16-3555

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MATTHEW STEPHEN AKINS, Plaintiff-Appellant, vs. DANIEL KNIGHT, in his official and individual capacity, and STEVEN BERRY, in his official and individual capacity, and BRENT NELSON, in his official and individual capacity, and KENNETH BURTON in his official and individual capacity, and ROB SANDERS in his official and individual capacity, and ERIC HUGHES in his official and individual capacity, ROGER SCHLUDE, in his official and individual capacity, and MICHAEL PALMER, in his official and individual capacity, and BOONE COUNTY, State of Missouri, and CITY OF COLUMBIA State of Missouri, et, al., Defendants- Appellees.	Appeal from the United States District Court for the Western District of Missouri, Central Division The Honorable Nanette Laughrey, Judge Presiding Case No.: 2:15cv04096-NKL

APPELLANT'S BRIEF

Respectfully submitted,

/s/ Stephen Wyse

Stephen Wyse, MO Bar # 49717

Admitted before the U.S. Court of Appeals for the Eighth Circuit

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Attorney for MATTHEW STEPHEN AKINS, Plaintiff-Appellant

CASE SUMMARY & REQUEST FOR ORAL ARGUMENT

MATTHEW AKINS formed CITIZENS FOR JUSTICE (CFJ) to report on police conduct after he was stopped on May 09, 2010, at DUI checkpoint by CPD Officer Eric Hughes and arrested for unlawfully concealing a firearm in his car despite MO law lawfully permitting him to do same. Prosecutor Steven Berry filed charges in that case that were later dismissed in November 2010. Akins' gun seized on May 09, 2010, was held by Columbia Police Dept. (CPD) until April 15, 2013. On June 19, 2010, with CFJ web-designer A. Brooks, Matt Akins and K. Jones were stopped by CPD Sgt. Roger Schlude for an illegal turn made by Akins. Akins' car was searched without consent after the occupants were removed and handcuffed and held for 24 minute. Upon release Schlude threatened Akins that a 10/22 rifle in the backseat permits police to execute him. City/CPD established a designated public forum Facebook page where citizens responded to CPD posts and posted reports, from May 2011 through July 2011. Matt Akins posted six CFJ Reports he filmed on this forum. Thereafter CPD Closed the forum censored Akins' posts. Akins was targeted by a CPD wanted poster, Sanders unlawful stop, stopped for filming in CPD lobby and arrested for lawful conduct. Akins' lawsuit was filed in the U.S. District Court for the W. D. of Missouri on 05/08/15. Motions to disqualify Judge Laughrey were denied on 07/09/15 and 01/11/16. On 08/18/15 Motion to Dismiss Boone Cty. granted. On 08/02/2016, the Court granted City Defendants judgment and denied judgment to Akins. Appeal timely filed on 08/29/16. Appellant requests 20 minutes for argument.

CORPORATE DISCLOSURE STATEMENT

Matthew (Matt) Akins is a natural person as are Appellees, except for the City of Columbia, Missouri, and Boone County, Missouri, which are local governmental units organized under Missouri law.

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Point II. The District Court erred in holding "*Neither the public nor the media has a First Amendment right to videotape, photograph, or make audio recordings of government proceedings that are by law open to the public*" (ECF 117, page 34) then denied Akins' motion for summary judgment and granting the City's Motion when CPD staff acting pursuant Chief Burton's policy that the CPD lobby was not a traditional public forum, even though it contained a memorial to a fallen officer, media advisory handouts, public information displays and was the designated point where citizens were to file misconduct complaints (petition the government for a redress of grievances) against police officers, and this CPD staff member in 2011 ordered Matt Akins to stop filming a citizen file a misconduct complaint against a CPD Officer in violation of Akins' rights under the First, Fourth and Fourteenth Amendments.

POINT III. The District Court erred when it granted Boone County, Prosecutors Knight, Berry and Nelson's 12(b)(6) Motion to Dismiss in holding, "Berry and Nelson are therefore protected by absolute prosecutorial immunity for filing charges against Akins and retaining his firearm." (Add p. 14) There was no probable cause for Prosecutor Berry to charge Matt Akins, 21, for unlawfully concealing a firearm in his motor vehicle on May 09, 2010, (App. P 217) which charge was dismissed on November 16, 2010. Further there was no probable cause for Prosecutor Nelson to charge Matt Akins for possessing a prohibited weapon and unlawfully concealing a butterfly-style pocket knife with a locking latch and blade less than four inches on September 11, 2012. Nor was their immunity for any recommendations to maintain Akins' Bersa pistol after November 16, 2010, until April 15, 2013. Nor to maintain the seizure or approve of the destruction of Akins pocket knife after the charges were dismissed in March 2013. In violation of Akins rights under First and Fourteenth Amendments

Point IV. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment in his claim for the violation of his Fourth and Fourteenth Amendment Rights when he was arrested at a DUI Checkpoint on May 09, 2010, and compelled by Officer Hughes to exit his vehicle for unlawfully concealing a firearm on his person in violation of RSMo. 571.030, in that Missouri law permitted Akins who was over the age of 21 to lawfully conceal a firearm on his person withing a motor vehicle. Under RSMo. 571.030(3) (2010) Akins was legally authorized to carry a concealed firearm on his person inside a vehicle, even without a valid permit. Seizures are judged from their inception and Officer Hughes opening Akins' car door and compelling him to exit the vehicle

Point V. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment when Matt Akins and Citizens For Justice web-designer Arch Brooks and Kenneth Jones were stopped on June 19, 2010. Akins had made an unlawful turn in downtown Columbia justifying the initial stop. After Sergeant Roger Schlude contacted Akins and obtained his driver's license he inquired if there were any drugs or guns in the car. Akins told him there was a 10/22 rifle in the backseat floorboard. Sgt. Schlude and another CPD Officer seized all three vehicle occupants ordered them out of the vehicle placed them in handcuffs and ord3red them to sit on curb of the street. Sgt. Schlude declared an intent to search Akins' vehicle at which point Akins informed him that he was not consenting to the search. Twenty minutes after Schlude removed the contents of the vehicle and searched it finding no contraband he tossed the contents back in the vehicle and released the three citizens from handcuffs. This was in violation of Akins' Fourth Amendment Rights.

Point VI. The District Court erred in finding that on June 19, 2010, After the traffic stop was concluded and the handcuffs removed that Sergeant Schlude informing Matt Akins that having a 10/22 rifle in his car could result in his summary execution by an officer that felt concerned for his safety by a firearm being in the vehicle and that a jury would acquit the officer f the homicide due to officer safety concerns. This was in violation of Matt Akins' Second and Fourteenth Amendment Rights

Point VII. The District Court erred in finding that the July 27, 2011, Taco Bell stop, encirclement by three human and two canine officers and seizure of Matt Akins and his identification by Officer Rob Sanders, "*I don't have to have probable cause*" was not an unlawful seizure in violation of the Fourth Amendment

Point VIII. The District Court erred in not granting Appellant Matt Akins' Motion for Partial Summary Judgment for the violation of his Fourth and Fourteenth Amendment Due Process rights when Officer Hughes seized Akins lawfully possessed firearm on May 09, 2010. And his Fourteenth Amendment due process rights when the Defendant City of Columbia maintained that seizure after that case was dismissed in November 2010, until April 15, 2013, when Akins' firearm was finally returned to him by the City of Columbia.

Point IX. The District Court erred in not granting Appellant Matt Akins' Motion for Partial Summary Judgment for the violation of his Fourth and Fourteenth

Amendment Due Process rights due to the September 11, 2012, seizure for unlawfully concealing a pocket-knife maintaining that seizure and destroying said knife without obtaining a required under Missouri law court order.

Point X. The District Court erred in granting summary judgment to the Defendants/Appellees for retaliation against Matt Akins for his work with Citizens For Justice when he was targeted by a CPD Wanted Poster with inaccurate information displayed in a restricted area of the police department. When Chief Burton represented to the Columbia Tribune that he was aware that CPD Officers were targeting Matt Akins with illegal police contact (Sanders/Taco Bell incident) in retaliation for his reporting. When evidence was presented of City Employees threatening Matt Akins' employers with loss of business or his employers with fines for employing Matt Akins

Point XI. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment for the violation of his Fourth and Fourteenth Amendment rights for the City's failure to train and/or supervise City of Columbia police officers and Boone County prosecutors in Missouri weapons law and search warrant law in that this failure caused them to arrest and prosecute him when his actions were legal and to seize a firearm belonging to him on May 09, 2010, and refuse to return them for over a two years without a reasonable objective legal basis. Further to arrest him for lawfully possessing a pocket-knife and destroy said knife without a required under Missouri law court order.

Point XII. The District Court erred in granting Appellees summary judgment in that the Court construed the facts in the light most favorable to the Defendants' and failed to recognize or distinguish contrary facts favorable to the Akins contrary to the standard for granting summary judgment precedent.

Point XIII. The District Court erred in not complying with 28 U.S.C. § 144 by failing to assign, ECF 46 a motion to disqualify judge that was verified by sworn affidavit alleging actual bias and ". . . *of fact and law according to my best information and belief and are subject to the penalties of perjury for any knowing misstatement of fact as attested by my below signature*" to another District Court judge for ruling as required by law to determine issues of judicial bias. Instead of transferring the motion as required under law Judge Laughrey denied the motion herself.

Point XIV. The District Court failed to recuse or grant either of the two motion to disqualify where actual bias and the appearance of bias were established.

Where Judge Laughrey's husband Chris Kelly held an office of trust with the Defendant City of Columbia as Chair of the Mayor's Infrastructure Task Force during the pendency of this litigation. A position that caused the Columbia Heartbeat a local news and opinion forum to allege, On 09/24/15, Columbia Heart Beat reported, "**SMH in CoMo: Stormy Mayor, biased Judge this week's leadership blunders,** . . . Federal Judge **Nanette Laughre**y ruling **for City Hall in the Opus Student apartment lawsuit**: . . . My head is shaking over the Laughrey decision for a simple reason: her husband, Chris Kelly, chairs the Mayor's Infrastructure Task Force, a job he landed after **leading organized efforts to raise utility rates this year.** On infrastructure, Kelly has become **City Hall's #1 cheerleader.** That his wife is hearing Columbia's most high-profile infrastructure legal case, maybe in history, seems like appallingly bad judgment." Further, case evidence of Citizen For Justice reporting by Akins relating to Judge Laughrey's rulings in Williams was material to the case Appellant intended to submit and would have impuned the Judge's ruling before a jury creating an inherent conflict. In association to the substantive allegations of judicial bias
Motion to disqualify Judge Laughrey in that the Court lost jurisdiction under Article III and/or the statutory jurisdictional grant of judgeship upon Judge Laughrey's acceptance of "senior judge" status in that her "tenure" status is diminished below the requirements of Article III in "senior" status and/or she was acting in excess of the fourteen (14) authorized federal judgeships which were filled by "active" judges in Missouri and no exemption, waiver or vacancy has been granted to judges in "senior" status.

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STATEMENT OF JURISDICTION

This case was filed in the District Court on 05/07/2015, and amended on 05/28/2015, (App 14-53) as a civil rights suit under 42 U.S.C § 1983 alleging violations of Matt Akins' rights under the 1st, 2nd, 4th and 14th Amendments to the U.S. Constitution and Missouri law. This appeal is from rulings of the U.S. District Court for the Western District of Missouri, Central Division granting Defendants' motion for summary judgment, denying Matt Akins' motion for partial summary judgment. Previously the District Court had granted (Add. P 11-15, App 205-209, ECF 37) on 08/18/2015 a 12(b)(6) dismissal with prejudice to the Defendant Boone County Prosecutors (Knight, Berry and Nelson) and Boone County's as requested by their Motion to dismiss (App. 54-57, ECF 13). The District Court denied a motion to reconsider the dismissal order or permit amendment as to the prosecutors. (Add. p. 16-19, App. 237-240, ECF 45 on 10/19/2015)

Further the District Court denied two motions to disqualify alleging bias (Add. p.1-10, p. 20-25, App 78-148, ECF 15 and Vol V. Supplement to App. Page 1107- 1126 (ECF 46)) and challenging the Court's Article III and statutory jurisdiction as a Senior Judge Nanette Laughrey to continue to preside over an Article III federal court. Those challenges were denied by the District Court (Add. p.1-10, (ECF 26) on 07/19/2015 and Add. p. 20-25 (ECF 47) on 01/11/2016) Also the ruling being appealed from is 08/02/2016 denial of Akins' Motion for Partial Summary Judgment and granting the Defendants' Summary

Judgment.

This Court has jurisdiction over the present appeal pursuant to 28 U.S.C. § 1291 as this appeal stems from a final decision(s) of a United States District Court within the 8th Circuit. This Appeal is taken from the order and judgment dated 08/02/2016 (Addendum p. A26-62, App. p. 1066-1102) and the First order denying judicial disqualification and dated 07/19/2015 (Addendum p.A1-10). The 12(b)(6) Order dismissing the prosecutors dated 08/18/2015, (Addendum p. A11-15) The order denying motion to reconsider or leave to amend the complaint against the prosecutors dated 10/19/2015 (Addendum p. A. 16-19). The Second order denying judicial disqualification and dated 01/11/2016 (Addendum 20-25) The Appellants filed timely Notice of Appeal on 08/19/2018. (Appendix p 1105-06).

STATEMENT OF ISSUES PRESENTED

Point I. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment and granting the Defendants' Motion for Summary Judgment where the Defendant City in 2011 created the Columbia Police Department (CPD) Facebook Page as a designated public forum and prior to July 2011, it was so maintained, during the preceding months that Matt Akins had posted six of his reports for Citizens For Justice (1.This is How Officers Should React to you Video Taping them (Ex.#16); 2. Another Spotlight Shined at CFJ Camera (Ex.# 17); 3. Officer Steve Wilmouth Uses a TASER to Subdue a Man on Providence Road (Ex# 18); 4. Careless and Imprudent Driving ? CPD Police Car Swerves Multiple Times in Front of CFJ Camera (Ex.# 19); 5. Police Standoff: CFJ's Camera Vs. a Patrol Cruiser Spotlight (Ex.#20); 6. Officer Lori Simpson testifies why she turned off her body mic off during Derek Billups incident (Exhibit#21 – see also YouTube.com /cfjcomo) on this forum prior to the City's decision to close this forum in July 2011, to all non-CPD posts and censor/remove Matt Akins' reports by failing to apply a strict scrutiny review of the violation of Akins' First and Fourteenth Amendment Rights.

1. *Hooper v. Pasco*, 241 F.3d 1067 (9th Cir. 2001)
2. *Perry Educ. Assn. v. Perry Local Educ. Assn*, 460 U.S. 37 (1983)
3. *Hazelwood School District v. Kuhlmeier,* 484 U.S. 260 (1988)

4. *Cornelius v. NAACP Legal Defense Fund,* 473 U.S. 788 (1985).

Point II. The District Court erred in holding "*Neither the public nor the media has a First Amendment right to videotape, photograph, or make audio recordings of government proceedings that are by law open to the public*" (Add, p. 59, (ECF 117, page 34)) then denied Akins' motion for partial summary judgment and granting the City's Motion when CPD staff acting pursuant Chief Burton's policy that the CPD lobby was not a traditional public forum, even though it contained a memorial to a fallen officer, media advisory handouts, public information displays and was the designated point where citizens were to file misconduct complaints (petition the government for a redress of grievances) against police officers, and this CPD staff member in summer 2011 ordered Matt Akins to stop filming a citizen file a misconduct complaint against a CPD Officer in violation of Akins' rights under the First and Fourteenth Amendments.

1. *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir., 2011)
2. *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir., 2009)
3. *Stanley v. Georgia,* 394 U.S. 557
4. *Houchins v. KQED, Inc.,* 438 U.S. 1 (1978)

POINT III. The District Court erred when it granted Boone County, Prosecutors Knight, Berry and Nelson's 12(b)(6) Motion to Dismiss in holding, "Berry and Nelson are therefore protected by absolute prosecutorial immunity for filing charges against Akins

and retaining his firearm." (Add p. 14) There was no probable cause for Prosecutor Berry to charge Matt Akins, 21, for unlawfully concealing a firearm in his motor vehicle on May 09, 2010, (App. P 217) which charge was dismissed on November 16, 2010. Further there was no probable cause for Prosecutor Nelson to charge Matt Akins for possessing a prohibited weapon switch blade and unlawfully concealing a "switch blade" (App. P 219-224) when Akins possessed a butterfly-style pocket knife with a locking latch and blade less than four inches on September 11, 2012. Nor was their immunity for any recommendations to maintain Akins' Bersa pistol after November 16, 2010, dismissal until April 15, 2013. Nor for Daniel Knight or Boone County Prosecutors to maintain the seizure or approve of the destruction of Akins butterfly style pocket knife after the charges were dismissed in March 2013.

1. *Kelly v. City of Neb.*, 813 F.3d 1070 (8th Cir., 2016)
2. *Kalina v. Fletcher*, 522 U.S. 118 (1997)
3. *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir., 2012)
4. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)

Point IV. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment in his claim for the violation of his Fourth and Fourteenth Amendment Rights when he was arrested at a DUI Checkpoint on May 09, 2010, and compelled by Officer Hughes to exit his vehicle for unlawfully concealing a firearm on his person in violation of RSMo. 571.030, in that Missouri law

permitted Akins who was over the age of 21 to lawfully conceal a firearm on his person withing a motor vehicle. Under RSMo. 571.030(3) (2010) Akins was legally authorized to carry a concealed firearm on his person inside a vehicle, even without a valid permit. Seizures are judged from their inception and Officer Hughes opening Akins' car door and compelling him to exit the vehicle.

1. *Albright v. Oliver*, 510 U.S. 266 (1994)

2. *Harlow v. Fitzgerald,* 457 U.S. 800 (1982)

3. *Pritchard v. Hamilton Township*, 424 Fed.Appx. 492 (6th Cir. 2011)

4. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)

Point V. The District Court erred in not granting Matt Akins' Motion for Partial Summary Judgment when Matt Akins and Citizens For Justice web-designer Arch Brooks and Kenneth Jones were stopped on June 19, 2010. Akins had made an unlawful turn in downtown Columbia justifying the initial stop. After Sergeant Roger Schlude contacted Akins and obtained his driver's license he inquired if there were any drugs or guns in the car. Akins told him there was a 10/22 rifle in the backseat floorboard. Sgt. Schlude and another CPD Officer seized all three vehicle occupants ordered them out of the vehicle placed them in handcuffs and ordered them to sit on curb of the street. Sgt. Schlude declared an intent to search Akins' vehicle at which point Akins informed him that he was not consenting to the search. Twenty four minutes after Schlude removed the contents of the vehicle

and searched it finding no contraband he tossed the contents back in the vehicle and released the three citizens from handcuffs. This was in violation of Akins' Fourth Amendment Rights.

1. *Brendlin v. California,* 551 U.S. 249, 255 (2007).
2. *Arizona v Gant*, 556 U.S. 332 (2009)
3. *Arizona v Johnson*, 555 U.S. 323 (2009)
4. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)

Point VI. The District Court erred in finding that on June 19, 2010, After the traffic stop was concluded and the handcuffs removed that Sergeant Schlude informing Matt Akins that having a 10/22 rifle in his car could result in his summary execution by an officer that felt concerned for his safety by a firearm being in the vehicle and that a jury would acquit the officer of his homicide due to officer safety concerns. This was in violation of Matt Akins' First, Second and Fourteenth Amendment Rights.

1. *Hill v. Lappin*, 630 F.3d 468 (6th Cir., 2010)
2. *McDonald v. City of Chicago,* 130 S.Ct. 3020 (2010)

Point VII. The District Court erred in finding that the July 27, 2011, Taco Bell stop, encirclement by three human and two canine officers and seizure of Matt Akins and his identification by Officer Rob Sanders, "*I don't have to have*

probable cause" was not an unlawful seizure in violation of the Fourth Amendment.

1. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)
2. *Joseph v. Allen,* 712 F.3d 1222 (8th Cir. 2013)
3. *Arizona v Johnson*, 555 U.S. 323 (2009)

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1. *Mathews v. Eldridge,* 424 U.S. 319 (1976)
2. *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir 2002)

Point VIII. The District Court erred in not granting Appellant Matt Akins' Motion for Partial Summary Judgment for the violation of his Fourth and Fourteenth Amendment Due Process rights due to the September 11, 2012, seizure for unlawfully concealing a pocket-knife maintaining that seizure and destroying said knife without obtaining a required under law court order.

1. *Lathon v. City of St. Louis*, 242 F.3d 841 (8th Cir. 2001)

2. *Whitlock v. Brueggemann,* 682 F.3d 567 (7th Cir. 2012)

3. *Pps Inc. v. Faulkner County, 630 F.3d 1098 (8th Cir. 2011)*

Point IX. The District Court erred in granting summary judgment to the Defendants/Appellees for retaliation against Matt Akins for his work with Citizens For Justice when he was targeted by a CPD Wanted Poster with inaccurate information displayed in a restricted area of the police department. When Chief Burton represented to the Columbia Tribune that he was aware that CPD Officers were targeting Matt Akins with illegal police contact (Sanders/Taco Bell incident) in retaliation for his reporting. When evidence was presented of City Employees threatening Matt Akins with loss of business or fines for employing Matt Akins.

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warrant law in that this failure caused them to arrest and prosecute him when his actions were legal and to seize a firearm belonging to him on May 09, 2010, and refuse to return them for over a two years without a reasonable objective legal basis. Further to arrest him for lawfully possessing a pocket-knife and destroy said knife without a required under Missouri law court order.

1. *City of Canton, Ohio v Harris,* 489 U.S. 378 (1989)

Point XI. The District Court erred in granting Appellees summary judgment in that the Court construed the facts in the light most favorable to the Defendants' and failed to recognize or distinguish contrary facts favorable to the Akins.

1. Fourteenth Amendment to U.S. Constitution

Point XIII. The District Court erred in not complying with 28 U.S.C. § 144 by failing to assign, ECF 46 a motion to disqualify judge that was verified by sworn affidavit alleging actual bias and ". . . *of fact and law according to my best information and belief and are subject to the penalties of perjury for any knowing misstatement of fact as attested by my below signature*" to another District Court judge for ruling as required by law to determine issues of judicial bias.

1. 28 U.S.C. § 144

2. 28 U.S.C. § 455

Point XIV. The District Court failed to recuse or grant either of the two motion to disqualify where actual bias and the appearance of bias were alleged. Where Judge Laughrey's husband Chris Kelly held an office of trust with the Defendant City of Columbia as Chair of the Mayor's Infrastructure Task Force during the pendency of this litigation. A position that caused the Columbia Heartbeat a local news and opinion forum to allege, On 09/24/15, Columbia Heart Beat reported, "**SMH in CoMo: Stormy Mayor, biased Judge this week's leadership blunders,** . . . Federal Judge **Nanette Laughre**y ruling **for City Hall in the Opus Student apartment lawsuit**: . . . My head is shaking over the Laughrey decision for a simple reason: her husband, Chris Kelly, chairs the Mayor's Infrastructure Task Force, a job he landed after **leading organized efforts to raise utility rates this year.** On infrastructure, Kelly has become **City Hall's #1 cheerleader.** That his wife is hearing Columbia's most high-profile infrastructure legal case, maybe in history, seems like appallingly bad judgment." Further, case evidence of Citizen For Justice reporting by Akins relating to Judge Laughrey's rulings in Williams was material to the case Appellant intended to submit and would have impuned the Judge's ruling before a jury creating an inherent conflict. In association to the substantive allegations of judicial bias

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Article III and/or the statutory jurisdictional grant of judgeship upon Judge Laughrey's acceptance of "senior judge" status in that her "tenure" status is diminished below the requirements of Article III in "senior" status and/or she was acting in excess of the fourteen (14) authorized federal judgeships which were filled by "active" judges in Missouri and no exemption, waiver or vacancy has been granted to judges in "senior" status.

1. *Caperton v. A.T. Massey*, 556 U.S. 868 (2009)
2. *Hurles v. Ryan*, 650 F.3d 1301 (9th Cir. 2011)
3. *Withrow v. Larkin*, 421 U.S. 35 (1975)

STATEMENT OF THE CASE

Matthew (Matt) Akins filed a suit under 42 U.S.C. § 1983 on 05/07/2015, (App P. 3) and then filed an amended complaint on 05/28/2015, (App p 3, 14-53) in the U.S. Court for the Western District of Mo. for violations of their 1st, 2nd, 4th, 5th and 14th Amendment Rights by Defendants Boone County and County Prosecutor Daniel Knight and his assistant prosecutors Steven Berry and Brent Nelson, and the City of Columbia and its Police Department (CPD) Chief Kenneth Burton, Officers Eric Hughes, Rob Sanders, Roger Schlude, Michael Palmer. Matt Akins alleged that the Defendants fabricated felony weapons charges against him and unlawfully seized and retained a pistol and knife belonging to him that were unrelated to any pending criminal charges and destroyed the knife in violation of Missouri's due process requirement and refused to return the firearm held from May 09, 2010, until April 15, 2013. Legally possessed when seized and after the dismissal of charges on November 06, 2010, the City continued the seizure without providing any sort of post-deprivation due-process hearing and that the Defendant took these action in retaliation for Akins reporting for Citizens For Justice (CFJ) a police accountability organization.

MATTHEW AKINS, D.O.B 09/22/1988 (App p 218), formed CITIZENS FOR JUSTICE (CFJ) to report on police conduct after he was stopped on May 09, 2010, at DWI checkpoint by CPD Officer Eric Hughes and arrested for unlawfully concealing a firearm (App. pp. 217-18, 634-635) in his car despite MO law (RSMo. 571.030.3) (App.

P 840-843) permitting him to do same. Prosecutor Berry filed charges for that 05/09/2010, case (App. P 217) that were dismissed on 11/16/2010 (App. P 508). Akins' gun seized on 05/09/2010, was held by Columbia Police Dept. (CPD) until 04/15/2013. (App p 704-716). Disputed facts as to whether there was the smell of marihuana or even marihuana in Akins vehicle during this stop. Akins maintains there was no smell of marihuana. (App p 828-829) Officer Hughes alleges a smell of marihuana and documents were completed indicating a marihuana seizure of a couple of grams, misdemeanor amount, an order for destruction, but no charges, no field or lab tests were conducted to verify any illicit substance. The City of Columbia had enacted Ordinance 16-255.2 in 2004, which prohibited CPD Officers from making an arrest based upon less than 35 grams of marihuana and permitting only the issuance of a municipal ordinance citation, "*that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose nor detained for any reason other than the issuance of a summons*" for citizens in Akins situation in regard to this dispute marihuana. (App p 855). Akins explicitly attests that his Bersa .380 had no round in the chamber until such time as Officer Hughes chambered a round. (App. P 632)

On 06/19/2010, at 18:50 hours (App. P 964) with CFJ web-designer Arch Brooks, Matt Akins and Ken Jones (App. p. 698-699) were stopped by CPD Sgt. Roger Schlude (App p 964-966) for an illegal turn (App. P 709) made by Akins. Sgt. Schlude asked for Akins license at 18:55 hours (App. P 965) and then asked if there were any guns or drugs

in the car. Akins told him there was a 10/22 rifle in the backseat floorboard at 19:02 Hours (App p 965). Akins. Jones and Brooks were then removed from the car and handcuffed and ordered to sit on the curb and held until 19:26 hours (App p. 966) while items were removed from the car and placed on the street. Akins told Sgt Schlude, I "informed him that I did not consent to the vehicle search" (App. p. 635) but the vehicle was searched by Sgt. Schlude and another CPD officer without consent searched the vehicle as admitted by City's Response to Request for Admissions 160 & 161 in which the failure to deny is deemed an admission (App. Volume IV (Under seal) App. P 258-259, (Ex.# 41 City RFA #7) and App. P 634-645, 828-835) the occupants were handcuffed. Upon finding no contraband they were released and Sgt. Schlude threatened Akins that a 10/22 rifle in the backseat of his car permits police to execute him. Sgt Schlude said, "*It depends on the officer. Some officers would see a gun in the back seat and pull their gun out and shoot you, Bam, your dead ! And do you know what they would say in court ? Do you know what they would say in court ?! They would say 'Was there reason for the officer to fear for his life ? Well, there was a gun found in the car and it would be dismissed. Just like that* !" (App. P 635)

Appellee City of Columbia established a designated public forum on CPD's Facebook page where citizens responded at will to CPD posts and made posts of their own using the "**Post by Others**" (App. P 638) option on that page prior to the end of July 2011, when that option was eliminated. Matt Akins from May 2011 through July 2011, posted six CFJ

Reports. (App. P 637-638) The removal from the designated public forum of the CPD Facebook page of Akins' video reports for CFJ reports violated his 1st and 14th Amendment rights (Volume IV (Under seal) App. P 186-270, (Ex.# 41 City RFA #7) Appellant's Appendix video supplement: 1.This is How Officers Should React to you Video Taping them (ECF 92, Ex.#16); 2. Another Spotlight Shined at CFJ Camera (ECF 92, Ex.# 17); 3. Officer Steve Wilmouth Uses a TASER to Subdue a Man on Providence Road (ECF 92, Ex# 18); 4. Careless and Imprudent Driving ? CPD Police Car Swerves Multiple Times in Front of CFJ Camera (ECF 92, Ex.# 19); 5. Police Standoff: CFJ's Camera Vs. a Patrol Cruiser Spotlight (ECF 92, Ex.#20); 6. Officer Lori Simpson testifies why she turned off her body mic off during Derek Billups incident (ECF 92, Exhibit# 21) from this designated public forum, CPD Facebook page under the control of the Appellee City of Columbia. After July 2011, the City changed this designated public forum to non-public fora and censored/removed Akins' reports listed above and removed the option of "Posts by Others" and then only posted approved comments from end of July 2011, until present on the CPD Facebook Page. Now designated contrary to the City's Social Media policy declaration (App p 693-695). Even though the City of Columbia was a named defendant. The District Court found that "None of individual Defendants participated in these incidents, and as discussed above, the City cannot be liable under § 1983 on a *respondeat superior* theory." (Add p 59, App 1099) "His links to the Police Department's Facebook page were treated the same as everyone else's and there is no constitutional

right to unlimited posting." (Add p. 59-60, App. 1099-1100)

During the Summer of 2011, Akins was filming a report for CFJ. A report involving an activist against institutional racism Marlon Jordan who was filing a misconduct complaint against a CPD Officer in CPD Lobby. This CFJ report contains a reflected image of Akins filming (Appendix video supplement ECF 92, Ex 34, "Not Allowed to film in public lobby"). The CPD Lobby was the location designated by the City of Columbia for filing a misconduct complaint(s) or petitioning the govt. for a redress of grievances when involving a CPD Officer. During this filming a CPD employee acting pursuant to Chief Burton's policy ordered Akins to stop filming Jordan's complaint and Akins complied. (App p. 638-9, 829) Police Chief Burton declared the policy for 2011, that the CPD Lobby was not intended for "assembly and speech" and "the public was not allowed to use the lobby of the Columbia Police Department for assembly or speech" and "not open to public for expressive activity" (App p 600, Chief Burton Affidavit) The District Court had ruled,"*Neither the public nor the media has a First Amendment right to videotape, photograph, or make audio recordings of government proceedings that are by law open to the public*" (App p 1099, Page 34). In addition, to the CPD Lobby being open 24 hours a day and being the point for filing misconduct and criminal complaints. The CPD lobby contained informational handouts and beat map advising citizens what patrol area they lived within, it had media advisories as well as CPD's Media Book containing "24 Hour Arrest Reports" for the news media (App p 829, 847-848). Finally, CPD's Lobby

contained a memorial to slain officer Molly Bowden to honor her sacrifice in the line of duty. (App p 829)

On 07/27/2011, Akins and Micheal Carter were filming CPD Officers for a CFJ report and they left to drop Michael Carter off at home. (App p 639). In route contact was made with a CPD Patrol Car containing Officer Rob Sanders and his K-9 Partner Fano who changed direction and began following Akins' vehicle. Akins and Carter concerned for their safety decided to grab some food at Taco Bell and began filming their police surveillance. They drove into the drive-thru lane and were followed by Sanders. After they made the order Sanders pulled over to the front of the Taco Bell parking lot and waited. Akins decided a public place was a good place to eat and pulled to front curb of the Taco Bell parking lot adjacent to Providence. After which a 2d CPD Patrol Car containing Officers Parsons and Hedrick and an additional K-9 pulled behind Akins' vehicle blocking his ability to back-up before exiting their car. Officer Parson with his K-9 took up his post behind Akins' vehicle and Officer Hedrick took his post on the passenger side of Akins vehicle. Officer Sanders left his door open so that K-9 Fano was at the ready and approached Akins' driver side window. Sanders asked Akins "You got a driver's license I could see ?" Akins responded requesting to know Officer Sanders probable cause to demand his license. Sanders responded "I don't have to have probable probable cause !" Akins then asked if Sanders was conducting a traffic stop and Sanders replied "No, I'm not". Akins provided his driver's license to Sanders (App p. 639, 829-830, App video supp

ECF 91-1, 91-4). Sanders then demanded that Michael Carter's identification and after discussion it was also provided. Sanders then departed to run a computer check on Akins and Carter. Officer Hedrick then interacted with these reporters. After witnessing the CFJ report,(ECF 91-4) "How to Handle a Questionable Encounter with Police" Chief Burton filed an IA Complaint against Sanders. CPD IA found that this seizure was not a "Terry Stop" or other legal seizure and was in violation of Akins' Fourth Amendment Right (Vol. IV App. Under Seal pp.31-33, 67- 68). In a Columbia Tribune, Article from October 24, 2011, "*Chief Ken Burton told the Tribune previously officers should respect activists' questions. Burton said he understands that the conduct of the activists representing a group called Citizens for Justice might not be popular among officers, but they should still be respected.*"

Displayed in the CPD Briefing Room, (App p 601) an area generally not open to the public, a "wanted poster" with Matt Akins picture was displayed throughout 2011, this wanted poster text stated: "Matthew Stephen Akins 09/22/1988" and "Akins runs the **cfjwebssos.us** website. He has arrests in our system for weapons violations, including carrying a pistol concealed on his person. He is currently driving a silver Grand Prix Pontaic MO DD9 H1T" (App p 530) and was revealed by a parent of school group student visiting CPD in October of 2011 (App. p 640). The website address listed on this wanted poster was never public and when the website went public in April 2011, it had a different address. As of the Fall of 2011, the only weapons arrest Akins had in "our system" was for

the 05/09/2010, false arrest described above by CPD Officer Hughes for unlawfully concealing a firearm in motor vehicle. Akins filed an IA Complaint over the Poster and CPD was unwilling to disclose the identity of the creator and what authorization had been obtained to display this wanted poster in the Police Briefing Room and determined that no policy had been violated by its display (App p 640-642, 831-832).

On 09/11/2012, was stopped by CPD Officer Michael Palmer for a traffic infraction and during a search of his person a butterfly style pocket knife with a locking latch and blade less than four inches (App p 221-224) was found in Akins' pocket. Akins was arrested and charged with driving on a suspended license,and possession of a prohibited weapon and the felony of unlawful use of a weapon for having this pocket knife in his pocket. (App. P 642-643, 830-831) Prosecutor Nelson filed the C Felony Charge of Unlawful Use of Weapon for "the defendant knowingly possessed a **switchblade knife**" (App p 219-221) which was dismissed by March 2013. (App p. 67). Akins' butterfly style pocket-knife was subsequently destroyed by the City without obtaining the required by Missouri law Court Order (App. P 831)

Appellee Officer Eric Hughes in 10/14/2011, went to Salty's Nightclub and threatened the owner Andrew Koerper that he would cite him with a fine of $2,500,00 for permitting Akins to work there as a videographer after the law required non-employee patrons to exit the club. On 10/16/2011, a CPD Patrol Car shined its spotlight into the club through the windows and then spotlighted Mr. Akins and his brother Nick as they left the premises.

(App p 640-641). In a 12/15/2011, meeting the Chief Kenneth Burton, Deputy Chief Jill Schlude and CFJ reporters Travis Marshall and Matt Akins. CPD Chief Burton stated it was his goal CFJ "**out of business**" (App. P 641, Vol. IV, Under Seal, p 85). 09/07/2013, Matt Akins was assaulted by a felon CJ Powell, who had made threats against Akins and his paramour Samantha Crockett. After being assaulted Akins produced his pistol and used it to stop further assaults by Powell. After Akins had gotten into the back seat of Crockett's car. CJ Powell forced open his door and attempted to gain entry for additional violence against Akins. Akins fired one shot between Powell's legs causing him to jump back enabling the vehicle to flee. This incident was recorded on a neighbor's video yet Mr. Akins was arrested and charged with multiple felonies carrying the possibility of life in prison. Over a year later all the original charges were dismissed (App. 832-834) City of Columbia Officials Brooks and Rhodes (Vol. IV App. Under Seal 268) contacted a contracted City employee Nicholas Rodriguez, aka NicDanger, and informed him that if he did not obtain a different videographer than Matt Akins then his contract would be terminated. The contract was worth $600.00 to Matt Akins personally. (App. 834-835). Matt Akins was excluded from 10/22/2015,. CPD "Media Training Day" event (App 645-646, Vol. IV App. Under Seal P 292-297).

Matt Akins' counsel filed a Motion request the court recuse, or disqualified on 06/23/2015, (App. P 78-88, (ECF 15)) instant counsel alleged that Judge Laughrey was biased for the Defendant City of Columbia and against instant counsel. Instant counsel had

filed a judicial misconduct complaint (08-11-90060) against Judge Laughrey in re the matter of Crystal Coates (App p 89-148). After a three day child murder case of State v. Horace Johnson that ended the day before the Coates pre-trial conference on 12/04/2009, for a matter set for jury trial on 12/14/2009. Judge Laughrey denied Wyse's motion for continuance. Wyse had alleged that three days of sustained media coverage representing Horace Johnson in a child murder case had rendered him toxic to the potential jury pool and would deny his client a fair trial due to the animosity directed at him for representing a now convicted child murderer in such close proximity to the Coates trial. (App p 91) Judge Laughrey denied Wyse's motion to continue. Sua sponte Judge Laughrey moved the jury trial up four days from 12/14/2009, to 12/10/2009, None of Crystal Coates witnesses were under subpoena for the 12/10/2009. Wyse informed Judge Laughrey that he had a conflicting matter in state Court on that date and she instructed him to get it continued and if he was unable she would continue it for the state judge. (App. P 99-100). This 1st motion alleged bias for the City of Columbia in previous cases and where Judge Laughrey had previously worked as a Columbia municipal judge and where her family resided. The 2d Motion to Disqualify, was verified by me under oath and "according to Wyse's best information and belief and he was subject to the penalties of perjury for any knowing misstatement of fact as attested by his below signature." (Vol. VI, App p. 1112) It further attested that case evidence in Akins v Knight would include a CFJ "a two-part video report, "*Columbia Police Falsely Arrest and Injure Men for Sitting in a Public Park.*"

Reporting on the case of Josh Williams and Philip Porter v. Scott Decker and various CPD Officers. Part 1 and Part 2 was critical of Judge Laughrey's finding the seizure at gun point, handcuffing, injury, destruction of property and detention for an hour after police declaration to Williams that he was "under arrest" was not an arrest but merely a reasonable detention under a Terry analysis." (App p 1107). Further that Judge's husband, Chris Kelly, was holding a position of trust with the Columbia as Chair of the Mayor's Infrastructure Task Force during the pendency of Akins' case. A conflict of interest that had drawn criticism from Columbia Heartbeat, a news outlet, alleging a conflict of interest by Judge Laughrey for presiding over the Opus development lawsuit. On 09/24/15, Columbia Heart Beat reported, "**SMH in CoMo: Stormy Mayor, biased Judge this week's leadership blunders,** . . . Federal Judge **Nanette Laughrey** ruling **for City Hall in the Opus Student apartment lawsuit**: . . . My head is shaking over the Laughrey decision for a simple reason: her husband, Chris Kelly, chairs the Mayor's Infrastructure Task Force, a job he landed after **leading organized efforts to raise utility rates this year.** On infrastructure, Kelly has become **City Hall's #1 cheerleader.** That his wife is hearing Columbia's most high-profile infrastructure legal case, maybe in history, seems like appallingly bad judgment." (App. P 1121-22). Chris Kelly and instant counsel had the year prior engaged in a disagreement over his criticism of local advocacy group circulating petition requesting the U.S. Supreme Court review Judge Laughrey's and the 8th Circuit's rulings in Williams v Decker. (App. 1107-1119). Judge Laughrey denied both

motions to disqualify her from Akins' case.

Matt Akins' lawsuit was filed in the U.S. District Court for the W. D. of Missouri on 05/08/15. Motions to disqualify Judge Laughrey were denied on 07/09/15 (App p. 175-184, AD 1-10) and 01/11/16 (App p 241-246, AD 20-25). On 08/18/15 (App p. 205-209, AD 11-15) 12(b)(6) Motion to Dismiss Boone Cty. granted. On 08/02/2016, (App p. 1066-1102, AD 26-62) the Court granted City Defendants summary judgment and denied judgment to Akins. Notice of Appeal was timely filed on 08/29/16. (App p 1105-1106)

SUMMARY OF ARGUMENT

The Court improperly granted a 12(b)(6) dismissal to Boone County and Boone County Prosecutors Knight, Berry and Nelson. In that prosecutors only have absolute immunity as to prosecutions undertaken with probable cause, and qualified immunity for all other actions taken under the color of law. Missouri law specifies that a citizen over the age of 21 may lawfully conceal a firearm on his person within a motor vehicle. Further Missouri law specifies that a butterfly style pocket knife with a locking latch and blade less than 4 inches may also be lawfully concealed. That in addition it is not a prohibited weapon 'switchblade'. These prosecutorial actions are therefore not entitled to absolute immunity. Interference with Matt Akins property rights for his firearm and his knife after the associated criminal cases were dismissed are subject to a qualified immunity analysis. In summary judgment the District Court excused CPD's continued retention of Akins Bersa pistol after the case was dismissed on 11/16/2010, until 04/15/ 2013, "pursuant to

the recommendations of the Boone County Prosecutor's Office." (ADD. P 46)

District Court erred in denying the 1st Motion to Disqualify the Judge. In that a reasonable person could find at a minimum the appearance of impropriety as alleged. The District Court erred in ruling on the 2d Motion to Disqualify the Judge for Bias. In that, pursuant to 28 U.S.C. § 144 the motion verified under oath and pursuant to the best knowledge and belief of Appellant's counsel was pursuant to law required to be transferred to a different judge to rule on those issues raised in this motion. When Judge Laughrey failed to transfer to an impartial judge and denied the motion herself she acted contrary to the specific commands of 28 U.S.C. § 144. In that case evidence with regard to Citizens For Justice reports prepared by Appellant were critical of her ruling in Williams v Decker (CPD) and would impune her reputation in which she had a property interest. Further with Judge Laughrey's husband Chris Kelly holding a position of trust with Appellee City of Columbia as Chair of Infrastructure Task Force during the pendency of this matter it created an appearance of bias. As was further verified by a local Columbia news outlet "Columbia Heart Beat" which found Judge Laughrey's participation in cases related to the City of Columbia to be a conflict and appearance of bias. And the allegations of bias for the City of Columbia and against Akins counsel as specified in the motion. Further, Missouri pursuant to 28 U.S.C. § 133 is only authorized fourteen (14) District Court Judges by Congress. All 14 of those judicial commissions were filled by active judges. No variance, wavier or exception permits a "senior judge" to preside over an

Article III Court without a commission. Senior judges may fulfill their 25% workload requirement by entirely non-judicial activities. Further, upon accepting "senior judge" status, Judge Laughrey lost the tenure protection necessary to be an Article III judge and lost the authority to hear Matt Akins' claims. Further, it was a conflict of interest for Senior Judge Laughrey to rule on the motion to disqualify her in that she has a direct and personal interest in maintaining her judicial office, staff and authority, and she should not have ruled on that motion. In addition, as a former Columbia municipal judge and resident of Boone County she has an interest in preventing significant judgments form being awarded against the county.

The District Court erred in denying Akins Motion for Summary Judgment and granting summary judgment to the City Defendants, including CPD officers for violations of Akins 1st, 2d, 4th and 14th Amendment rights by construing facts in the light most favorable to the moving defendants and failing to consider contrary facts favorable to the Akins. Matt Akins claims violations of his rights to freedom of speech and press, in that he was utilizing the designated public forum of the CPD's Facebook page to post 6 of his reports made for Citizens For Justice from May until July 2011, when in July 2011, those reports were censored and removed from this Facebook Page and new policy prohibiting the public from using the "**Post By Others**" option to post on this page was implemented and this forum was thereafter censored with only approved government messages permitted. Further, while covering citizen, Marlon Jordan, file a misconduct complaint at

the designated location, traditional public forum, at the CPD Lobby and CPD employee pursuant to Chief Burton's policy ordered Akins to cease filming and Akins complied with that order. Akins right to petition the government for a redress of grievances without retaliation; to own firearms without threat of police execution; to be free from false arrest for felony weapons charges when complying with the law; to be free from unreasonable seizures of force by police officers; to be free from seizure of property without a legal basis and without the due process of a post-deprivation hearing; and to be free from retaliatory arrest and prosecution interference with business expectations for engaging in free speech, press and petition for a redress of grievances.

STANDARD OF REVIEW

The Court of Appeals reviews "de novo the district court's granting of summary judgment." *Jessep v. Jacobson Transp. Co., Inc*., 350 F.3d 739, 741 (8th Cir. 2003). "The Court reviews the evidence and the inferences which may be reasonably drawn from the evidence in the light most favorable to the non-moving party. The moving party has the burden of showing the absence of genuine issue of material fact and that it is entitled to judgments as a matter of law." *Enterprise Bank. V. Magna Bank of Missouri,* 92 F.3d 743, 747 (8th Cir. 1996) (internal citations omitted).

The jurisdictional challenges, bias, constitutional and statutory, to Senior District Judge Laughrey's authority to hear Matt Akins' case is pure questions of law that receive a de novo review and may be raised at any time in the proceedings, even if on appeal for the

first time. See *U.S. v. American Steamship,* 363 U.S. 685 (1960). An assertion of judicial bias is a due process challenge and the review is for an abuse of discretion.

In regard to 12(b)(6) Motions to Dismiss. This Circuit said in *Kelly v. City of Neb.*, 813 F.3d 1070 (8th Cir., 2016) "We review *de novo* a district court's dismissal for failure to state a claim, taking all facts alleged in the complaint as true. *Trooien v. Mansour,* 608 F.3d 1020, 1026 (8th Cir.2010). Rule 12(b)(6) allows a defendant to move for dismissal based on a plaintiff's "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Braden v. Wal–Mart Stores, Inc.,* 588 F.3d 585, 594 (8th Cir.2009) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 556 U.S. at 678.

ARGUMENT

Point I

The District Court erred when it found, "his links to the Columbia Police Department's Facebook page were treated the same as everyone else's and there is no constitutional right to unlimited posting." (Add p 60) The Court erred in not applying a forum analysis to determine which level of scrutiny this 1st Amendment challenge was entitled to and by not

applying a strict scrutiny analysis to the designated public forum of the Columbia Facebook page. Akins from May until end of July 2011, made six posts of his reports made on behalf of Citizens For Justice (CFJ) to the Columbia Police Department (CPD) page using the 'Post by Others" option by which the City had permitted a free dialogue between the citizenry and the public on this forum until the end of July 2011.

Hooper v Pasco, 241 F.3d 1067 (9th Cir. 2001) held, **"**A. First Amendment Violation. Categories of Fora -The Supreme Court instructs us that, in assessing a First Amendment claim for speech on government property,"we must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." *Cornelius v. NAACP Legal Defense & Educ. Fund,* 473 U.S. 788, 797 (1985). If the forum is public, "speakers can be excluded . . . only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest." Id. at 800. If, on the other hand, the forum is non-public, the government is free to restrict access "as long as the restrictions are `reasonable and [are**] not an effort to suppress expression merely because public officials oppose the speaker's view.**' " Id. (quoting Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983)).

Thus, the two main categories of fora are public (where strict scrutiny applies) and non-public (where a more lenient "reasonableness" standard governs). This does not, however, exhaust the universe of categories. Rather, "Forum analysis divides government

property into three categories: public fora, designated public fora, and nonpublic fora."[5] DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ., 196 F.3d 958, 964 (9th Cir. 1999), cert. denied, 120 S.Ct. 1674 (2000) A designated public forum exists where "the government intentionally opens up a nontraditional forum for public discourse." Id. "Restrictions on expressive activity in designated public fora are subject to the same limitations that govern a traditional public forum," i.e., strict scrutiny. Id. at 964-965 4

When City of Columbia authorized citizens to utilize the “Post by Others” option of the CPD Facebook page it created a designated public forum. A Forum used to discuss the conduct of CPD Officers, a matter of great public concern. The removal from the designated public forum of the CPD Facebook page of Akins’ video reports for CFJ reports posted between May and July 2011 (Volume IV (Under seal) App. P 186-270, (Ex.# 41 City RFA #7) Appellant’s Appendix video supplement: 1.This is How Officers Should React to you Video Taping them (ECF 92, Ex.#16); 2. Another Spotlight Shined at CFJ Camera (ECF 92, Ex.# 17); 3. Officer Steve Wilmouth Uses a TASER to Subdue a Man on Providence Road (ECF 92, Ex# 18); 4. Careless and Imprudent Driving ? CPD Police Car Swerves Multiple Times in Front of CFJ Camera (ECF 92, Ex.# 19); 5. Police Standoff: CFJ’s Camera Vs. a Patrol Cruiser Spotlight (ECF 92, Ex.#20); 6. Officer Lori Simpson testifies why she turned off her body mic off during Derek Billups incident (ECF 92, Exhibit# 21). This censorship coincides with an effort by the CPD to persuade the Columbia City Council to dramatically weaken the oversight of the Citizen’s Police

Review Board (CPRB) (App p 638) and Akins reporting for CFJ is the type of effort that the Supreme Court was concerned about being censored in *Cornelius you may not* "**suppress expression merely because public officials oppose the speaker's view."** *Id.*, at 797 and because Akins' CFJ report regarding "Officer Lori Simpson testifies why she turned off her body mic off during Derek Billups incident", involved her testimony before the CPRB it clearly indicates that this was viewpoint discrimination to silence a contrary viewpoint than was being advocated by Chief Burton and the Columbia Police Officers Association with regard to the oversight of the CPRB.

As the Supreme Court observed in Cornelius, government intent is the essential question in determining whether a designated public forum has been established: The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional public forum for public discourse. Accordingly, the Court has looked to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum. The Court has also examined the nature of the property and its compatibility with expressive activity to discern the government's intent. 473 U.S. at 802 (emphasis added) (citing Perry , 460 U.S. At 46). The "policy" and "practice" inquiries are intimately linked in the sense that an abstract policy statement purporting to restrict access to a forum is not enough. What matters is what the government actually does -specifically, whether it consistently enforces the restrictions on use of the forum that it adopted.

The District Court failed to identify which type of forum analysis applied and the City offered no justification for the censorship of Akins 6 reports for CFJ without notice and opportunity for a hearing. Akins was engaged in Core political speech. This is the most highly guarded form of speech because of its purely expressive nature and importance to a functional republic. Restrictions placed upon core political speech must weather strict scrutiny analysis or they will be struck down. Strict scrutiny is the most stringent standard of judicial review used by United States courts. It is part of the hierarchy of standards that courts use to determine which is weightier, a constitutional right or principle or the government's interest against observance of the principle.

This Court should find that Akins' 1st and 14th Amendment were violated by the removal of his reports for CFJ and strict governmental censorship regime enacted at the end of July 2011 on the Appellee City of Columbia's CPD Facebook Page.

Point II

The District Court erred when it did not grant Akins Motion for summary judgment and granted Defendants summary judgment and found, "Further, he has no constitutional right to videotape any public proceedings he wishes to. *See Rice v. Kempker*, 374 F.3d 675, 678 (8th Cir. 2004) ("[N]either the public nor the media has a First Amendment right to videotape, photograph, or make audio recordings of government proceedings that are by law open to the public."" (Add p 59)

The District Court reliance upon *Rice* is misplaced. *Rice* is 1st Amendment challenge

to film an execution. Govt. can satisfy a strict scrutiny challenge in Rice due the need for safety in the death chamber and that the death chamber is not a traditional public forum. Reasonable restrictions in such an environment may be consistent with the 1st Amendment. In Akins the CPD Lobby was open 24 hours a day, was the designated point where citizens were the file a misconduct complaint/petition the government for a redress of grievances. Contained a "Media Advisory" book on 24 hour arrest reports and information displays and handouts for the public. In addition, it contained a memorial to fallen Officer Molly Bowden. Memorials are designated points where people gather to remember and pay tribute to a particular person or event. Akins assisting Marlon Jordan by documenting his filing of a police misconduct complaint is consistent with the protections of the 1st Amendment. The order of the CPD employee acting pursuant to Chief Burton's policy that the CPD Lobby was not a traditional public forum and filming not permitted is insufficient to change the nature of this traditional public forum into something else and violated Akins 1st Amendment Rights in the end of the summer 2011.

Glik v. Cunniffe, 655 F.3d 78, (1st Cir. 2011), held, **"**It is firmly established that the First Amendment's aegis extends further than the text's proscription on laws "abridging the freedom of speech, or of the press," and encompasses a range of conduct related to the **gathering** and dissemination of information. As the Supreme Court has observed, "the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which

members of the public may draw." *First Nat'l Bank v. Bellotti,* 435 U.S. 765, 783, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978); *see also Stanley v. Georgia,* 394 U.S. 557, 564, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969) ("It is ... well established that the Constitution protects the right to receive information and ideas."). An important corollary to this interest in protecting the stock of public information is that "[t]here is an undoubted right to gather news 'from any source by means within the law.' " *Houchins v. KQED, Inc.,* 438 U.S. 1, 11, 98 S.Ct. 2588, 57 L.Ed.2d 553 (1978) (quoting *Branzburg v. Hayes,* 408 U.S. 665, 681–82, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972)). The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within these principles. Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting "the free discussion of governmental affairs." *Mills v. Alabama,* 384 U.S. 214, 218, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966). Moreover, as the Court has noted, "[f]reedom of expression has particular significance with respect to government because '[i]t is here that the state has a special incentive to repress opposition and often wields a more effective power of suppression.' " *First Nat'l Bank,* 435 U.S. at 777 n. 11, 98 S.Ct. 1407 ... This is particularly true of law enforcement officials, who are granted substantial discretion that may be misused to deprive individuals of their liberties. *Cf. Gentile v. State Bar of Nev.,* 501 U.S. 1030, 1035–36, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991) (observing that "[t]he public has an interest in

[the] responsible exercise" of the discretion granted police and prosecutors). Ensuring the public's right to gather information about their officials not only aids in the uncovering of abuses, *see id.* at 1034–35, 111 S.Ct. 2720 (recognizing a core First Amendment interest in "the dissemination of information relating to alleged governmental misconduct"), but also may have a [655 F.3d 83] salutary effect on the functioning of government more generally, *see Press–Enter. Co. v. Superior Court,* 478 U.S. 1, 8, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (noting that "many governmental processes operate best under public scrutiny"). In line with these principles, we have previously recognized that the videotaping of public officials is an exercise of First Amendment liberties. In *Iacobucci v. Boulter,* 193 F.3d 14 (1st Cir.1999), a local journalist brought a § 1983 claim arising from his arrest in the course of filming officials in the hallway outside a public meeting of a historic district commission. The commissioners had objected to the plaintiff's filming. *Id.* at 18. When the plaintiff refused to desist, a police officer on the scene arrested him for disorderly conduct. *Id.* The charges were later dismissed. *Id.* Although the plaintiff's subsequent § 1983 suit against the arresting police officer was grounded largely in the Fourth Amendment and did not include a First Amendment claim, we explicitly noted, in rejecting the officer's appeal from a denial of qualified immunity, that because the plaintiff's journalistic activities "were peaceful, not performed in derogation of any law, and *done in the exercise of his First Amendment rights,* [the officer] lacked the authority to stop them." *Id.* at 25 (emphasis added). Our recognition that the First Amendment protects the filming of

government officials in public spaces accords with the decisions of numerous circuit and district courts. *See, e.g., Smith v. City of Cumming,* 212 F.3d 1332, 1333 (11th Cir.2000) ("The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest."); *Fordyce v. City of Seattle,* 55 F.3d 436, 439 (9th Cir.1995) (recognizing a "First Amendment right to film matters of public interest"); *Demarest v. Athol/Orange Cmty. Television, Inc.,* 188 F.Supp.2d 82, 94–95 (D.Mass.2002) (finding it "highly probable" that filming of a public official on street outside his home by contributors to public access cable show was protected by the First Amendment, and noting that, "[a]t base, plaintiffs had a constitutionally protected right to record matters of public interest"); ... It is of no significance that the present case, unlike *Iacobucci* and many of those cited above, involves a private individual, and not a reporter, gathering information about public officials. The First Amendment right to gather news is, as the Court has often noted, not one that inures solely to the benefit of the news media; rather, the public's right of access to information is coextensive with that of the press. *Houchins,* 438 U.S. at 16, 98 S.Ct. 2588 (noting that the Constitution "assure[s] the public and the press equal access once government has opened its doors"); [655 F.3d 84] *Branzburg,* 408 U.S. at 684, 92 S.Ct. 2646 ("[T]he First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally."). Indeed, there are several cases involving private individuals among the decisions from other courts

recognizing the First Amendment right to film. *See, e.g., Smith,* 212 F.3d 1332; . . . Moreover, changes in technology and society have made the lines between private citizen and journalist exceedingly difficult to draw. The proliferation of electronic devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper. Such developments make clear why the news-gathering protections of the First Amendment **cannot turn on professional credentials or status.**

To be sure, the right to film is not without limitations. It may be subject to reasonable time, place, and manner restrictions. *See Smith,* 212 F.3d at 1333. . . . On the facts alleged in the complaint, Glik's exercise of his First Amendment rights fell well within the bounds of the Constitution's protections. Glik filmed the defendant police officers in the Boston Common, the oldest city park in the United States and the apotheosis of a **public forum**. In such traditional public spaces, the rights of the state to limit the exercise of First Amendment activity are "sharply circumscribed." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). . . . Such **peaceful recording of an arrest in a public space that does not interfere with the police officers' performance of their duties is not reasonably subject to limitation.**

In our society, police officers are expected to endure significant burdens caused by citizens' exercise of their First Amendment rights. *See City of Houston v. Hill,* 482 U.S.

451, 461, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) ("[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."). Indeed, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Id.* at 462–63, 107 S.Ct. 2502. . . . **2. Was the Right to Film Clearly Established?** Though the "clearly established" inquiry does "not require a case directly on point," *al-Kidd,* 131 S.Ct. at 2083, we have such a case in *Iacobucci.* What is particularly notable about *Iacobucci* is the [655 F.3d 85] brevity of the First Amendment discussion, a characteristic found in other circuit opinions that have recognized a right to film government officials or matters of public interest in public space. *See Smith,* 212 F.3d at 1333; *Fordyce,* 55 F.3d at 439. This terseness implicitly speaks to the fundamental and virtually self-evident nature of the First Amendment's protections in this area. *Cf. Lee v. Gregory,* 363 F.3d 931, 936 (9th Cir.2004) (noting that some constitutional violations are "self-evident" and do not require particularized case law to substantiate them). We thus have no trouble concluding that "the state of the law at the time of the alleged violation gave the defendant[s] fair warning that [their] particular conduct was unconstitutional." *Maldonado,* 568 F.3d at 269." *Id* ., 83-85 (emphasis added)

POINT III

The District Court erred when it granted Boone Prosecutors Knight, Berry and Nelson's 12(b)(6) Motion to Dismiss in holding, "Berry and Nelson are therefore

protected by absolute prosecutorial immunity for filing charges against Akins and retaining his firearm." (Add p. 14) There was no probable cause for Prosecutor Berry to charge Matt Akins, 21, for unlawfully concealing a firearm in his motor vehicle on May 09, 2010, (App. P 217) which charge was dismissed on 11/16/2010. Further there was no probable cause for Prosecutor Nelson to charge Akins for possessing a prohibited weapon and unlawfully concealing a butterfly-style pocket knife with a locking latch and blade less than four inches on 09/11/2012. Nor was their immunity for any recommendations to maintain Akins' Bersa pistol after 11/16/2010, until 04/15/2013. Nor to maintain the seizure or approve of the destruction of Akins' pocket knife after the charges were dismissed in March 2013.

The U.S. Supreme Court in *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) said, "In our system, **so long as the prosecutor has probable cause** to the believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before the grand jury, generally rests entirely in his discretion. Within the limits set by the legislature's constitutionally valid definition of chargeable offenses." Id., at 364. (emphasis added) The *Bordenkircher* Court also said, "To punish a person because he has done what the law plainly allows is a **due process** violation of the most basic sort.... and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is "patently unconstitutional" *Id*., at 363 (emphasis added)

The U.S. Supreme Court cited the *Bordenkircher* as good law in *Hartman v. Moore*, 547 U.S. 250 (2006) a leading case on retaliatory prosecution. The *Hartman* Court said, "Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right" ... and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out." *Id.*, at 256. The *Hartman* Court noted, "...the **presumption of regularity behind the charging decision**, see *Bordenkircher v Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978) (emphasizing that "**so long as the prosecutor has probable cause,**" the charging decision is generally discretionary), and enough for a prima facié inference" *Id.*, at 265 (emphasis added) . . . they are rebuttable by a showing of a lack of probable cause.

Lacey v. Maricopa Cnty., 693 F.3d 896 (9th Cir., 2012) Said**, "**In *Burns,* the Supreme Court held that giving legal advice to police, including advice as to whether there is probable cause to arrest a suspect, is not a function protected by absolute immunity. 500 U.S. at 493–96, 111 S.Ct. 1934;*accord Ewing v. City of Stockton,* 588 F.3d 1218, 1233–34 (9th Cir.2009). The mere rendering of legal advice is not so closely connected to the judicial process that litigation concerning that advice would interfere with it. *Burns,* 500 U.S. at 493–94, 111 S.Ct. 1934. Further, "it is incongruous to allow prosecutors to be absolutely immune from liability for giving advice to the police, but to allow police officers only qualified immunity for following the advice." *Id.* at 495, 111 S.Ct. 1934.

The same logic also precludes Wilenchik from claiming immunity for playing other roles in the arrests, including ordering them. . . . When a prosecutor orders or counsels warrantless arrests, he acts directly to deprive someone of liberty; he steps outside of his role as an advocate of the state before a neutral and detached judicial body and takes upon himself the responsibility of determining whether probable cause exists, much as police routinely do. Nothing in the procuring of immediate, warrantless arrests is so essential to the judicial process that a prosecutor must be granted absolute immunity." *Id*., at 915

Supreme Court made clear in *Kalina v. Fletcher*, 522 U.S. 118 (1997) that a Section 1983 action against a prosecutor is supportable when they certify the information. The *Kalina* Court, cited the basic rule as to prosecutorial immunity, "*a criminal prosecutor is fully protected by absolute immunity when performing the traditional* ***functions of an advocate,*** *see e.g., Buckley v. Fitzsimmons, 509 U.S. 259, 273, but is protected only by qualified immunity when he is not acting as an advocate, as where he functions as a complaining witness in presenting a judge with a complaint and supporting affidavit to establish probable cause for an arrest, see Malley v Briggs, 475 U.S. 335, 340-341, . . .*" *Id.*, at 118 (emphasis added)

Buckley also stated, "...so when a prosecutor "functions as an administrator rather than as an officer of the court" he is entitled only to qualified immunity. ...When a prosecutor performs the investigative functions normally preformed by a detective or police officer, it is "neither appropriate nor justifiable that, for the same act, immunity should protect one

and not the other." … **A prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested**." *Id*., 273-4

POINT IV

The District Court erred when it did not grant Akins Motion judgment and granted City summary judgment and found, "Hughes arrested Akins for possession of an illegal substance, as well as unlawful use of a weapon, Mo. Rev. Stat. § 571.030. Because Hughes at minimum had probable cause to arrest Akins for possession of marijuana, Akins' claim concerning the arrest for the gun fails." (Add. P 42)

The District Court erred when it found that the disputed smell of marihuana provided probable cause to arrest. 1. Under Columbia City Ordinance this Columbia Police Officer was prohibited from making an arrest for a misdemeanor amount of marihuana; 2. Further, Akins specifically disputes their was the smell of marihuana in the vehicle or upon the occupants on May 09, 2010, when he was seized from the passenger compartment and removed from the vehicle. No drug field or laboratory tests were ever conducted on this phantom marihuana and no charges ever were filed in relation to this purported marihuana. Akins did admit that he had at date previously smoked marihuana and he could not with certainty exclude that possibility that marihuana maybe in the trunk or other part of the vehicle, raising a disputed fact.

It is Black Letter law that a seizure is judged from its inception. Officer Hughes stop of Akins at a DUI Checkpoint and order for him to exit the vehicle and opening of Akins'

driver-side door was the point of the seizure's inception and at that point Akins was entitled to lawfully conceal a firearm on his person within the motor vehicle. A point so well established that the Missouri Highway Patrol published information brochures advising the citizens of Missouri of this very point (App p 840-843)

The U. S. Supreme Court held in *Albright v. Oliver,* 510 U.S 266 (1994), "that [a defendant's] claimed right to be free from prosecution without probable cause must be judged under the Fourth Amendment" *Id*., at 266.

The District Court in further error in its order granting summary judgment to Defendants, stated: "The prohibition is subject to some exceptions, including instances in which the actor is "transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible," or when the actor has a "valid concealed carry permit[.]" § 571.030.3 and .4"

In that application excludes and misapplies statutory exceptions enacted by the Missouri legislature in RSMo 571.030 (2009)

> 1. A person commits the crime of unlawful use of weapons if he or she knowingly: (1) Carries concealed upon or about his or her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use**;** or . . .
>
> 3. **Subdivisions (1), (5), (8), and (10) of subsection 1 of this section do not apply when** the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. **Subdivision (1) of subsection 1 of this section does not apply to any person twenty-one years of age**

> or older or eighteen years of age or older and a member of the United States Armed Forces, or honorably discharged from the United States Armed Forces, **transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed,** . . . . RSMO 571.030.3 (2009)

The Missouri Supreme Court held in *Brooks v State*, 128 S.W. 3D 844 (MO 2004) "Finally, this Court holds that certain provisions of the Act . . . . For instance, the reenacted section 571.030—the "unlawful use of weapons" statute—provides that any person twenty-one years or older may lawfully transport a concealable firearm in the passenger compartment of a motor vehicle. Sec. 571.030.3." *Id*., at 851

The U. S. Supreme Court has held in regard to immunity for public officials that knowledge of the law they enforce is presumed for determinations of qualified immunity. Indeed, it is a touchstone of qualified immunity doctrine that **"**a reasonably competent public official should know the law governing his conduct." *Harlow v. Fitzgerald*, 457 U.S. 800, 818-19 (1982)." The *Harlow* Court went on to say, however,

> "[n]evertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained ... By defining the limits of qualified immunity essentially in objective terms, we provide no license to lawless conduct ... Where an official could be expected to

know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate." *Id.,* at 819

In *Michigan v. DeFillippo,* 443 U.S. 31 (1979), the U.S. Supreme Court stated, "[t]his Court has repeatedly explained that 'probable cause' to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution" *Id.,* at 37. The 6th Cir. stated in *Pritchard v Hamilton Township,* 424 Fed.Appx. 492 (6th Cir. 2011):

> "We impute knowledge of state-law definitions and state-court interpretations of a statute to police officers when we decide whether an officer could reasonably conclude that probable cause exists . . . Likewise, we impute knowledge of clearly established constitutional case law to police officers when we state that the 'binding precedent from the Supreme Court, the Sixth Circuit, the district court itself, or other circuits … places a law enforcement official 'on notice that [his] conduct violates established law.'"

The information possessed by the officer must be considered in the totality of the circumstances, because "an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence**.** Likewise, an officer may not make "hasty, unsubstantiated arrests with impunity." *Id.* The law is clearly established that absent probable cause to believe that an offense had been committed, was being committed, or was about to be committed, officers may not arrest an individual.

"Qualified immunity ordinarily applies unless it is obvious that no reasonably competent official would have concluded that the actions taken were unlawful." *Chappell v. City of Cleveland,* 585 F.3d 901, 907 (6th Cir. 2009). Furthermore, the doctrine of qualified immunity applies "irrespective of whether the official's error was a mistake of law or a mistake of fact, or a mistake based on mixed questions of law and fact." *Id.*

The record before us shows that this was not a mistake of fact because the CPD Officers possessed all of the necessary information to know that Akins' conduct was legal. Thus, the narrower question before us on appeal is whether the CPD Officers' mistake about Missouri firearm law was objectively reasonable.

In a line of cases, the 6th Circuit has addressed a somewhat analogous situation, whether an officer has probable cause to arrest an individual who may have an affirmative justification for a suspected criminal act. In both *Painter v. Robertson*, 185 F.3d 557 (6th Cir. 1999) and *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir. 1999), the arrestee was charged with carrying a concealed weapon despite the presence of a statute that provided that an individual engaged in a business activity that is particularly susceptible to criminal attack has an affirmative defense to the charge. *Painte*r, 185 F.3d at 564-65; *Dietrich*, 167 F.3d at 1010-11. In both cases the court denied qualified immunity, holding that the arresting police officers lacked probable cause because the officers were aware of sufficient facts and circumstances to establish that the arrestees had a statutorily authorized affirmative justification for the suspected criminal act at the time of the arrest

and knowledge of the statute was imputed to the police officers. *Painter*, 185 F.3d at 571; *Dietrich* 167 F. 3d at 1012.

As for Prosecutors' immunity, the 8th Circuit stated in *McGhee v. Pottawattamie County*, 547 F.3d 922 (8th Cir. 2008), "Before the establishment of probable cause to arrest, a prosecutor generally will not be entitled to absolute immunity." *Id.* at 929.

The 9th Circuit in *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012), found that that the prosecutor was "not entitled to absolute immunity in connection with ordering or advising those making the arrests. Neither are prosecutorial functions...the Supreme Court held that giving legal advice to police, including advice as to whether there is probable cause to arrest a suspect, is not a function protected by absolute immunity. *Id.,* at 914. The court went on to hold "it is incongruous to allow prosecutors to be absolutely immune from liability for giving advice to the police, but to allow police officers only qualified immunity for following the advice. Thus, to the extent that [prosecutor] counseled police about the propriety of the arrests, he is not entitled to absolute immunity." *Id.*

No reasonably competent police officer and/or prosecutor would have arrested or prosecuted Akins for concealing a firearm on his person while inside his car from where he was seized by CPD Officer Hughers and prosecuted by Prosecutor Steven Berry and the District Court erred in granting them judgment

POINT V

The District Court erred in holding, "But to the extent Akins suggests Schlude had an improper motive in conducting the search, the search was objectively permissible as discussed above" (Add p. 49) Traffic stop for the illegal turn was proper, After obtaining Akins driver's license and learning there was a 10/22 rifle in the back seat floor board. Removal of Akins, Brooks and Jones and there handcuffing and placed on the street-side curb for twenty-four minutes was unreasonable as Akins vehicle was searched and his property placed on the street as the search was on-going after he had specifically advised CPD Sgt. Roger Schlude that he did not consent to a search.

In *U.S. v. Rodriguez,* 135 S.Ct. 1609, 1612, (2015) "We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation." *Id*., at 1612. The Supreme Court in reversing the 8th Cir., found that a delay of seven to eight minutes to permit a police dog to conduct a sniff search was a violation.

The U.S. Supreme Court in *Illinois v. Caballes*, 543 U.S. 405 (2005), held, "Here, the initial seizure of respondent when he was stopped on the highway was based on probable cause and was concededly lawful. It is nevertheless clear that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. *United States* v. *Jacobsen,* 466 U. S. 109,

124 (1984). A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id*., at 407

In *Arizona v. Johnson*, 555 U.S. 323 (2009) this Court clarified its holding in *Terry v. Ohio*, 392 U.S. 1 (1968). The *Johnson* Court considered "... the authority of police officers to 'stop and frisk' a passenger in a motor vehicle temporarily seized upon police detection of a traffic infraction." In T*erry*, this Court considered whether an investigatory stop (temporary detention) and frisk (pat down for weapons) may be conducted without violating the Fourth Amendment's prohibition on unreasonable searches and seizures. The *Terry* Court upheld "stop and frisk" as constitutionally permissible if two conditions are met. First**,** the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

In *Arizona v . Gant*, 129 S.Ct 1710, (2009) held, "Accordingly, we reject this reading of Belton and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. 4

Although it does not follow from Chimel, we also conclude that circumstances unique

to the vehicle context justify a search incident to a lawful arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Id*., at 1715. In the instant case, Akins was never arrested for the offense of an illegal turn and was handcuffed sitting on a street-side curb at the time of the search and no evidence of an illegal turn could be found within Akins' vehicle by this search without a warrant or consent.

This Court recently confirmed that for the duration of a traffic stop, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers. *Brendlin v. California,* 551 U.S. 249, 255, 127 S.Ct. 2400 (2007). Accordingly, "in a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. ..." *Id*., at 326

In the instant case, as to the 06/19/2010, traffic stop for an illegal turn. Sgt. Schlude after obtaining Akins driver's license, failed to provided any objectively reasonable basis for probable cause or even articulable suspicion of any crime to justify a continuation of seizure of the vehicle occupants. Their removal, handcuffing and placement on the street-side curb for twenty-four minutes as he searched Akins' vehicle was unreasonable. There is no objectively reasonable basis to believe that any additional evidence of this illegal turn would be found within Akins' vehicle. The lawful presence of Akins' 10/22 rifle in the backseat of his vehicle provides no objectively reasonable basis to justify this seizure.

The Fifth Circuit in *Davila v. United States,* 713 F.3d 248 (5th Cir 2013) said, "[P]olice officers may stop and briefly detain an individual for investigative purposes if they have reasonable suspicion that criminal activity is afoot." Under *Terry* the reasonableness of an investigative stop is determined by examining: (1) whether the officer's action of stopping the vehicle was justified at its inception**,** and (2) whether the officer's actions were reasonably related in scope to the circumstances that justified the stop. The police officer must have reasonable suspicion to justify the investigative stop, which requires "the police officer ... to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." This standard "requires more than merely an unparticularized hunch, but considerably less than proof of wrongdoing by a preponderance of the evidence." A court must assess the reasonableness of the stop "by conducting a fact-intensive, totality-of-the circumstances inquiry, and considering the "information available to the officer[s] at the time of the decision to stop a person." *Id.*at 258 (internal citations omitted).

The Seventh Circuit considered circumstances similar to the ones in the instant case in *Huff v. Reichert*, 744 F.3d 999 (7th Cir. 2014). In determining whether the defendants were under arrest, the court found that, the Supreme Court has explained that, under these circumstances, "the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter. ... [T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police

conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Id* at 1006 In the instant case Akins was seized, handcuffed and ordered to sit on a street-side curb for over twenty-four minutes while Sgt. Schlude's patrol car's emergency lights were flashing. Akins was never told he was under arrest but after being placed in handcuffs and ordered to sit on the street-side curb no reasonable person would have felt they were free to ignore the officers.

The *Huff* Court further stated, "Arguable probable cause exists when "the facts and circumstances within [the officer's] knowledge and of which they have reasonably trustworthy information are sufficient to warrant a prudent person in believing that the suspect had committed an offense." The probable cause inquiry is an objective one; an officer's subjective motivations do not invalidate a search otherwise supported by probable cause. The probable cause standard requires that the officer's belief be reasonable, not that it be correct." *Id.*, at 1007 (internal citations omitted).

POINT VI

The District Court found, that, "Schlude responded that it depended on the officer, i.e., some would see the gun in the car, pull their own gun and shoot him dead, then testify that they had feared for their life and the charge would be dismissed." (Add. P 31) The District Court erred when it found this threat was not a violation of Akins rights and said, "The exchange occurred after Schlude had already performed the search and ticketed Akins. In short, the exchange had nothing to do with Akins' traffic violation and the search." (Add. P

49) In that Akins' fundamental right under the 2d Amendment and CPD Sergeant Roger Schlude has no right to threaten Akins with summary execution for exercising that right. Akins was also in development of CFJ and it is a further violation of his rights by engaging in retaliation against him for exercising his 1st Amendment rights.

In *Hill v. Lappin*, 630 F.3d 468 (6th Cir., 2010), said, **"**the essential elements of a First Amendment retaliation claim. To establish such a claim, [ ] must prove that (1) he engaged in protected conduct, (2) the defendant took an adverse action that is capable of deterring a person of "ordinary firmness from continuing to engage in that conduct," and (3) "the adverse action was motivated at least in part by the [prisoner's] protected conduct." *Thaddeus–X v. Blatter,* 175 F.3d 378, 394, 398 (6th Cir.1999) (en banc)." *Id*., at 472

The *Hill* Court further said, "We emphasize that while certain threats or deprivations are so de minimis that they do not rise to the level of being constitutional violations, this threshold is intended to weed out only inconsequential actions.... *Thaddeus–X,* 175 F.3d at 398. Moreover, because "there is no justification for harassing people for exercising their constitutional rights," the deterrent effect of the adverse action need not be great in order to be actionable. *Id.* at 397. "The plaintiff's evidentiary burden is merely to establish the factual basis for his claim that the retaliatory acts amounted to more than a de minimis injury." *Bell,* 308 F.3d at 606." *Id*., 472-3

The Sixth Circuit stated in *Leonard v. Robinson,* 477 F.3d 347 (6th Cir 2007),

[G]overnment officials in general, and police officers in particular, may not exercise their

authority for personal motives, particularly in response to real or perceived slights to their dignity." For a plaintiff to state a claim for First Amendment retaliation, he must show the injury was material, (internal citations omitted) (that the injury "would likely chill a person of ordinary firmness from continuing to engage in that activity"), "that this conduct was constitutionally protected," and that it was the "motivating factor" behind the government's actions."*Id*. at 355

The Supreme Court reasoned the inherent right of self-defense has been central to the Second Amendment right for defense of self, family and property. Further clarified this in *McDonald v. City of Chicago,* 130 S.Ct. 3020 (2010) that, ". . . the Second Amendment protects a personal right to keep and bear arms for lawful purposes." *Id.* at 3044.

As articulated under the *Hill* test, 1. Akins was engaged in protected conduct by the lawful possession of firearm in his vehicle or reporting; 2. CPD Sergeant Roger Schlude took adverse action by threatening the summary execution of Akins by police for lawfully having a firearm in his car which "is capable of deterring a person of "ordinary firmness from continuing to engage in that conduct," and; 3. "the adverse action was motivated at least in part by the [Akins] protected conduct [of lawfully possessing a firearm in his vehicle or advocating for police accountability with Citizens For Justice].

POINTS VII, VIII & IX

The Court erred, stated, "Moreover, there are no facts in the record showing it was

destroyed or who allegedly did so, let alone that a Defendant did, and respondeat superior is not a basis for § 1983 liability. *Keeper v. King,* 130 F.3d 1309, 1314 (8th Cir. 1997).: (Add. Pages 56).

In the instant case the initial seizure of Akins' Bersa pistol was unlawful under the 4th Amendment in that he had the lawful right under Missouri law RSMo 571.030.3 to conceal a firearm on this person within the passenger compartment of his vehicle on May 09, 2010. When CPD Officer Eric Hughes seized him at the DUI checkpoint and removed him from his vehicle no objectively reasonable officer would ignore that at the time of seizure Mr. Akins possession of the concealed firearm was lawful until the Officer Hughes during seizure had removed him from the passenger compartment of the vehicle. The initial seizure is judged under the 4th Amendment. In *Pps Inc. v. Faulkner County*, 630 F.3d 1098 (8th Cir. 2011) the 8th Circuit found the initial seizure was viewed under the Fourth Amendment analysis, "In the criminal context, an officer may seize property related to a criminal investigation by way of an ex parte warrant as long as the warrant is properly supported by probable cause." *Id.*, at 1108 (internal citations omitted).

The retention of this firearm after this unwarranted charge was Nolle Prosequi'd on November 16, 2010, until it was returned by CPD to Matt Akins on April 15, 2013, is judged under the Due Process requirements of the 14th Amendment. Akins had made demands for the return of his pistol without response. Additional demands in February 01, 2012, resulted in Boone Prosecutor Johnson to Matt Akins attorney that the release should

be “OK”. See Affidavit Hamilton (App. P 700)

The U.S. Supreme Court in *Mathews v. Eldridge,* 424 U.S. 319 (1976) announced a three factor test, noting, [D]ue process is flexible and calls for such procedural protections as the particular situation demands . . . consideration of three factors: (1) the private interest that will be effected by official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, an probable value, if any, of additional procedural safeguards; and (3) the Governments interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Id* at 332.

Due process is afforded only by the kinds of notice and hearing that are aimed at establishing the validity, or at least probable validity, of the government’s claim against a citizen whose property has been seized. Then Judge Sotomayor when writing for the 2d Circuit found in *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir 2002) that due process required a prompt post-deprivation hearing to determine the Fourth and Fourteenth Amendment rights for citizens whose property had been seized, to challenge the governments’ “probable validity” for the seizure post-seizure and pre-judgment. These are now known as *Krimstock* hearings. (See also *Smith v. City of Chicago,* 524 F.3d 834 (7th Cir. 2008).

In *Lathon v. City of St. Louis*, 242 F.3d 841 (8th Cir. 2000), the 8th Circuit reversed the District Court’s grant of summary judgment where firearms had been seized under a warrant and the City had refused to return the firearms and unlawfully transferred some of them to other law enforcement officials. The *Lathon C*ourt stated, “[w]e believe the

District Court erred in holding that the valid search warrant defeated Mr. Lathon's constitutional claim. The pivotal deprivation in this case was not the initial seizure of the ammunition and weapons, but the refusal to return them without a court order after it was determined that these items were not contraband or required as evidence in a court proceeding." *Id*., at 843

It is well-established law within the 8th Circuit that seizures and deprivation required a reasonably prompt post-deprivation due process hearing because these firearm and knife were not directly related to any pending criminal charges. (See *Coleman v. Watt,* 40 F.3d 255 (8th Cir. 1994)).

In *Pps Inc. v. Faulkner County*, 630 F.3d 1098 (8th Cir. 2011) found the initial seizure was viewed under the Fourth Amendment analysis and stated, "In the criminal context, an officer may seize property related to a criminal investigation by way of an ex parte warrant as long as the warrant is properly supported by probable cause." *Id.*, at 1108.

The 8th Circuit in *Lathon, supra,* found a § 1983 action applicable "to seized weapons that were legally possessed by the owner and not used in the commission of a crime." The court found that the adequacy of a post-deprivation remedy was not relevant to whether the owner could maintain his 1983 claims. *Lathon,* 242 F.3d, at 844.

RSMo. 542.301 (2008). 1. **Property which comes into the custody of an officer or of a court as the result of any seizure and which has not been forfeited pursuant to any other provisions of law or returned to the claimant shall be disposed of as**

follows: 1. . . . (d) A law enforcement officer having custody of seized property may, *at any time that seized property has ceased to be useful as evidence, request that the prosecuting attorney of the county in which property was* seized file a motion with the court of such county for the disposition of the seized property. . . . 2. **The officer who has custody of the property shall inform the prosecuting attorney of the fact of seizure and of the nature of the property**

RSMo. 513.600. (2008) Sections 513.600 to 513.645 shall be known and may be cited as the **"Criminal Activity Forfeiture Act"**.

513.605. As used in sections 513.600 to 513.645, unless the context clearly indicates otherwise, the following terms mean: . . . (4) "Criminal proceeding", any criminal prosecution commenced by an investigative agency under any criminal law of this state; . . . *1. **All property** of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding. . . .6. . . . **Within four days of the date of seizure,** such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, **within ten days after receiving notice of seizure, file a petition for forfeiture.** The petition shall state, in addition to the information required in*

subdivision (1) of this subsection, the date and place of seizure. ***The burden of proof will be on the investigative agency to prove all allegations contained in the petition***.

POINT X, XI & XII

The U.S. Supreme Court considered the failure to train standard of municipal liability in *City of Canton, Ohio v Harris,* 489 U.S. 378 (1989). The Court held that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train "amounts to deliberate indifference to the rights of persons with whom the police come into contact." The Court stated "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983." *Id., at* 388-389. Similarly, in *Polk County v. Dodson,* 454 U.S. 312 (1981), the Court stated that "a municipality can be liable under § 1983 only where its policies are the moving force [behind] the constitutional violation. Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference**"** to the rights of its inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983." *Id*., at 388-389.

The 8th Circuit also considered the failure to train standard of municipal liability in *Parrish v. Ball,* 594 F.3d 993 (8th Cir 2010). The Court reasoned "[t]hat a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the [local government] ... Instead, to satisfy the standard, [the plaintiff] must demonstrate that in

light of the duties assigned to specific officers ... the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the [county] can reasonably be said to have been deliberately indifferent to the need." Id., at 998. In *Brockinton v. City of Sherwood*, 503 F.3d 667 (8th Cir 2007) the 8th Circuit held,"[a] supervisor may be held individually liable under § 1983 if he directly participates in the constitutional violation or if he fails to train or supervise the subordinate who caused the violation. The standard of liability for failure to train is deliberate indifference. The standard of liability for failure to supervise is "demonstrated deliberate indifference or tacit authorization of the offensive acts." *Id*., at 673.

The arresting officers were not trained that under Missouri law he had the legal right to conceal a firearm on his person within his motor vehicle

The inadequate training in firearms law that the CPD officers and the Boone Prosecutors received “amounts to deliberate indifference to the rights of persons with whom they come into contact.” Moreover, the need for police and prosecutors to understand state and federal law prior to procuring and executing a search warrant is obvious, and a lack of understanding is likely to result in the violation of constitutional rights, and did so in this case. Thus the Columbia and Boone County can reasonably be said to have been “deliberately indifferent to the need" for adequate training and subject to liability under § 1983.

The commands of the Missouri Criminal Activity Forfeiture Act, RSMo. 513.607.6(2),

and Missouri law, RSMo. 542.301.2, establishing joint responsibility with regard to disposition of seized property between the police and the prosecutor control in this matter.

Point XIII & XIV

The District Court erred in denying the first motion to disqualify when she: "Plaintiff Akins' motion to recuse or disqualify [Doc. 15] is denied." (Add. P 10) The District Court further erred in not assigning this motion to a different judge for ruling and then denying the Second verified motion to disqualify when she found: "The video report does not constitute a basis for recusal or disqualification" (Add p 23) and, "The Court concludes that a reasonable person, knowing all the circumstances, would not question the undersigned's impartiality" (Add. p.26)

> 28 U,S.C. § 144: Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. . . . It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. **(emphasis added)**

In Akins the 2d Motion to Recuse or Disqualify, filed under oath and with the best knowledge and belief of Akins' counsel, satisfied the requirements of 28 U.S.C. § 144. Invoking the mandatory "another judge shall be assigned" to rule on that bias motion. In failing to assign the qualifying 2d Motion to another judge and denying the motion herself Judge Laughrey acted contrary

to the commands of law.

The U.S. Supreme Court in *Liljeberg v. Health Services Acquisition Corp,* 486 U.S. 847, (1987) held, "1. A violation of § 455(a)—which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned—is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, . . . To require scienter as an element of a § 455(a) violation would contravene that section's language and its purpose of promoting public confidence in the integrity of the judicial system. . . .

2. Vacatur was a proper remedy for the § 455(a) violation in the circumstances of this case. . . . Here, despite his lack of actual knowledge of Loyola's interest in the dispute during trial, Judge Collins' participation in the case created a strong appearance of impropriety" *Id.*, at 848. See also *Moran v. Clarke,* 296 F.3d 638 at 648 (8th Cir. 2002)

In *Hall v. S.B.A.,* 695 F.2d 175 (5th Cir. 1983) held, "Judicial ethics reinforced by statute exact more than virtuous behavior; . . . These expectations extend to those who make up the contemporary judicial family, the judge's law clerks and secretaries. Because a magistrate's sole law clerk was initially a member of the plaintiff class in this suit, . . . , we hold that the magistrate erred in refusing to disqualify himself. We, therefore, reverse the

judgment and remand for a new trial before a judge or another magistrate." In the instant case Judge Laughrey's husband Chris Kelly held a position of trust for the Appellee City of Columbia as Chair of the Mayor's Task Force. An association that had drawn condemnation from a local news outlet Columbia Heart Beat for Judge Laughrey's role presiding over another Columbia case.

The fact that in Akins case video evidence related directly to Judge Laughrey's ruling in *Williams* and the prior judicial complaint by Akins' counsel and the litany of bias allegations contained within both the First and Second Motions all are sufficient to establish for a reasonable person an appearance of impropriety.

Due Process Clause incorporated the common-law rule requiring recusal when a judge has 'a direct, personal, substantial, pecuniary interest' in a case … however, this Court has also identified additional instances which, as an objective matter, require recusal where 'the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Id.*, at 876-877.

Finally, Judge Laughrey has a personal bias against Akins' counsel because he previously filed a judicial complaint (J.C.P. #08-11-90060). Related to conduct in a previous case in which she denied a "toxic publicity" request for continuance and moved up the trial date four days causing counsel and his client significant prejudice. In that case, Judge Laughrey endorsed the Defendants' settlement offer of $45,000, calling it

"excellent" and expressing surprise that the plaintiff had not "grabbed" the offer. Judge Laughrey went on to advise the plaintiff about the excellent nature of the highway patrol's reputation and that she had "farmers" on her juries. Judge Laughrey also commented about "plaintiffs with issues" referring to plaintiff, who was confused by the reference.

In *Hurles v. Ryan*, 650 F.3d 1301 (9th Cir. 2011) said;

> "[a] fair trial in a fair tribunal is a basic requirement of due process... [i]ndeed, the legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship. This most basic tenet of our judicial system . . . An appearance of impropriety, regardless of whether such impropriety is actually present or proven, erodes that confidence and weakens our system of justice." *Id*., at 1309
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> "To safeguard the right to a fair trial, the Constitution requires judicial recusal in cases where 'the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'" *Withrow v. Larkin*, 421 U.S. 35, 47(1975).

Due process required judicial recusal from ruling on the Akins' Motions to Disqualify. The nature of the motion, the potential personal effect on Judge Laughrey, her previous relationship with Columbia as a municipal judge, and the judicial complaint filed against her by the Akins' counsel combined to create a potential for bias that was too high to be constitutionally tolerable.

CONCLUSION

The Court erred in giving all favorable inferences to the Appellees and disregarding contrary facts favorable to the Akins in granting them summary judgment. On 08/02/2016, well-established Missouri law was that Akins was lawfully entitled to conceal a firearm on his person while in his car. Also well-established law that Akins was lawfully permitted to carry a butterfly style pocket knife with locking latch and blade less than four inches. No objectively reasonable basis existed to arrest and prosecute Matt Akins for unlawfully carrying a concealed firearm or concealed pocket knife or a prohibited weapon. The seizures CPD Officers Hughes, Schlude, Palmer were in violation of Akins 4th Amendment Rights. Arrests and prosecutions of Akins for unlawfully concealing a firearm in his motor vehicle and unlawfully possessing a prohibited pocket knife and unlawfully concealing a pocket knife were in violations by Hughes, Palmer, Berry and Nelson of Akins 14th Amendment rights. The removal of Matt Akins reports for CFJ from the City of Columbia's Police Department Facebook page of 6 video reports made using the "Post by Others" option that was disabled end of July 2011, and these reports censored was in violation of Matt Akins 1st and 14th Amendment rights. The denial of Akins 2d verified motion to disqualify Judge Laughrey without a transfer to a different judge was in violation of Akins 14th Amendment rights. The denial of his motions for disqualification which alleged case evidence personally related to Judge Laughrey was an essential part of his case, that Judge Laughrey's husband Chris Kelly held a position of Trust with Appellee

Columbia during the pendency of Akins case before her, the bias allegations against Akins counsel all would have caused and did cause Columbia Heart Beat to find an appearance of impropriety in Judge Laughrey presiding over Columbia cases. Threats of summary execution by Sgt. Schlude did unlawfully inhibit Akins and operated to deny him liberty and his 2d Amendment right to "keep and bear arms". City Retaliations against Akins' employers, "Wanted Poster", spotlighting, unlawful stops, prohibition from filming in traditional public forum of the CPD Lobby were all in retaliation for his exercising his 1st Amendment rights through CFJ. The destruction of his knife without the required court order, the seizure of his lawfully possessed pistol and its retention after the charges were dropped on November 16, 2010, until April 15, 2013, were in violation of Akins 1st and 14th Amendment rights. The Court failed to apply the *Matthews* balancing test and instead permitted government retention or destruction of property without need for an articulated government interest or post-deprivation due process hearing.

The training of arresting/seizing CPD Officer Hughes, Roger Schlude, Palmer and other CPD as to the entitled to the statutory exemption for citizens to lawfully carry a concealed firearm in a motor vehicle or a pocket knife were deliberately indifferent to the rights and safety of others and was the foreseeable cause of the harm done to Akins. Further the failure to adequately train CPD officers in Missouri weapons law led to the fabricated charges against Matt Akins for unlawfully concealing a firearm and knife. The retention of Akins' firearms for more than two years with no legal nexus to criminal

charges and destruction of his knife was the custom, policy and practice of the Appellees to violate the rights of citizens.

The Court erred in denying the Akins' summary judgment motion and further erred in denying the Akins' motion(s) to disqualify Judge Laughrey for bias or lack statutory jurisdiction as a "senior judge." Judge Laughrey also erred in not assigning the verified motion to another judge as required by 28 U.S.C. § 144 for a ruling on the motion due to the appearance of bias arising from grounds alleged in the motion and the judicial complaint previously filed by Akins' counsel.

Akins prays this Court reverse the District Court's denial of their motion for partial summary judgment and the grant of summary judgment to Appellants and vacate the grant of summary judgment to Appellees in this case and assign this matter to a new judge for further proceedings and such other relief as this Court deems reasonable and just.

Respectfully submitted,

/s/ Stephen Wyse
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CERTIFICATE OF SERVICE

The above and foregoing was filed with the Court by ECF transmission and served upon counsel for all parties on this 15th Day of November 2016

/s/ Stephen Wyse
Stephen Wyse, MO Bar # 49717

RULE 32(a) (7) AND LOCAL RULE 28 A (d) CERTIFICATE OF COMPLIANCE

As required by F.R.A.P. Rule 32(a) (7) and Local Rule 28 (A) (d) the undersigned certifies that: 1.This brief contains no more than 15,000 words granted by leave of the Court to exceed the presumed limit of 14,000 words; 2.There are 14,845 words in the brief (including headings and quotations, but not including the cover, table of contents, table of citations, statement with respect to oral argument, the addendum and the certificates of counsel regarding service, filing and compliance with F.R.A.P. 32 (a)(7) and Local Rule 28 (A)(d) according to the word counting feature of Microsoft Word 7; and 3. This document is virus free.

/s/ Stephen Wyse
Stephen Wyse, MO Bar # 49717