s page layouts, advertisements—even the newspaper nameplate (the title of the newspaper on the front page)—were inaccessible.

531. The *Record* had to cobble together a patchwork computer network from borrowed and otherwise obsolete computers in an attempt to publish the weekly print edition of the newspaper.

532. That effort required back-to-back all-nighters, during which the staff was unable to gather and report on other news events.

The Chilling Effect

533. The unprecedented raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, and threatened pursuit of criminal charges against Eric Meyer and Phyllis Zorn, would chill a person of ordinary firmness from reporting on local events in Marion.

534. In fact, the month following the raids, *Record* reporter Deb Gruver—who had worked as a reporter for more than 30 years—resigned.

535. Gruver, who lives in Wichita, stated she was afraid to come to Marion for fear of what the local police might do.

536. That fear did not dissipate when Chief Cody resigned, because Officer Zach Hudlin—who had rummaged through Gruver’s desk, had found her file on “Captain Cody,” and had showed the file to Chief Cody—was appointed acting police chief.

537. As such, the proverbial fox was now guarding the henhouse.

The Anguish Brought on By the Raids

538. Gruver is not alone in being anguished over the raids.

539. *Marion County Record* reporter Phyllis Zorn has suffered—and is continuing to suffer—severe mental anguish as a result of the raid on the *Record* newsroom.

540. As a result, Zorn has had to reduce her level of reporting, thereby causing still more damage to the *Record*.

541. *Marion County Record* Office Manager Cheri Bentz, who was present at the *Record* during the raids and was one of the persons Chief Cody attempted to interrogate, has suffered—and is continuing to suffer—severe mental anguish as a result of the raid on the *Record* newsroom.

542. As a result, Bentz has had to reduce her workload as well.

543. *Marion County Record* editor Eric Meyer is not only severely anguished over what happened to (and at) his family’s newspaper, but is heartbroken over the loss of his mother, who was literally hounded to death by Chief Cody and his army of law enforcement officers.

544. Eric Meyer watched as the last 24 hours of his mother’s life were filled with tears and fears—and anger—over what had happened to her in the home in which she had lived for 70 years, causing both Eric and Joan to suffer extreme mental distress and emotional suffering.

545. But Eric could do little to console his mother because he too could not understand—nor explain to his mother—how this could happen in Marion, Kansas ... how this could happen anywhere in America.

The Financial Costs

546. The *Marion County Record* was required to retain skilled media counsel to deal with the legal consequences of the raids.

547. It was through the work of legal counsel that the *Record* was able to obtain the return of the items that were illegally seized during the raids.

548. Counsel was required to employ a forensic expert to examine the items that were seized to determine whether information on the items had been viewed, deleted, or altered.

549. Additionally, it was counsel who discovered that the inventory of items returned to the *Record* did not match the inventory of items submitted to the court.

550. As a result, counsel had to obtain the return of the hard drive which Det. Christner had used to illegally copy data from the *Record's* computer network.

551. Finally, because the Marion County Attorney has yet to formally “clear” the *Record* or its reporters of criminal charges, counsel has had to prepare for the possibility that baseless criminal charges may still be filed in an effort to justify the illegal raids.

552. These legal fees were incurred solely because of the raids and are, therefore, damages which can be recovered in this lawsuit.

The Defendants' Malicious and Wanton Actions

553. Defendants acted maliciously and wantonly in violating the First Amendment rights of the *Marion County Record* and Joan and Eric Meyer.

554. Defendants' actions were prompted by ill will or spite towards the *Record* and its owners, as evidenced, for example, by Chief Cody's repeated prior actions to harass the *Record*, including gleefully removing Eric Meyer and Phyllis Zorn from the “open” meet and greet for

Rep. LaTurner, offering to fund a competing newspaper, refusing to provide clear open records to the *Record*, etc.

555. Defendants' actions were also motivated by ill will or spite towards the *Record* because Eric Meyer informed Chief Cody and Sheriff Soyez the paper was investigating the allegations that the Marion Police Department and the Marion County Sheriff's Office permitted Kari Newell to drive without a license for years.

556. Defendant's actions demonstrate a conscious desire to violate the constitutional rights of the *Record* and its owners, as well as an awareness of the consciousness of their guilt, such as when they tried to hide their illegal activities.

557. Such actions include, for example, Sheriff Soyez' dissembling comments to Phyllis Zorn while witnessing the return of the illegally seized devices.

558. At that time, Sheriff Soyez said to Zorn, "You didn't see me over there," referring to the raid of the *Marion County Record* newsroom.

559. But it was Sheriff Soyez who personally told Chief Cody "just take them all" when Cody called Soyez from the *Record*'s newsroom and told Soyez about the failed "preview search."

560. Such actions also include Chief Cody's explicit warning to Kari Newell "we can't write anything," as well as his direction to Newell to destroy the couple's text messages.

561. Such actions also include Officer Hudlin's use of coded language to inform Chief Cody that he (Hudlin) had successfully found Deb Gruver's file on Cody in Gruver's desk.

562. Officer Hudlin, who knew he was being recorded on his body camera, tried to hide his wrongdoing by saying to Chief Cody:

Hudlin: "You want to look through this desk?"

Cody: "You have the right to look for yourself."

Hudlin: “I know, I’m asking do YOU want to look through this desk?”

Cody: “Man, you got a right to ...”

Hudlin: “I understand. You will understand shortly.”

563. Such actions also include Mayor Mayfield’s public comments after the raids in which he falsely claimed he did not believe Chief Cody did anything wrong.

564. Defendants also demonstrated a callous disregard for the rights of Joan and Eric Meyer, as evidenced by, among other things, Chief Cody’s and Officer Hudlin’s repeated suggestions to arrest Joan and Eric Meyer during the raids.

565. Defendants also evidenced an extreme callous disregard for the rights of Joan Meyer by making her wait for Chief Cody to finish raiding the newsroom of the *Record* and the home of Ruth Herbel, all the while Joan was under armed guard and while she was becoming increasingly anxious and increasingly agitated.

Official Municipal Policies

566. The Marion City Code gave Mayor Mayfield “superintending control of all officers and affairs of the city.” Code of the City of Marion, Kan. § 1-205(a).

567. Accordingly, Mayor Mayfield’s actions, along with the actions of the Marion police officers who participated in the illegal searches under the direction of Mayor Mayfield, were undertaken pursuant to official municipal policy.

568. The Marion City Code gave Chief Cody “power to make such rules and regulations as may be necessary for the proper and efficient conduct of the department.” Code of the City of Marion, Kan. § 10-103.

569. Accordingly, Chief Cody's actions, along with the actions of the Marion police officers who participated in the illegal searches under the direction of Chief Cody, were undertaken pursuant to official municipal policy.

570. Moreover, the Marion City Council ratified the illegal search when it appointed Officer Zach Hudlin the Acting Police Chief, despite the Council's knowledge of Hudlin's illegal actions undertaken during the search.

571. Accordingly, the actions of the Marion police officers who participated in the illegal searches were undertaken pursuant to official municipal policy.

572. The Kansas statutes provide that the Sheriff is a separately elected official whose terms, duties, training, and authorities are established by statute. K.S.A. 19-801a.

573. The Sheriff is charged by statute with "keep[ing] and preserv[ing] the peace in their respective counties." K.S.A. 19-813.

574. Sheriff Soyez, therefore, sets official municipal policy for the Marion County, Kansas, Sheriff's Office.

575. Accordingly, Sheriff Soyez' actions, along with the actions of the Marion County Sheriff's personnel who participated in the illegal searches under the direction of Sheriff Soyez (including Det. Christner), were undertaken pursuant to official municipal policy.

576. Nevertheless, the Kansas statutes provide that "[i]n all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be 'The board of county commissioners of the county of _____.'" K.S.A. 19-105.

577. Accordingly, Plaintiffs have named both the Board of County Commissioners and Sheriff Soyez in his official capacity as defendants, to eliminate any doubt as to the proper defendant.

Failure to Train or Supervise

578. The City of Marion did not provide training to its police officers as to the rights of the news media to be protected from government intrusion under the First Amendment, the federal Privacy Protection Act, and the Kansas Shield Law.

579. This failure is evident from the complete absence of any mention of these issues during the investigation or in the search warrant affidavits.

580. That failure to train is the result of Mayor Mayfield and Chief Cody's animus toward the *Marion County Record* and reflects deliberate indifference on the part of the City.

581. Marion County and Sheriff Soyez did not provide training to the members of the Sheriff's Office as to the rights of the news media to be protected from government intrusion under the First Amendment, the federal Privacy Protection Act, and the Kansas Shield Law.

582. Again, this failure is evident from the complete absence of any mention of these issues during the investigation or in the search warrant affidavits.

583. This failure to train is the result of Sheriff Soyez' animus toward the *Marion County Record* and reflects deliberate indifference on the part of the County and the Sheriff.

WHEREFORE, Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request they be awarded actual and punitive damages against Defendants City of Marion; former Mayor David Mayfield, in his official and individual capacities; former Marion Police Chief Gideon Cody, in his official and individual capacities; Officer Zach Hudlin, in his individual capacity; Board of County Commissioners of the County of Marion; Sheriff Jeff Soyez, in his official and individual capacities; and Det. Aaron Christner, in his individual capacity, together with Plaintiffs'

attorney's fees pursuant to 42 U.S.C. § 1988(b) and K.S.A. 60-484, the costs of this action, and such other and further relief as this Court deems just.

Count II
First Amendment – Retaliation (42 U.S.C. § 1983)
(City of Marion, Former Mayor Mayfield, Former Chief Cody,
Board of County Commissioners, and Sheriff Soyez)

584. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-583.

585. The First Amendment to the United States Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech.”

586. The Fourteenth Amendment to the United States Constitution extends the protection of the First Amendment to actions taken by local governments and by local government officials.

587. Prior to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the government, including the police, cannot retaliate against a person for engaging in protected activity under the First Amendment.

“Silence the MCR”

588. Prior to the raids, the *Marion County Record* had published numerous reports, columns, and editorials about Marion city government generally, about Mayor Mayfield specifically, and about Chief Cody.

589. Additionally, Chief Cody knew the *Record* was investigating his prior employment with the Kansas City, Missouri Police Department.

590. Each of these activities is a protected First Amendment activity.

591. Both Mayor Mayfield and Chief Cody were incensed over these activities and both verbalized an intent to seek retribution against the *Record* and its owners.

592. Specifically, Mayor Mayfield had vowed to “silence the MCR” and Chief Cody had offered to fund a competing newspaper in an effort to put the *Record* out of business.

Sheriff Soyez’ Support of Mayor Mayfield and Chief Cody’s Plan

593. Sheriff Soyez had solicited Gideon Cody to become the Marion Police Chief and had urged Mayor Mayfield to select Cody as the police chief; Soyez believed that criticism of Chief Cody was also therefore criticism of his recommendation.

594. Sheriff Soyez also harbored his own personal animus against the *Record*.

595. Both Sheriff Soyez and Chief Cody also knew the *Record* was threatening to expose them for allowing Kari Newell to driver around Marion for years without a valid license.

596. Sheriff Soyez therefore affirmatively chose to join with both Mayor Mayfield (his own employee) and Chief Cody (his Kansas City law enforcement ‘brother’) in their illicit plan to take down the *Marion County Record*.

597. In the eyes of Sheriff Soyez and Chief Cody, the two men were fulfilling Marion Crime’s mandate of inserting “new blood” into Marion.

The Retaliatory Acts

598. Mayor Mayfield’s actions in overruling the City Administrator and authorizing Chief Cody to investigate the newspaper and its staff, and his actions in authorizing Chief Cody to raid the *Record*’s newsroom and the Meyer home, were motivated by his desire to seek retribution against the *Record* and its owners.

599. Chief Cody’s actions in seeking the search warrants for the *Record*’s newsroom and the Meyer home, in making false statements in the applications for the search warrants, as well as his actions in executing the illegal search warrants, were motivated by his desire to seek retribution against the *Record* and its owners.

600. Sheriff Soyez' actions in assisting Chief Cody with the investigation, in planning the raids with Chief Cody, in suggesting the search of the Meyer home, in supplying Sheriff's deputies for the illegal raids, and in agreeing with Chief Cody to disregard the preview search requirement before seizing the computers and other devices, were motivated by his desire to seek retribution against the *Record* and its owners.

601. Each of these actions were intended to intimidate the owners and reporters of the *Marion County Record*.

602. And when the owners and reporters of the *Marion County Record* were defiant in the face of this attempted intimidation, Chief Cody, working with Sheriff Soyez' office, drew up applications for arrest warrants for Eric Meyer and Phyllis Zorn.

The Raids Were Unprecedented

603. In the 154-year history of the *Marion County Record*—prior to Mayor Mayfield and Chief Cody assuming office—the Marion Police Department had never sought a search warrant involving the newspaper or its reporters.

604. In the 154-year history of the *Marion County Record*—prior to Mayor Mayfield and Chief Cody assuming office—the Marion County Sheriff's Office had never sought a search warrant involving the newspaper or its reporters.

605. In the 154-year history of the *Marion County Record*—prior to Mayor Mayfield and Chief Cody assuming office—the Marion Police Department had never sought to charge the newspaper or any of its reporters with a crime.

606. In the 154-year history of the *Marion County Record*—prior to Mayor Mayfield and Chief Cody assuming office—the Marion County Sheriff's Office had never sought to charge the newspaper or any of its reporters with a crime.

607. Upon information and belief—based on the 154-year history of the *Marion County Record* as the paper of record for both the City of Marion and Marion County—prior to Mayor Mayfield and Chief Cody taking office, the Marion Police Department had never sought a search warrant involving identity theft or unauthorized use of a computer as the result of someone accessing a public-facing government website.

608. Upon information and belief—based on the 154-year history of the *Marion County Record* as the paper of record for both the City of Marion and Marion County—prior to Mayor Mayfield and Chief Cody taking office, the Marion County Sheriff's Office had never sought a search warrant involving identity theft or unauthorized use of a computer as the result of someone accessing a public-facing government website.

609. Upon information and belief—based on the 154-year history of the *Marion County Record* as the paper of record for both the City of Marion and Marion County—prior to Mayor Mayfield and Chief Cody taking office, the Marion Police Department had never sought to charge someone with identity theft or unauthorized use of a computer as the result of that person's access of a public-facing government website.

610. Upon information and belief—based on the 154-year history of the *Marion County Record* as the paper of record for both the City of Marion and Marion County—prior to Mayor Mayfield and Chief Cody taking office, the Marion County Sheriff's Office had never sought to charge someone with identity theft or unauthorized use of a computer as the result of that person's access of a public-facing government website.

611. Defendants' actions were unprecedented and the result of their retaliatory animus.

The Search Warrants Were a Pretext

612. The pretextual nature of Defendants' actions is further demonstrated by Defendants' decision to only investigate Eric Meyer, Ruth Herbel, the *Marion County Record*, and the *Record's* confidential source (Pam Maag) for the crimes of identity theft and unauthorized use of a computer, while choosing not to investigate other persons for the same crimes.

613. Prior to the execution of the illegal search warrant on the Meyer home, Chief Cody, Det. Christner, and Det. Janzen were caught on body camera footage discussing the fact that "Marion Crime," a secretive vigilante Facebook page, "always" contained information that had been illegally obtained from the Kansas Criminal Justice Information System, or CJIS.



614. Specifically, Det. Janzen was caught stating: "The whole Marion Crime Facebook page, like, they always have random information that somebody with, like, CJIS access is giving them information on it, from one thing or another."

615. When Chief Cody asked Det. Janzen what law enforcement officer was providing this confidential information to the “Marion Crime” Facebook page, Det. Janzen stated: “My thought was [*****], he’s buddy-buddy with all them.”

616. Det. Janzen was referring to former Marion County Sheriff’s Deputy [*****].⁶

The Kansas Criminal Justice Information System

617. The Kansas Criminal Justice Information System, or CJIS, is a secure computer network used to store confidential criminal history information and is maintained by the Kansas Bureau of Investigation.

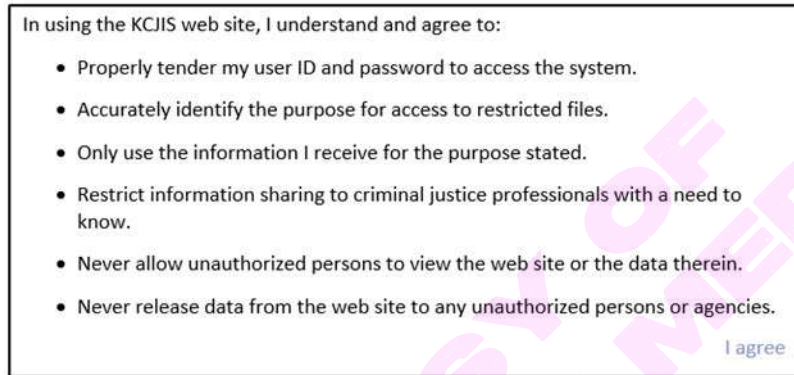


618. To access the CJIS, users must have a username and password, are told the “secure web site” is “for authorized criminal justice users only,” and are warned that “Unlawful use of data may result in agency sanctions and/or criminal penalties.”

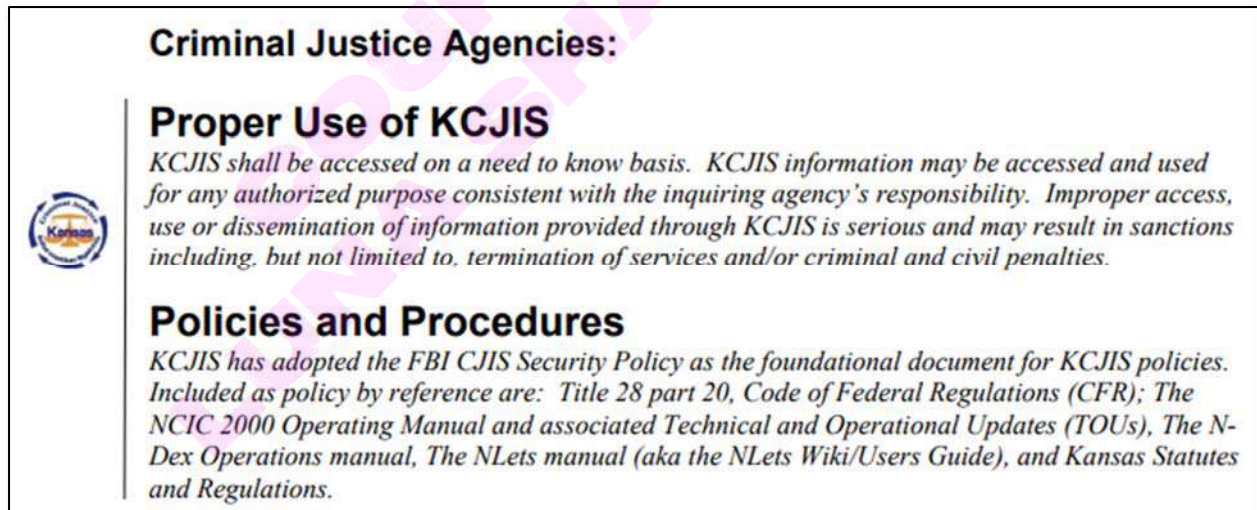


⁶ Defendants have the body camera footage in question and therefore know the identity of the deputy.

619. Moreover, users of the Kansas Criminal Justice Information System must explicitly agree that the information accessed on the system may only be shared with other “criminal justice professionals with a need to know,” must agree to “[n]ever allow unauthorized persons to view the web site or the data therein,” and must agree to “[n]ever release data from the web site to any unauthorized persons.”



620. The formal policies and procedures of the Kansas Criminal Justice Information System codify these restrictions.



621. Wrongful disclosure of CJIS information is a crime. See K.S.A. 22-4707(c).

622. If former Marion County Sheriff’s Deputy [*****] improperly accessed CJIS information and provided it to the operators of the “Marion Crime” Facebook page—as the

officers believed—he would have committed the crimes of identity theft and unauthorized use of a computer.

623. Despite that fact, neither the Marion County Sheriff’s Office nor the Marion Police Department ever executed a search warrant on former Dep. [*****]’s home, office, computer, car, or other property.

624. Defendants, however, executed search warrants on the Meyer home, the Herbel home, and the *Marion County Record* newsroom for evidence of these same so-called “crimes,” even though the Kansas Department of Revenue’s Driver’s License Status Check tool has none of the restrictions which are applicable to the Kansas Criminal Justice Information System.

625. Such disparate treatment is further evidence of the pretextual nature of Defendants’ actions.

Remaining Elements of Cause of Action

626. The actions of Mayor Mayfield, Chief Cody and Sheriff Soyez would chill a person of ordinary firmness from exercising their First Amendment rights and did, in fact, chill the *Record*.

627. As a result, the *Marion County Record*, along with Joan and Eric Meyer, have been injured.

628. Additionally, the public has been injured in that the *Record* has not reported on matters of public interest as a result of this chilling effect.

629. When the offices of the *Marion County Record* and the home of Joan and Eric Meyer were raided, Defendants did not have an objectively reasonable belief that Eric or Joan Meyer, or anyone else associated with the *Record*, were in possession of any contraband, fruits, instrumentalities, or evidence of any crime.

630. The *Marion County Record* and its owners have been damaged by Defendants' wrongful actions.

631. Defendants acted maliciously and wantonly in violating the First Amendment rights of the *Marion County Record* and Joan and Eric Meyer.

WHEREFORE, Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request they be awarded actual and punitive damages against Defendants City of Marion, Kansas; former Mayor David Mayfield, in his official and individual capacities; former Chief Gideon Cody, in his official and individual capacities; Board of County Commissioners of the County of Marion; and Sheriff Jeff Soyez, in his official and individual capacities, together with Plaintiffs' attorney's fees pursuant to 42 U.S.C. § 1988(b), the costs of this action, and such other and further relief as this Court deems just.

Count III
Fourth Amendment (42 U.S.C. § 1983)
(All Defendants)

632. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-631.

633. The Fourth Amendment to the United States Constitution provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

634. The Fourteenth Amendment to the United States Constitution extends the protection of the Fourth Amendment to actions taken by local governments and by local government officials.

635. Prior to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the Fourth Amendment

prohibited the government, including the police, from raiding a person's home or a corporation's offices unless the police had (a) a valid warrant, (b) issued upon probable cause, (c) supported by an application made under oath or affirmation, and (d) which particularly described the items to be seized.

The Invalid Search Warrants

636. The search warrants issued by Magistrate Judge Laura Viar for the *Marion County Record* newsroom and the home of Joan and Eric Meyer were not valid.

637. No probable cause, nor even arguable probable cause, existed to issue the search warrants for the *Marion County Record* newsroom and the home of Joan and Eric Meyer and no reasonable police officer could have believed there was probable cause to issue the search warrants.

638. The search warrants were issued based on materially false statements of fact by Chief Cody.

639. The search warrants were issued based on omissions of material facts by Chief Cody.

640. The search warrants were not supported by "oath or affirmation."

641. The search warrants did not "particularly describe the place to be searched, and the persons or things to be seized."

The Seizures Exceeded the Scope of the Search Warrant

642. Prior to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer, it was clearly established that the Fourth Amendment prohibited the government, including the police, from conducting warrantless raids on a person's

home or a corporation's offices except in strictly limited circumstances, such as exigent circumstances, with consent of the property owner, an item is plain view, etc.

643. No exceptions to the warrant requirement applied to the August 11, 2023, raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer.

644. Yet numerous items were seized which were not listed on the search warrant.

Remaining Elements of Cause of Action

645. The *Marion County Record* and its owners have been damaged by Defendants' wrongful actions.

646. Defendants acted maliciously and wantonly in violating the Fourth Amendment rights of the *Marion County Record* and Joan and Eric Meyer.

WHEREFORE, Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request they be awarded actual and punitive damages against Defendants City of Marion, Kansas; former Mayor David Mayfield, in his official and individual capacities; former Chief Gideon Cody, in his official and individual capacities; Officer Zach Hudlin, in his individual capacity; Board of County Commissioners of the County of Marion; Sheriff Jeff Soyez, in his official and individual capacities; and Det. Aaron Christner, in his individual capacity, together with Plaintiffs' attorney's fees pursuant to 42 U.S.C. § 1988(b), the costs of this action, and such other and further relief as this Court deems just.

Count IV

Privacy Protection Act (42 U.S.C. § 2000aa) (City of Marion, Marion County, and Sheriff Soyez, in his official capacity)

647. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-646.

The Privacy Protection Act

648. The Privacy Protection Act of 1980 provides that “it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any documentary [or work product] materials possessed by a person in connection with a purpose to disseminate to the public a newspaper ... or other similar form of public communication, in or affecting interstate or foreign commerce.” 42 U.S.C. § 2000aa.

649. The Act defines “documentary materials” as “materials upon which information is recorded,” including “written or printed materials,” as well as “other mechanically, magnetically [sic] or electronically recorded cards, tapes, or discs.” 42 U.S.C. § 2000aa-7(a).

650. The Act defines “work product materials” as materials prepared in connection with a purpose of communicating such materials to the public and which include mental impressions, conclusions, opinions, or theories of the author. 42 U.S.C. § 2000aa-7(b).

651. The search warrants for the *Marion County Record* newsroom and the home of Joan and Eric Meyer sought both “documentary” and “work product materials.”

652. For example, the search warrant sought “Documents and records pertaining to Kari Newell,” which would include reporter’s notes about Newell, drafts of yet-to-be-published newspaper articles about Newell, internal communications about Newell, etc.

653. Additionally, the search terms which were used to conduct the so-called “preview search” included “Kansas” and “Brogan Jones” (the Marion City Administrator) and “Ruth Herbel” (the Marion Vice-Mayor).

654. These terms would include reporter’s notes about the state, the city administrator, and the vice-mayor; drafts of yet-to-be-published newspaper articles about the state, the city

administrator, and the vice-mayor; internal communications about the state, the city administrator, and the vice-mayor, etc.

655. The *Marion County Record* is a newspaper “in or affecting interstate commerce” in that prior to the raids it regularly mailed copies of the newspaper to subscribers in, *inter alia*, Arizona, California, Colorado, Illinois, Iowa, Minnesota, Missouri, and Wisconsin.

656. Additionally, the *Marion County Record* hosts a website, marionrecord.com, on which it posts the content of its newspaper.

657. That website is an “other similar form of public communication” under the Act and is regularly accessed by readers outside the State of Kansas.

Probable Cause Did Not Exist

658. At the time of the raids, probable cause did not exist to believe that Eric or Joan Meyer, Phyllis Zorn, Deb Gruver, or anyone else at the *Marion County Record* had committed or were committing any criminal offense.

659. Specifically, at the time of the raids, probable cause did not exist to believe that Eric or Joan Meyer, Phyllis Zorn, Deb Gruver, or anyone else at the *Marion County Record* had violated or were violating K.S.A. 21-6107 or K.S.A. 21-5839.

660. Eric Meyer and Phyllis Zorn’s use of the Kansas Driver’s License Status Check tool on the public-facing website of the Kansas Department of Revenue was 100% legal and did not violate any Kansas law.

661. Quite the contrary, the very first sentence of the “Division of vehicles; records; disclosure” statute provides that all driver’s license records “shall be subject to the provisions of the open records act, except” (a) “records which relate to the physical or mental condition of any

person,” (b) “records which have been expunged,” or (c) “photographs [on] drivers’ licenses.” K.S.A. 74-2012(a)(1) & (b).

662. Thus, the information which the *Record* accessed, *i.e.*, that Newell’s driver’s license was suspended due to a DUI conviction, was specifically authorized under Kansas law, which states such information is subject to the Kansas Open Records Act.

663. As such, neither Meyer, Zorn, nor anyone else at the *Record*, committed identity theft, identity fraud, or unlawfully accessing a computer.

“The Receipt [or] Possession ... of Such Materials”

664. The Privacy Protection Act explicitly provides that “a government officer or employee may not search for or seize [documentary or work product] materials under the provisions of this paragraph if the offense to which the materials relate consists of **the receipt, possession, communication, or withholding of such materials or the information contained therein.**” 42 U.S.C. § 2000aa(a)-(b).

665. The Act provides that such materials (or the information in such materials) can only be obtained by a court ordered subpoena, which would allow the party in possession of materials an opportunity to object to the subpoena.

666. As described by Chief Cody in the search warrant applications, the purpose of the search was to seize the “Department of Revenue record” of Kari Newell, the “letter” to Newell, and the “information” in the “record” and “letter.”

667. As such, the purpose of the search of the *Record* and the home of its owners was to seize the very items which the Act states cannot be seized with a search warrant and must instead be sought with a court ordered subpoena.

668. Neither Chief Cody, nor any other law enforcement officer, ever sought a subpoena and, as a result, neither the *Record*, its owners, its staff, or its lawyers ever had an opportunity to object to the subpoena.

No Other Exceptions Apply

669. At the time of the raids, there was no reason to believe that the immediate seizure of any materials was necessary to prevent the death of, or serious bodily injury to, a human being.

670. Prior to the time of the raids, no subpoena duces tecum had been issued for any of the materials sought in the search warrants for the newsroom of the *Marion County Record* or the home of Joan and Eric Meyer.

671. At the time of the raids, there was no reason to believe that the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials.

672. Quite the contrary, it was Eric Meyer who originally notified both Chief Cody and Sheriff Soyez of the existence of the August 1, 2023, letter from the Kansas Department of Revenue, and explicitly offered to cooperate in any subsequent criminal investigation into how the source obtained the letter or in why local law enforcement had knowingly allowed Kari Newell to drive without a license for years.

Plaintiffs' Claims

673. The Act provides that “[a] person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure against ... any other governmental unit, ... which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment.” 42 U.S.C. § 2000aa-6(a)(1).

674. The *Marion County Record*, along with Joan and Eric Meyer, are “person[s] aggrieved by a search for or seizure of materials in violation of” the Act.

675. The Act defines “any other governmental unit” as “any local government, unit of local government, or any unit of State government.” 42 U.S.C. § 2000aa-7(c).

676. The City of Marion, Kansas; Marion County; and the Marion County Sheriff are therefore “other governmental units” under the Act.

677. Chief Cody, Officer Hudlin, and Det. Christner were “acting within the scope or under color of their office or employment” when they raided the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer.

678. Sheriff Soyez was “acting within the scope or under color of [his] office or employment” when he directed the raids on the newsroom of the *Marion County Record* and the home of Joan and Eric Meyer.

679. The *Marion County Record* and its owners have been damaged by Defendants’ wrongful actions.

680. Defendants acted maliciously and wantonly in violating the rights of the *Marion County Record* and Joan and Eric Meyer.

681. The Act provides that in addition to actual damages, a person having a cause of action under the Act is entitled to recover their attorney’s fees. 42 U.S.C. § 2000aa-6(f).

WHEREFORE, Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request they be awarded actual and punitive damages against Defendants City of Marion, Kansas; Board of County Commissioners of the County of Marion; and Sheriff Soyez, in his official

capacity, together with their attorney's fees pursuant to 42 U.S.C. § 2000aa-6(f), the costs of this action, and such other and further relief as this Court deems just.

Count V

**Failure to Train, Supervise, and Have Proper Policies (42 U.S.C. ¶ 1983)
(City of Marion, Marion County, and Sheriff Soyez, in his official capacity)**

682. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-681.

683. Marion County, the Marion County Sheriff, and the City of Marion failed to properly hire, train, supervise, discipline, and control their officers regarding:

- a. the constitutional protections afforded the press under the First Amendment,
- b. the constitutional requirements contained in the Fourth Amendment,
- c. the statutory protections contained in the Privacy Protection Act,
- d. the statutory protections of the Kansas Shield Law,
- e. the methods and manner of preparing a valid search warrant application,
- f. the methods and manner of properly executing a search warrant, and
- g. the methods and manner of conducting a valid "preview search" of a digital device.

684. Marion County, the Marion County Sheriff, and the City of Marion failed to have proper policies, procedures, or practices concerning these subjects.

685. That failure to train is the result of deliberate indifference on the part of the City, the County, and the Sheriff's Office.

686. The failures of Marion County, the Marion County Sheriff, and the City of Marion in this regard led to, and/or contributed to, the wrongful acts committed by their officers in obtaining and conducting the illegal raids.

687. As a result, Marion County, the Marion County Sheriff, and the City of Marion are responsible for the actions of their officers in obtaining and conducting the illegal raids.

WHEREFORE, Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request they be awarded actual and punitive damages against Defendants City of Marion, Kansas; Board of County Commissioners of the County of Marion; and Sheriff Soyez, in his official capacity, together with their attorney's fees pursuant to 42 U.S.C. § 1988(b), the costs of this action, and such other and further relief as this Court deems just.

Count VI
Kansas Open Records Act (K.S.A. 45-215 *et seq.*)
(City of Marion)

688. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-687.

Kansas Open Records Act

689. The Kansas Open Records Act (KORA) guarantees that public records shall be open and available to all persons.

690. The Act explicitly states: "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy." K.S.A. 45-215(a).

691. The City of Marion, Kansas, is subject to the Kansas Open Records Act.

The City Denies the *Record's* KORA Request

692. On October 19, 2023, after learning that Chief Gideon Cody had asked Kari Newell to delete his text messages with her, the *Marion County Record* made a Kansas Open Records Act request to the City of Marion for all text messages—whether from city-owned phones or privately owned phones—sent to or from Chief Cody, City Administrator Brogan Jones, Mayor David Mayfield, and the members of the city council, between August 1 and August 18, that related to the *Record*, Eric Meyer, Ruth Herbel, Kari Newell, Phyllis Zorn, Deb Gruver, Pam Maag, or that mentioned or related to the search warrants or investigation.

693. On October 24, 2023, Jennifer Hill, an attorney with the McDonald Tinker law firm in Wichita, Kansas, responded to the request from the *Record*, writing: “Please be advised that our law firm is responding to all Kansas Open Record Act requests on behalf of the City of Marion.”

694. Jennifer Hill had been hired immediately following the illegal raids by EMC Insurance, which faces potential multi-million-dollar losses as a result of issuing to the City of Marion both a “Law Enforcement Liability” insurance policy and a “Commercial Umbrella” insurance policy.

695. In her response, Hill stated, “the City is not aware of any responsive text messages sent on City-owned property;” Hill also said “[t]he City has no custody over personal cell phones.”

696. Accordingly, Hill wrote, “no responsive records exist that the City is obligated to produce.”

697. Hill’s claim that the City is not obligated to produce text messages from the personal cell phones of city officers and employees is false and is designed to protect the City—and EMC Insurance—from further liability based on the content of the damning text messages.

The 2016 Amendments to KORA

698. In 2016, the Kansas Legislature amended the definition of “public record” in the Kansas Open Records Act.

699. As a result of the 2016 amendments, the Kansas Open Records Act now defines “public record” as follows: “‘Public record’ means any recorded information, **regardless of form, characteristics or location, that is made, maintained or kept by or in the possession of any public agency[,]** or **any officer or employee of a public agency** pursuant to the officer’s or employee’s official duties and that is related to the functions, activities, programs or operations of any public agency.” K.S.A. 45-217(1)(1)(a)-(b) (emphasis added).

700. The 2016 amendments followed discovery by the *Wichita Eagle* of the fact former Gov. Sam Brownback’s budget director, Shawn Sullivan, used a private email account to discuss budget proposals with lobbyists.

701. The 2016 amendments were specifically intended to ensure that emails, text messages, and other forms of communications sent to/from government officers and employees on their private devices and accounts, fell within the definition of “public records.”

702. The Kansas Judicial Council Open Records Advisory Committee, in its report supporting the proposed change in the definition of “public records,” wrote “that public employees and officers should not be able to avoid open records laws simply by conducting public business or official duties on a private account or device.”

703. University of Kansas Law Professor Mike Kautsch—who was on the Judicial Council Advisory Committee—testified that “[u]nder the definition” in the bill, a “public record ... would encompass electronic communications ... that are about public business and are exchanged by public officers and employees using personal devices.”

704. The amendments accomplished this objective by explicitly stating that records held by government officers and employees were “public records” regardless of where the records were located.

705. As Melissa Wangemann, the General Counsel of the Kansas Association of Counties, testified, the new “definition no longer defines a public record by its location with a public agency but instead by the content of the record.”

706. In supporting the proposed amendment, Wangemann said “[t]he concept of open government should not be dependent on the location of the public record.”

707. Doug Anstaett with the Kansas Press Association testified that “if we do not close this loophole, we might as well throw the entire Kansas Open Records Act out the window.”

708. Even The League of Kansas Municipalities—no friend of open records—recognized that the 2016 amendments to the Kansas Open Records Act brought e-mails and text messages sent to/from government officers and employees using private devices and accounts within the statutory definition of “public records.”

709. Specifically, the League’s 2016 *Kansas Open Records Manual*—which was prepared after the 2016 amendments took effect—states as follows:

(2) “[R]egardless of form, characteristics, or location” encompasses all forms of recorded information – paper, videotape, audiotape, compact discs (CDs), DVDs, USB drives, external hard drives, photographs, slides, computer disks or tape, and any other digital information whether stored on server systems maintained by the public agency, third party providers, or employees’ personal devices. See also *Wichita Eagle & Beacon Pub. Co. v. Simmons*

710. Thus, the City is wrong in claiming it is not obligated to produce text messages from the personal cell phones of city officers and employees.

The City’s Denial Was Not in Good Faith

711. The Kansas Open Records Act provides that “the court shall award costs and a reasonable sum as attorney’s fees for services rendered in such action ... if the court finds that the agency’s denial of access to the public record was not in good faith and without a reasonable basis in fact or law.” K.S.A. 45-222(d).

712. Since the 2016 amendments to the Kansas Open Records Act, it has been well-accepted that text messages by government officers and employees are public records under KORA, even when the officer/employee uses their personal device.

713. The City of Marion’s refusal to provide the requested text messages is not because the City believes the messages are not “public records” under KORA, but because the messages

are damning to both it and its insurer, each of which face multi-million-dollar liability for the illegal raids.

714. As such, the City's action in wrongfully denying the *Record's* Kansas Open Records Act request was not in good faith and was without a reasonable basis in fact or law.

WHEREFORE, Plaintiff The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, request the Court order Defendant City of Marion, Kansas, to provide the requested text messages to Plaintiff and award Plaintiff its attorney's fees pursuant to K.S.A. 45-222(d), together with the costs of this action, and such other and further relief as this Court deems just.

Count [*]⁷
Wrongful Death (K.S.A. 60-1901 *et seq.*)**

715. [Reserved]

Count [*]
Abuse of Process**

716. [Reserved]

Count [*]
Outrage**

717. [Reserved]

Count [*]
Negligent Infliction of Emotional Distress**

718. [Reserved]

⁷ Pursuant to K.S.A. 12-105b, Plaintiffs have served a notice of claim asserting various state law claims and will be amending their Complaint to formally assert such claims once Defendant(s) either deny the claim(s), or 120 days has passed following the service of the notice. A copy of the notice is attached as Exhibit A.

Count [*]
Negligent Hiring and Retention**

719. [Reserved]

Count [*]
Negligent Supervision**

720. [Reserved]

Count [*]
Invasion of Privacy**

721. [Reserved]

Count [*]
Trespass**

722. [Reserved]

Count [*]
Trespass to Chattels**

723. [Reserved]

Count [*]
Conversion**

724. [Reserved]

Count [*]
Negligence**

725. [Reserved]

Count [*]
Negligence Per Se**

726. [Reserved]

Count [*]
Respondat Superior**

727. [Reserved]

Jury Demand

Plaintiffs Eric Meyer and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, demand a trial by jury on all issues triable to a jury.

Designation of Place of Trial

Plaintiffs Eric Meyer and The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, hereby designate Kansas City, Kansas, as the place of trial.

Respectfully submitted,

LATHROP GPM, LLP

By: /s/Bernard J. Rhodes

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April 1, 2024

Via e-mail and certified mail

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RE: K.S.A. 12-105b Notice of Claims

Dear Ms. Robinson, Ms. Herpich, Sheriff Soyez, and Mr. Ensey:

I am the attorney for Eric Meyer;¹ the estate of Joan Meyer;² and Hoch Publishing Co., Inc., doing business as the *Marion County Record*. This letter constitutes notice to the City of Marion, Marion County, the Marion County Sheriff's Office, and the Marion County Attorney, pursuant to K.S.A. 12-105b, of numerous claims by my clients against the City of Marion, Marion County, the Marion County Sheriff's Office, the Marion County Attorney, and their officers, employees and agents arising out of the events described below.

I. The claimants' names and addresses, and the name and address of claimants' attorney.

The claimants' names and addresses are as follows:

- Eric Meyer: [REDACTED] Marion, KS 66861.
- Joan Meyer (Deceased): Resided at [REDACTED] Marion, KS 66861.
- The Hoch Publishing Co., Inc., doing business as the *Marion County Record*: 117 S. 3rd St., Marion, KS 66861.

¹ Mr. Meyer is a claimant (1) in his personal capacity, (2) as the executor of the estate of Joan Meyer, and (3) as heir at law to Joan Meyer.

² As noted above, Eric Meyer is the executor of Mrs. Meyer's estate.



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My address is c/o Lathrop GPM LLP, 2345 Grand Blvd., Suite 2200, Kansas City, MO 64108. Please send any correspondence concerning these claims to me at this address.

II. The name and address of any public officer or employee involved, if known.

The names and addresses of the public officers and employees known to my clients to be involved in these claims are as follows:

- Former Marion Mayor David Mayfield; personal address unknown; former work address: 208 E. Santa Fe, Marion, KS 66861.
- Marion City Councilman Zach Collett; personal address unknown; work address: 208 E. Santa Fe, Marion, KS 66861.
- Former Marion Vice Mayor Ruth Herbel: [REDACTED] Marion, KS 66861; former work address: 208 E. Santa Fe, Marion, KS 66861.
- Former Marion City Councilman Gerald Kline; personal address unknown; former work address: 208 E. Santa Fe, Marion, KS 66861.
- Marion City Councilman Kevin Burkholder; personal address unknown; work address: 208 E. Santa Fe, Marion, KS 66861.
- Former Marion City Administrator Brogan Jones; personal address unknown; former work address: 208 E. Santa Fe, Marion, KS 66861.
- Former Marion Police Chief Gideon Cody; personal address unknown former work address: 112 N. Fifth St., Marion, KS 66861.
- Acting Police Chief Zach Hudlin; personal address unknown; work address: 112 N. Fifth St., Marion, KS 66861.
- Former Marion Police Officer Jonathon Benavidez; personal address unknown; former work address: 112 N. Fifth St., Marion, KS 66861.
- Part-time Marion Police Officer & State Fire Marshall Investigator Chris Mercer, personal address unknown; work addresses: 112 N. Fifth St., Marion, KS 66861 and 800 S.W. Jackson St., Suite 104, Topeka, KS 66612.
- Marion County Commission Chair David Mueller; personal address unknown; work address: 200 S. Third St., Suite 104, Marion, KS 66861.
- Marion County Commission Vice-Chair Dave Crofoot; personal address unknown; work address: 200 S. Third St., Suite 104, Marion, KS 66861.
- Marion County Commissioner Jonah Gehring; personal address unknown; work address: 200 S. Third St., Suite 104, Marion, KS 66861.

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- Marion County Commissioner Kent Becker; personal address unknown; work address: 200 S. Third St., Suite 104, Marion, KS 66861.
- Marion County Commissioner Randy Dallke; personal address unknown; work address: 200 S. Third St., Suite 104, Marion, KS 66861.
- Marion County Sheriff Jeff Soyez; personal address unknown; work address: 202 S. 4th St. Marion, KS 66861.
- Former Marion County Sheriff's Detective Steve Janzen; personal address: [REDACTED] Marion, KS 66861; former work address: 202 S. 4th St., Marion, KS 66861.
- Marion County Sheriff's Deputy Aaron Christner; personal address unknown; work address: 202 S. 4th St., Marion, KS 66861.
- Former Marion County Sheriff's Sergeant Matt Regier; personal address unknown; former work address: 202 S. 4th St., Marion, KS 66861.
- Marion County Sheriff's Deputy Kaylan Miles; personal address unknown; work address 202 S. 4th St., Marion, KS 66861.
- Marion County Attorney Joel Ensey; personal address unknown; work address: 202 S. Third St., Suite A, Marion, KS 66861.
- Morris County Magistrate Judge Laura Viar; personal address unknown; work address: 501 W. Main Street, Council Grove, KS 66846.

Additional public officers and employees may be identified through further investigation.

III. A concise statement of the factual basis of my clients' claims.

The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, publishes a weekly newspaper based in Marion, Kansas. Eric Meyer and Joan Meyer co-owned the paper until Mrs. Meyer's unfortunate death. Mrs. Meyer was a regular contributor to the *Record* and Mr. Meyer is the *Record's* publisher and editor.

A. The scheme to frame the Record and Mr. Meyer³

The Marion City Council, at the direction and urging of Mayor David Mayfield, hired Gideon Cody as the Marion Police Chief in the spring of 2023, despite Mayor Mayfield's and the City Council's awareness of prior misconduct by then-Captain Cody in his previous role at the Kansas City, Missouri, Police Department. The City of Marion hired and retained Chief Cody even though it knew or should have known that he was incompetent or unfit to serve as police chief.

³ To the best of my clients' knowledge, the events detailed in this section all occurred in Marion County, Kansas.

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The City of Marion then failed to supervise Chief Cody even though it knew or should have known that he was incompetent or unfit to serve as police chief.

In early August 2023, a source provided the *Record* with a copy of a letter from the Kansas Department of Revenue addressed to Kari Newell. The source also alleged that law enforcement was “fully aware” that Ms. Newell was driving without a license for years. A *Record* reporter used the Department of Revenue’s public online Driver’s License Status Check tool to verify the authenticity of the letter—with the assistance of the KDOR.

Following this tip—and the KDOR’s confirmation that the letter was accurate—Mr. Meyer reached out to Chief Cody and Sheriff Soyez expressing concern about the tipster’s allegations, as well as concern that the tipster themselves may have wrongfully utilized law enforcement sources to obtain the letter.

Chief Cody, together with Mayor Mayfield and Sheriff Soyez, undertook a scheme to wrongfully accuse Mr. Meyer and the *Record* of identity theft and unlawful acts concerning computers. Chief Cody and Mayor Mayfield also falsely accused Mr. Meyer and the *Record* of providing this letter to Marion Vice Mayor Ruth Herbel.

At all times, Mayor Mayfield, Sheriff Soyez, and Chief Cody knew or should have known that their accusations were false, and that neither Mr. Meyer nor the *Record* had committed any crimes. In their actions concerning these made-up “crimes” and subsequent “investigation,” Mayor Mayfield, Sheriff Soyez, and Chief Cody acted intentionally, with actual malice, with reckless disregard or callous indifference to my clients’ rights, or were negligent.

According to Chief Cody, County Attorney Joel Ensey was aware of, and provided legal approval of, the allegations, investigation, affidavits, warrants, and raids.

Chief Cody and Mr. Mayfield involved others in their scheme, including City Council Member Zach Collett, Police Officer Zach Hudlin, and Marion County Sheriff’s Detective Aaron Christner. Council Member Collett assisted Mayor Mayfield and Chief Cody by, among other things, helping Mayor Mayfield and Chief Cody convince the so-called “victim,” Ms. Newell, that Mr. Meyer and the *Record* had committed crimes against her. Chief Cody falsely told Ms. Newell that the *Record* had stolen her identity and had provided the letter to Vice Mayor Herbel.

Chief Cody, Officer Hudlin, Sheriff Soyez, and Det. Christner all participated in the “investigation” and/or the pursuit of search warrants for Mr. Meyer’s residence (shared with Joan Meyer) and the *Record*’s office based on fictional “crimes.”

At all times, Chief Cody, Mayor Mayfield, Council Member Collett, Officer Hudlin, Sheriff Soyez, and Det. Christner knew or should have known that the accusations against the *Record* and Mr. Meyer were false. These men likewise knew or should have known that the “investigation” was a sham and was part of a scheme to harass, intimidate, and retaliate against the *Record* and Mr. Meyer. These men acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients’ rights, or were negligent.

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Based on these malicious, false allegations, Chief Cody and Det. Christner drafted an affidavit for a search warrant for the *Record's* office. Sheriff Soyez suggested that they also draft an affidavit for the home Mr. Meyer shared with his 98-year-old mother, Mrs. Meyer; Chief Cody took Sheriff Soyez up on the suggestion.

These affidavits contained numerous misstatements of facts and law and omissions of material fact. The affidavits purposefully obfuscated the fact the KDOR made the letter publicly available via its Driver's License Status Check tool, and instead falsely claimed the letter could only be accessed via a crime. The affidavits stated that Mr. Meyer and/or the *Record* must have made material misrepresentations to the KDOR in order to obtain the letter, when that allegation was obviously false. The affidavits stated that the letter was protected by the Driver's Privacy Protection Act—the plain language of the Act establishes that this is also obviously false.

Additionally, because Chief Cody did not appear before Judge Viar to swear to the allegations in the affidavits, the resulting search warrants were not issued “upon the oral or written statement ... of any person under oath or affirmation” as required by the Fourth Amendment and Kansas law.

The search warrants issued pursuant to these falsified, legally erroneous affidavits were illegal, were not supported by probable cause, and violated the First Amendment, the Fourth Amendment, the federal Privacy Protection Act, and the Kansas Journalist Privilege Law.

Chief Cody, Officer Hudlin, Sheriff Soyez, and Det. Christner knew or should have known that the affidavits were false and defective, and the warrants were illegal. By nevertheless pursuing the warrants, they acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

B. The search and seizures at the Record

Chief Cody then set about executing the illegal warrants at the *Record's* office and the Meyers' home with the help and assistance of Ofc. Hudlin, Det. Christner, Det. Janzen, Ofc. Benavidez, Ofc. Mercer, and Dep. Regier.

Around 11:00 a.m. on August 11, 2023, Chief Cody, Ofc. Hudlin, Det. Christner, Det. Janzen, and Ofc. Benavidez executed the illegal warrant at the *Marion County Record*, located at 117 S. 3rd St., Marion, KS 66861. Each of these individuals illegally trespassed onto the *Record's* property and into its offices and newsroom. When committing this trespass, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

While at the *Record*, the officers illegally excluded the *Record's* staff from the office, including editor Eric Meyer, reporters Deb Gruver and Phyllis Zorn, and office manager Cheri Bentz. Chief Cody, with no legal basis, interrogated Ms. Zorn and Ms. Bentz and attempted to interrogate Ms. Gruver, all in a further attempt to harass and intimidate them. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

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While at the *Record*, the officers seized and kept the reporters' cell phones. The cell phones were not used to access the KDOR letter, and the warrants required law enforcement to screen electronic devices to determine whether the device had been used in the alleged "crimes" before seizure. The officers conducted no such screening but seized the phones anyway. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

Also at the *Record*, Det. Christner engaged in a sham "preview search" of the computer's network server, purportedly to identify whether computers and/or the network had been used in the so-called "crimes." But the keywords for the "preview search" were so vague as to be meaningless. For example, Det. Christner searched for the words "Kansas" and "vehicle" to search a Kansas newspaper's network and used the positive search results to "justify" the seizure of the *Record's* newsroom computers, as well as the computer network server. Sheriff Soyez consulted via phone with Chief Cody and together the two decided to "just take [] all" of the *Record's* computers despite the lack of any evidence connecting the computers or the server to any crime. By seizing the computers, the officers effectively shut down the newspaper. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

While at the *Record*, the officers also spent considerable time rifling through the *Record's* papers and its reporters' confidential files, in violation of the First Amendment, the federal Privacy Protection Act, and the Kansas Journalist Privilege Law. Officer Hudlin identified *Record* reporter Deb Gruver's confidential file on Chief Cody, which included the identity of one or more confidential informants. Officer Hudlin took it upon himself to direct Chief Cody to review the file as well. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

The officers also wrongfully seized and kept the *Record's* newsgathering materials. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

C. The search and seizures at the Meyer home.

Also on August 11, 2023, beginning around 11:00 a.m., Chief Cody, Officer Hudlin, Officer Benavidez, Officer Mercer, Dep. Christner, and Sgt. Regier all participated in the illegal search and seizures at the Meyer home, located at [REDACTED] Marion, KS 66861. Each of these individuals⁴ illegally trespassed into the Meyers' property. When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients' rights, or were negligent.

The warrants required the officers to screen electronic devices to determine whether the device had been used in the alleged "crimes" before seizure. At the Meyers' home, the officers seized and kept Mr. Meyer's phone, along with Mrs. Meyer's computer, Mr. Meyer's laptop, a portable

⁴ It is unclear from the available body camera footage whether Det. Janzen and Dep. Miles trespassed on the Meyers' property, but available bodycam footage does show them congregating with other officers at the front of the house.

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hard drive, and a router, without performing any sort of screening to determine whether the devices were used in the alleged “crimes.” When doing so, the officers acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients’ rights, or were negligent.

While at the Meyers’ home, the officers also rifled through, seized, and kept Mr. and Mrs. Meyer’s personal papers, and confidential newsgathering material in violation of the First Amendment, the federal Privacy Protection Act, and the Kansas Journalist Privilege Law. When doing so, they acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients’ rights, were reckless, or were negligent.

The officers committed an egregious invasion of privacy when armed law enforcement illegally invaded and searched the Meyer home for hours, despite my clients’ constant assertions of their rights and complaints that the search was illegal. This invasion of privacy and outrageous conduct caused immense physical and emotional distress to Mr. and Mrs. Meyer.

Mrs. Meyer sobbed, was visibly in tremendous distress (both physically and emotionally), and constantly warned present law enforcement that their illegal raid and occupation were going to kill her via heart attack or stroke. Despite this, law enforcement persisted with the illegal raid, worsening Mrs. Meyer’s physical and emotional distress.

The trauma and distress of the raid did not dissipate when law enforcement finally left. Mrs. Meyer remained highly distressed and inconsolable, refusing to eat, drink, and sleep. Within a day of the illegal raid, the trauma and distress caused by the raid killed Mrs. Meyer, who suffered a “sudden cardiac arrest” and died.

Mr. Meyer is devastated by the loss of his mother in such a brutal and unnecessary manner. Mr. Meyer has physical manifestation of the distress he is suffering. When the officers tormented Mr. and Mrs. Meyer with their illegal, outrageous conduct, they acted either intentionally, with actual malice, with reckless disregard or callous indifference to my clients’ rights, or were negligent.

Following the tortious and illegal raids, Chief Cody destroyed evidence concerning his involvement in the sham investigation and raids by, among other things, directing Ms. Newell, the so-called “victim,” to delete her text messages with him. And Sheriff Soyez purposefully misled *Record* reporter Phyllis Zorn in an attempt to hide his personal involvement in the illegal raids. The City further obfuscated the public officers’ wrongdoing by wrongfully refusing to produce relevant text messages concerning the raid in violation of Kansas Open Records Act.

When the above-identified actors engaged in the conduct described herein, they were acting on their own personal behalf, on behalf of the City of Marion, on behalf of Marion County, on behalf of the Marion County Sheriff’s Office, and/or on behalf of the Marion County Attorney.

K.S.A. 12-105b requires only a “concise statement of the factual basis” of a claim. Accordingly, the above description does not, and cannot, identify every detail of the tortious conduct. Additional details are included in the Complaint filed today in the United States District Court for the District of Kansas, which is enclosed and incorporated by reference.

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Based on the aforementioned conduct, the aforementioned individuals and entities are liable to my clients for, among other things, wrongful death; abuse of process; outrage; negligent infliction of emotional distress; negligent hiring and retention; negligent supervision; invasion of privacy by intrusion upon seclusion; trespass; trespass to chattels; conversion; negligence; negligence per se for violation of the Kansas Journalist Privilege Law (K.S.A. 60-480 et seq.) and the federal Privacy Protection Act (42 U.S.C. § 2000aa et seq.); and respondeat superior.

IV. A concise statement of the nature and extent of the injuries suffered by my clients.

This tortious conduct caused my clients severe and extensive injuries.

Joan Meyer: Mrs. Meyer's home was illegally invaded, and her personal effects were illegally seized and kept by law enforcement. Mrs. Meyer's life-long business, the *Marion County Record*, was also illegally invaded and its property seized. Mrs. Meyer's privacy was outrageously invaded.

The illegal occupation of her home and seizure of her personal effects, and illegal invasion and seizures at the *Record*, caused Mrs. Meyer tremendous physical, mental, and emotional distress. Mrs. Meyer was so distressed that she could not eat, drink, or sleep. Mrs. Meyer was so distraught by the invasions of her rights and privacy that she died of "sudden cardiac arrest" after spending the final hours of her life in unspeakable distress over the raids.

Before her death, she noted her devastation that after living peaceably in her home for 70 years, law enforcement's Third Reich-style⁵ tactics were going to cause her death via a heart attack or stroke. Despite her age, Mrs. Meyer was a vivacious woman. After a lifetime of service to the Marion community, Mrs. Meyer deserved to live out her golden years with her son, grandchild, great grandchildren, and other family members, with dignity and joy. The aforementioned tortious conduct stripped her of the opportunity to do so, made her last hours on earth a misery, and had literal grave consequences.

The claims brought on behalf of the tortious conduct toward Mrs. Meyer are brought both as survivor claims and as wrongful death claims.

Eric Meyer (personally and as the heir-at-law of Mrs. Meyer): Mr. Meyer's home was illegally invaded and his personal effects were illegally seized and kept by law enforcement, as was confidential newsgathering material found in his home. Mr. Meyer's business, the *Marion County Record*, was also illegally invaded and its property seized. Mr. Meyer's privacy was outrageously invaded, and he was prohibited from contacting his attorney.

Mr. Meyer was forced to navigate the trampling of his own personal rights, the violations of the First and Fourth Amendment with respect to the *Record*, and his mother's heartbreaking distress.

⁵ Mrs. Meyer lived through World War II, so her statement is not mere hyperbole.

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Mr. Meyer suffered extreme emotional distress as the result of the aforementioned tortious conduct, has suffered the devastating loss of his mother after witnessing her grueling final hours, and has physical manifestation of his distress, including requiring additional medication for his Type II diabetes.

After suffering the extreme indignity of the raids, Mr. Meyer then had to organize and fund funeral services for his mother. Mr. Meyer was deprived of the filial relationship with his mother, with whom he lived and who was also his business partner.

The Record: Law enforcement illegally excluded the *Record's* employees from the newspaper's office, interrogated the *Record's* staff with no basis, engaged in an illegal search of the premises, and seized the *Record's* papers, computers, and server, rendering the *Record* effectively unable to engage in newsgathering and reporting.

During the illegal raid of the newsroom, Chief Cody and Officer Hudlin discovered the identity of one or more of the *Record's* confidential sources who provided confidential information about Chief Cody. This breach of confidentiality is devastating to a newspaper, as newsgathering depends heavily on reporter's constitutionally protected right to keep their sources confidential and the forcible disclosure of a confidential source breaches the trust essential to newsgathering.

The raid caused the death of one of the paper's co-owners, Mrs. Meyer.

The *Record* also lost one of its reporters, Deb Gruver, who was so traumatized by her experiences at the *Record* on August 11 that she could no longer return to Marion or her job. The remaining staff of the *Record* is under constant stress, is extremely overworked, and remains under threat of criminal charges.

The raid also disrupted the *Record's* accounting system, causing \$125,145.24 in damages.

As a result of the tortious conduct, the *Record* has required legal representation by experienced legal counsel; the value of the legal services provided to date is \$152,212.50 in fees and \$20,287.96 in expenses, and is continuing to accrue.

V. A statement of the amount of monetary damages that is being requested.

Estate of Joan Meyer: Ms. Meyer's estate is entitled to recover damages for the injuries she suffered before her death, including but not limited to extreme and severe distress and physical injuries. Mrs. Meyer's estate is entitled to damages in excess of \$1 million for intentional infliction of emotional distress, outrage, negligent infliction of emotional distress, invasion of privacy, negligence per se, abuse of process, and negligence. Mrs. Meyer's estate is also entitled to damages in excess of \$500,000 for trespass to Mrs. Meyer's home, trespass to chattels, and the conversion of her property.

Mr. Meyer as heir to Mrs. Meyer: Mr. Meyer is entitled to recover damages under the wrongful death statute for the loss of Mrs. Meyer, as well as the costs for Mrs. Meyer's funeral. Mr. Meyer, as heir to Mrs. Meyer, is entitled to damages in excess of \$1 million for the loss of his relationship with his mother, as well as \$13,533.06 paid for Mrs. Meyer's funeral expenses.

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Mr. Meyer personally: Mr. Meyer personally is entitled to recover damages for the injuries he suffered, including but not limited to extreme and severe distress. Mr. Meyer is entitled to damages to in excess of \$1 million for intentional infliction of emotional distress, outrage, negligent infliction of emotional distress, invasion of privacy, negligence per se, abuse of process, and negligence. Mr. Meyer is also entitled to damages in excess of \$500,000 for trespass to Mr. Meyer's home, trespass to chattels, and conversion of his property.

The Record: The *Marion County Record* is entitled to damages for the injuries it suffered. The *Record* is entitled to damages in excess of \$1 million for trespass, trespass to chattels, conversion, negligence per se, abuse of process, and negligence, including breach of the *Record's* confidential investigative file on Chief Cody.

The *Record* is also entitled to recover in excess of \$1 million for other foreseeable harm to the business, including the vast drain on the *Record's* resources as they deal with the aftermath of the illegal raids.

The *Record* is also entitled to recover \$125,145.24 in damages caused by the interference with the *Record's* billing system.

The *Record* is also entitled to recover the value of the legal services incurred in responding to the illegal raids. To date, the value of these services amounts to \$152,212.50 in fees and \$20,287.96 in expenses; these amounts continue to accrue.

Given the egregiousness of the tortious conduct, my clients are likewise entitled to punitive damages. Punitive damages depend in part on as-yet-undiscovered information including defendants' assets. However, at this time we estimate that punitive damages will exceed \$4 million.

Please be advised that the claimants will pursue a civil action on the basis of these claims if these claims are denied or after 120 days have passed following this notice, whatever occurs first.

Sincerely,

Lathrop GPM LLP



Bernard J. Rhodes
Partner

Enclosure