

1 Daniel J. Quigley
(State Bar No. 011052)
2 DANIEL J. QUIGLEY, P.L.C.
5425 E. Broadway Blvd., Ste. 352
3 Tucson, Arizona 85711
(520) 867-4430
4 quigley@djqlc.com

5 Conor T. Fitzpatrick*
(Mich. P78981 / D.C. 90015616)
6 FOUNDATION FOR INDIVIDUAL RIGHTS
AND EXPRESSION
7 700 Pennsylvania Ave. SE, Ste. 340
Washington, D.C. 20003
8 (215) 717-3473
conor.fitzpatrick@thefire.org
9 *Pro Hac Vice motion forthcoming

10 *Counsel for Plaintiffs*
Additional counsel listed in signature block

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 Rebekah Massie; and
14 Quintus Schulzke,

Plaintiffs,

v.

16 City of Surprise, a municipal corporation
and a governmental entity;

17 Skip Hall, in his individual capacity; and
18 Steven Shernicoff, in his individual
capacity,

Defendants.

No. _____

**COMPLAINT FOR
CIVIL-RIGHTS VIOLATIONS**

JURY TRIAL DEMANDED

Hon. _____

20
21
22
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

INTRODUCTION

1. The Supreme Court has made clear that “one of the most precious of the liberties safeguarded by the Bill of Rights” is the sacred promise to every American, enshrined in the First Amendment, that citizens enjoy the freedom to complain about their leaders. *Lozman v. Riviera Beach*, 585 U.S. 87, 101 (2018). But Defendants Surprise, Arizona and its mayor, Skip Hall, broke that promise, arresting Plaintiff Rebekah Massie in front of her 10-year-old daughter for criticizing a public official at a city council meeting.

2. Video of the arrest¹ speaks for itself. On August 20, 2024, during the public comment portion of the Surprise City Council meeting, Massie spoke in opposition to a planned pay increase for Surprise’s city attorney. But Mayor Hall interrupted her remarks, scolding her for violating a City Council policy prohibiting “complain[ing]” about public officials.

3. Massie insisted—correctly—that the First Amendment protected her comments. Mayor Hall didn’t care, responding, “Do you want to be escorted out of here or are you going to stop talking?” Massie stood firm on her constitutional rights and demanded the opportunity to finish her remarks.

4. She never got the chance. Instead, Mayor Hall instructed a Surprise police officer, Defendant Steven Shernicoff, to detain Massie and eject her from the room.

¹ Video of the relevant portion of Surprise’s August 20, 2024 City Council meeting is attached as Exhibit A; video of the entire meeting is on Surprise’s public webpage, <https://surpriseaz.portal.civicclerk.com/event/4076/media>. Mayor Hall recognizes Massie to speak at 1:57:42.

1 Shernicoff carried out Hall’s unconstitutional order, detaining and then arresting Massie in
2 the City Council chamber. Her alleged crime? “Trespassing.” But the only trespass on
3 August 20th was against Massie’s rights.

4 5. Surprise places a muzzle on its residents at City Council meetings, imposing
5 a policy that bars remarks leveling “charges or complaints against any employee of the
6 City or members of the body” (the “Council Criticism Policy”).

7 6. Surprise’s Council Criticism Policy violates the First Amendment.
8 “Criticism of government is at the very center of the constitutionally protected area of free
9 discussion.” *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). After all, “speech concerning
10 public affairs is more than self-expression; it is the essence of self-government.” *Garrison*
11 *v. Louisiana*, 379 U.S. 64, 74–75 (1983).

12 7. But when Massie exercised her constitutional right to criticize officials at a
13 City Council meeting, a right “high in the hierarchy of First Amendment values,” *Lozman*,
14 585 U.S. at 101, the Council Criticism Policy and Mayor Hall ensured she left the meeting
15 in handcuffs. That might be how repressive regimes treat government critics, but it’s an
16 affront to our Constitution.

17 8. Surprise’s sudden move to arrest dissidents and enforce the Council
18 Criticism Policy is casting a cloud of fear over the city. Plaintiff Quintus Schulzke, a
19 frequent speaker at City Council meetings, now fears criticizing Surprise officials, knowing
20 he, like Massie, now risks arrest when he exercises his constitutional rights.

21
22
23

1 to the public. During the public comment period of City Council meetings, Surprise
2 enforces the Council Criticism Policy.

3 15. Defendant Skip Hall is the elected Mayor of the City of Surprise. The Mayor
4 is the presiding officer of the City Council and its meetings. Mayor Hall, enforcing the
5 Council Criticism Policy, ordered Massie to cease complaining about city officials, then
6 directed police to detain her.

7 16. Mayor Hall is Surprise's final policymaker for rules and decisions pertaining
8 to the conduct of City Council meetings.

9 17. At all times relevant to this Complaint, Mayor Hall acted under color of state
10 law. Massie sues Hall in his individual capacity.

11 18. Defendant Steven Shernicoff is an officer of the Police of the City of
12 Surprise. Officer Shernicoff, enforcing the Council Criticism Policy, detained and arrested
13 Massie.

14 19. At all times relevant to this Complaint, Officer Shernicoff acted under color
15 of state law. Massie sues Shernicoff in his individual capacity.

16 **JURISDICTION AND VENUE**

17 20. This action arises under the First, Fourth, and Fourteenth Amendments to
18 the United States Constitution and is brought under the Civil Rights Act of 1871, 42 U.S.C.
19 §§ 1983 and 1988, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201–02.

20 21. Massie and Schulzke seek injunctive relief against the City of Surprise
21 enjoining enforcement of the Council Criticism Policy. Massie also seeks declaratory relief
22

1 that the Council Criticism Policy and Mayor Hall’s directive that she cease criticizing city
2 officials at City Council meetings violate the First Amendment. Additionally, Massie seeks
3 monetary damages against the Defendants for violating her clearly established First and
4 Fourth Amendment rights.

5 22. Accordingly, this Court has subject-matter jurisdiction under 28 U.S.C.
6 § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

7 23. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b)(1)
8 because at least one of the Defendants resides in this District and all Defendants reside in
9 Arizona.

10 24. Venue is also proper in this judicial district under 28 U.S.C. § 1391(b)(2)
11 because a substantial part of the events and omissions giving rise to Massie’s and
12 Schulzke’s claims occurred within this District.

13 **FACTUAL ALLEGATIONS**

14 ***Surprise City Council meetings are open to public comments.***

15 25. The City of Surprise holds regular meetings of its City Council.

16 26. The mayor is the presiding officer of all City Council meetings. Surprise,
17 Ariz., Municipal Code § 2-40(a).

18 27. Under Arizona law, a “public body” like Surprise’s City Council, “may make
19 an open call to the public during a public meeting,” during which any individual may
20 “address the public body on any issue within the jurisdiction of the public body.” Ariz.
21 Rev. Stat. § 38-431.01(I).

1 28. Arizona law permits members of the public to criticize members of a public
2 body during a public comment period, providing that at “the conclusion of an open call to
3 the public, individual members of the public body may respond to criticism made by those
4 who have addressed the public body.” *Id.*

5 29. Arizona law allows public bodies to consider the public’s remarks, but
6 “members of the public body shall not discuss or take legal action on matters raised during
7 an open call to the public unless the matters are properly noticed for discussion and legal
8 action.” *Id.*

9 30. During City of Surprise City Council meetings, members of the public are
10 invited to speak during the “Call to the Public” segment of the meeting.

11 31. The City of Surprise’s website invites any person “wishing to address the
12 City Council” during the “Call-to-the-Public segment of the City Council Meeting” to
13 submit a form to the City Clerk’s office.

14 32. The “Council Meeting Public Comment Form” is available online and at City
15 Council meetings.

16 33. A true and correct copy of the “Council Meeting Public Comment Form,” as
17 made available online, is attached as **Exhibit B**.

18 34. According to the “Council Meeting Public Comment Form,” the City of
19 Surprise “values the comments and input from residents.” *Id.*

20 35. The “Council Meeting Public Comment Form” lists “rules” for remarks
21 during the public comment period. *Id.*

22

23

1 36. The rules derive from the City of Surprise Policies & Procedures Manual, a
2 true and correct copy of which, as made available online, is attached as **Exhibit C**, and
3 from page 20 of its “Rules for the Public at Council Meetings” (the “Rules for the Public”).

4 37. On August 6, 2024, following a review of the City of Surprise Policies &
5 Procedures Manual by the Rules Committee, the City Council reaffirmed the Rules for the
6 Public.

7 38. The City of Surprise reaffirmed its use of the Council Criticism Policy even
8 though, 28 years earlier, a federal court declared unconstitutional a narrower policy
9 prohibiting “charges or complaints against any employee” during public comments at a
10 school board’s meetings. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 730
11 (C.D. Cal. 1996).

12 39. The rules provide that public speakers are permitted to speak for three
13 minutes. Ex. B.

14 40. The rules, as published on the online form, prohibit “actual disruption” of
15 meetings. *Id.*

16 41. The rules and the Rules for the Public both contain the Council Criticism
17 Policy, barring speakers from “lodg[ing] charges or complaints against” Surprise officials
18 and employees. *Id.*; Ex. C at 20.

19 42. The Council Criticism Policy reads in full:

20 Oral communications during the City Council meeting may not
21 be used to lodge charges or complaints against any employee
22 of the City or members of the body, regardless of whether such
23 person is identified in the presentation by name or by any other

1 reference that tends to identify him/her. Any such charges or
2 complaints should be submitted during normal business hours
to the City Manager for appropriate action.

3 Ex. B; Ex. C at 20.

4 ***Mayor Hall welcomes praise and neutral speech about Surprise officials and employees***
5 ***during City Council meetings.***

6 43. The Council Criticism Policy permits and welcomes praises and neutral
7 speech during City Council meetings.

8 44. For example:

9 a) On December 20, 2022, a member of the public said she “came here
10 to thank all of you for everything that you’ve done for our
11 organization,” and “specially thank [...] Councilmember Roland
12 Winters” for “all of those years, you have been so instrumental in
13 supporting the arts,” and handed the Councilmember a gift.

14 b) On April 18, 2023, a member of the public praised the Chief of Police
15 of the City of Surprise, stating that “if there is ever any issues [sic], I
16 trust in Chief Piña to do what is necessary for his department to
17 continue to provide services in a professional manner,” and praised
18 “all the members of the Surprise Police Department” for “your hard
19 work and devotion to service for our communities.”

20 c) On October 17, 2023, a member of the public praised the Parks and
21 Recreation Director of the City of Surprise, saying the Director gave
22 a “great presentation” and he wanted to give “her and her staff a
23

- 1 standing ovation” because it was “the kind of investment that we need
2 in our city,” and “our city is doing awesome and we are growing.”
- 3 d) On May 21, 2024, a member of the public mentioned two members of
4 the City Council by name, making a heart-shape hand symbol and
5 remarking, “Nick, love you. Heart, Nick. Heart, Jack.”
- 6 e) On May 21, 2024, Plaintiff Schulzke told the Council: “I know you’ve
7 all made a lot of personal sacrifice [...], serving as you have here.”
- 8 f) On August 6, 2024, Plaintiff Schulzke said “I had a great discussion
9 with Mr. Judd,” referring to a member of the City Council.

10 ***Massie voices respectful, but pointed criticism of Surprise’s public officials, including***
11 ***during City Council meetings.***

12 45. Rebekah Massie and Quintus Schulzke are frequent critics of the City of
13 Surprise and its elected and appointed officials.

14 46. Massie operates The Grand Failure, a nonprofit organization critical of the
15 government of the City of Surprise.

16 47. Through The Grand Failure, Massie operates a website,
17 TheGrandFailure.org, publishing articles, petitions, and podcasts critical of the government
18 of the City of Surprise.

19 48. Through The Grand Failure and its website, Massie encourages visitors to
20 contact Surprise officials, including Mayor Hall.

21
22
23

1 57. As Massie approached the podium, she noticed Mayor Hall rolled his eyes
2 while saying “Miss Massie wants to speak to us again?”

3 58. Massie told the mayor, “You can roll your eyes all you want, Mayor.”

4 59. During the public comment period of the August 6, 2024, regular City
5 Council meeting, Massie criticized the appointment process for several city officials.

6 60. Video of the August 6 regular meeting of the City Council is publicly
7 available on Surprise’s webpage:

8 <https://surpriseaz.portal.civicclerk.com/event/4064/media>.

9 61. The appointment process utilized a nominating committee composed of two
10 outgoing members of the City Council, including Councilmember Cline.

11 62. During her remarks, Massie questioned the propriety of the makeup of the
12 nominating committee for the appointments which involved outgoing councilmembers.

13 63. Massie called it a “question of ethics” that Mayor Hall “nominate[d] the chair
14 of the [nominating] committee and then the chair hand-selects the two members
15 appointed.” Massie also said Councilmember Cline “has proven herself incapable of being
16 impartial.”

17 64. Massie’s remarks can be seen at 38:43 in the regular City Council meeting
18 video.

19 65. As Massie approached the podium to speak during the second public
20 comment period of the meeting, a microphone captured a City Council member remarking
21 under their breath: “Oh, God.” This occurs at 1:00:05 of the video of the regular meeting.

22

23

1 ***Surprise police detain Massie at Mayor Hall's direction after she opposes a raise for the***
2 ***City Attorney.***

3 66. The City Council next met on August 20, 2024.

4 67. Mayor Hall presided over the August 20 meeting.

5 68. As the presiding officer of the August 20 meeting, Mayor Hall was Surprise's
6 final decisionmaker in implementing the Rules for the Public.

7 69. The City Council's agenda for the August 20 meeting announced the body
8 would consider an increase to the city attorney's salary.

9 70. The proposed amendment to the "Employment Agreement with City
10 Attorney" was premised on his "exceptional performance" having "faithfully and
11 competently performed the duties of City Attorney."

12 71. A true and correct copy of the "Second Amendment to the Employment
13 Agreement with City Attorney" considered at the August 20, 2024, meeting is attached as
14 **Exhibit D.**

15 72. A true and correct copy of the video of Surprise's August 20 City Council
16 meeting is submitted as **Exhibit A** to this Complaint.

17 73. Massie attended the August 20, 2024, meeting with her 10-year-old daughter.

18 74. When the "Call to the Public" segment began, Mayor Hall recognized Massie
19 to speak. (Ex. A at 1:57:56.)

20 75. Massie criticized the proposal to increase the city attorney's salary and
21 voiced her belief that the city attorney's pay was too high compared to the salaries paid to
22 other Surprise employees and to city attorneys in larger cities. (Ex. A at 1:59:00.)
23

1 76. Massie questioned the proposal’s assertion that the city attorney had done an
2 “exceptional” job. (Ex. A at 1:58:34.)

3 77. Massie supported her position by sharing her view that the city attorney had,
4 in handling complaints about the conduct of a mayoral candidate, not complied with the
5 Constitution, state law, or his duties of professional conduct. (Ex. A at 1:59:40.)

6 78. Massie further supported her position by asserting the city attorney had been
7 dilatory in responding to public records requests. (Ex. A at 2:00:24.)

8 79. Massie’s comments about the city attorney addressed issues within the
9 jurisdiction of the City Council.

10 80. Massie’s comments did not purport to lodge a formal charge or formal
11 complaint.

12 81. Massie’s comments did not disrupt the City Council meeting.

13 82. Before Massie’s three minutes had expired, and while she was explaining her
14 opposition to the proposed city attorney pay increase, Mayor Hall said, “I’ve got to
15 interrupt you here.” (Ex. A at 2:00:30.)

16 83. Mayor Hall held up the Council Meeting Public Comment Form. (Ex. A at
17 2:00:35; Ex. B.)

18 84. Mayor Hall told Massie that by speaking at a public meeting, she “agree[d]”
19 to the Council Criticism Policy. (Ex. A at 2:00:35.)

20 85. Mayor Hall then read her the policy verbatim. (Ex. A at 2:00:39.)

21

22

23

1 86. Massie objected that Mayor Hall was violating her “First Amendment
2 rights.” (Ex. A at 2:01:01.)

3 87. Mayor Hall retorted, citing the Council Criticism Policy, “this is your
4 warning [...] for attacking the City Attorney personally.” (Ex. A at 2:01:06.)

5 88. Massie explained she was only sharing “factual information.” (Ex. A at
6 2:01:14.)

7 89. Mayor Hall responded that it “doesn’t matter.” (Ex. A at 2:01:15.)

8 90. When Massie explained that she had a First Amendment right to speak,
9 Mayor Hall responded she “agreed to” follow the Council Criticism Policy as a condition
10 for sharing her opinion during the public comment period. (Ex. A at 2:01:19.)

11 91. Massie responded that the Council Criticism Policy is “unconstitutional” and
12 urged Mayor Hall to “look at case law.” Massie stressed, “you are violating my First
13 Amendment rights.” (Ex. A at 2:01:23.)

14 92. Mayor Hall then told Massie, “Do you want to be escorted out of here or are
15 you going to stop talking?” (Ex. A at 2:01:41.)

16 93. When Massie again asserted that Mayor Hall was “violating my First
17 Amendment rights,” Hall responded: “That’s your opinion.” (Ex. A at 2:01:47.)

18 94. Although the city attorney was present, Mayor Hall did not ask the city
19 attorney whether Massie was correct.

20 95. Mayor Hall told Massie that she would be “escorted out” now and “in the
21 future also, any time you attack any staff member” or city official. (Ex. A at 2:01:51.)
22
23

1 96. Mayor Hall directed City of Surprise Chief of Police Benny Piña to “have
2 somebody come down here and escort Miss Massie out of this chamber.” (Ex. A at
3 2:02:14.)

4 97. Massie pleaded with Mayor Hall not to detain her “in front of my 10-year-
5 old daughter.” (Ex. A at 2:02:21.)

6 98. Mayor Hall responded, “She can go with you.” (Ex. A at 2:02:24.)

7 ***Officer Shernicoff carries out Mayor Hall’s order to detain Massie.***

8 99. At the direction of Mayor Hall, Officer Steven Shernicoff detained Massie.
9 (Ex. A at 2:02:31.)

10 100. Officer Shernicoff grabbed Massie’s arms and placed them behind her back.
11 (Ex. A at 2:02:36.)

12 101. Shernicoff told Massie, “come out with me now before you get arrested.”
13 (Ex. A at 2:02:45.)

14 102. Massie asked Shernicoff if he was detaining her. (Ex. A at 2:02:49.)

15 103. Shernicoff responded “Yes.” (Ex. A at 2:02:51.)

16 104. Shernicoff forcibly removed Massie from the chamber. (Ex. A at 2:02:36.)

17 105. Shernicoff forced Massie against a wall.

18 106. Shernicoff placed Massie in handcuffs.

19 107. Shernicoff told Massie she was under arrest.

20 108. Shernicoff removed Massie to a detention facility.

21

22

23

1 118. Voice of Surprise’s Facebook page explains that the organization is
2 “[d]edicated to fostering transparency and accountability among our city’s leaders.”

3 119. Hundreds of residents of the City of Surprise follow the organization’s
4 Facebook page.

5 120. A true and correct copy of a screenshot of the Voice of Surprise’s Facebook
6 page is attached as **Exhibit E**.

7 121. Schulzke frequently attends City Council meetings to speak on items on the
8 Council’s agenda.

9 122. Schulzke watched the video of Massie’s arrest and Mayor Hall’s assertion
10 that speakers “in the future” will be escorted out by police whenever they “attack any city
11 employee” or official.

12 123. Schulzke intends to attend and speak at future City Council meetings.

13 124. As he has before, Schulzke wants to criticize the City of Surprise, its
14 employees, and its officials, including Mayor Hall for his conduct on August 20, 2024.

15 125. Schulzke fears that he will be silenced, ejected, or arrested if his criticism of
16 the City of Surprise, its employees, or its officials is deemed to violate the Council
17 Criticism Policy.

18 126. As a result of Mayor Hall’s enforcement of the Council Criticism Policy, he
19 now intends to refrain from voicing his complete criticisms of the City of Surprise, its
20 officials, and its employees when he speaks at City Council meetings, out of fear that he
21 will be ejected, detained, or arrested.

INJURY TO PLAINTIFFS

1
2 127. Defendants injured Massie by silencing, detaining, and arresting her because
3 she criticized government officials—an exercise of rights “high in the hierarchy of First
4 Amendment values.” *Lozman*, 585 U.S. at 101.

5 128. The City of Surprise has violated—and continues to violate—Massie’s and
6 Schulzke’s First Amendment rights by establishing, maintaining, and enforcing a policy
7 allowing speakers to praise city officials, while forbidding them from complaining about
8 the same officials.

9 129. Mayor Hall injured Massie by ordering her to “stop talking” negatively of
10 government officials, cutting off her “Call to the Public” remarks at the August 20 City
11 Council meeting, and directing police to detain and eject her. Mayor Hall’s viewpoint-
12 discriminatory and content-discriminatory directive violated Massie’s well-established
13 First Amendment right to address a public body in a nondisruptive manner during a public
14 comment period.

15 130. Officer Shernicoff injured Massie by carrying out Mayor Hall’s
16 unconstitutional directive. Shernicoff’s actions compounded the violation of Massie’s First
17 Amendment rights by violating her Fourth Amendment right to be free from unreasonable
18 seizure.

19 131. Officer Shernicoff physically injured Massie in the course of detaining her
20 while carrying out Mayor Hall’s unconstitutional directive. Shernicoff caused further
21 injury to Massie’s constitutional rights by physically removing her from a public forum,
22

1 pushing her against a wall, handcuffing her, arresting her, and removing her to a detention
2 facility, where she was fingerprinted, searched, and held.

3 132. Mayor Hall and Officer Shernicoff injured Massie by enforcing, through
4 physical force, the Council Criticism Policy in front of Massie's minor daughter, in front
5 of the audience assembled for the August 20 meeting, and in front of all those watching
6 online and who later watched online.

7 133. Mayor Hall promised to repeat his unconstitutional conduct, warning Massie,
8 onlookers, and viewers of the video that he will have police remove those who violate the
9 Council Criticism Policy during future City Council meetings.

10 134. Mayor Hall's willingness to violate Massie's First Amendment rights at the
11 hands of law enforcement has a chilling effect on Massie, Schulzke, and all those who wish
12 to address the Surprise City Council.

13 135. For Schulzke, the City of Surprise's maintenance and enforcement of the
14 Council Criticism Policy inhibits his ability to share his views at City Council meetings,
15 frustrating his ability to lead his organization's efforts to convey the views of Surprise
16 residents to their City Council.

17 136. The Council Criticism Policy's presence in the rules and the Rules for the
18 Public, and Mayor Hall's recent history enforcing the policy, demonstrates a credible,
19 specific, and ongoing threat of enforcement of the policy against Massie, Schulzke, and
20 others who wish to criticize government officials at Surprise City Council meetings.

21
22
23

CLAIMS

FIRST CLAIM

**Violation of First Amendment—
Freedom of Speech, Freedom of Petition
42 U.S.C. § 1983
(All Plaintiffs against Defendant City of Surprise
for Injunctive and Declaratory Relief)**

137. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

138. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

139. Criticizing government officials “is at the very center of the constitutionally protected area of free discussion.” *Rosenblatt*, 383 U.S. at 85.

140. The City of Surprise’s Council Criticism Policy, which Mayor Hall enforces through his status as Chair of City Council meetings, violates the First Amendment both on its face and as applied to criticism of public officials.

141. Surprise established a limited public forum when it created a “Call to the Public” segment of City Council meetings. *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

1 142. In a public body’s public comment period, content-based regulations are
2 permissible only where they are “viewpoint neutral and enforced that way.” *Norse v. City*
3 *of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010).

4 143. “Viewpoint discrimination is impermissible no matter the forum.” *Waln v.*
5 *Dysart Sch. Dist.*, 54 F.4th 1152, 1162 (9th Cir. 2022) (internal quotation omitted).

6 144. “Viewpoint discrimination is an egregious form of content discrimination
7 and is presumptively unconstitutional.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019)
8 (internal quotation omitted).

9 145. On its face, the Council Criticism Policy’s prohibition of “complaints” about
10 city officials and employees permits two points of view (laudatory or neutral speech about
11 public officials) while forbidding a third (critical speech about the same officials).

12 146. The Council Criticism Policy therefore codifies viewpoint discrimination
13 and is unconstitutional under the First Amendment both on its face and as applied to public
14 comments critical of government officials.

15 147. The Council Criticism Policy is also unlawful content discrimination because
16 it prohibits a category of speech (complaints about public officials) while allowing others.

17 148. Under the First Amendment, content discrimination is permissible in the
18 limited public forum of a public comment portion of a City Council meeting only if the
19 restriction is viewpoint-neutral and reasonable in light of the purpose served by the forum.
20 *Norse*, 629 F.3d at 975, 976 n.10.

1 149. Prohibiting members of the public from criticizing government officials
2 during a City Council meeting is not a reasonable restriction because the purpose of a
3 public comment period is, among other things, to permit the public an opportunity to raise
4 matters of public concern with their elected officials, and in so doing to address, praise, or
5 criticize their elected officials. The public comment period allows the public to exercise
6 their right to free speech and their right to petition their government officials for redress of
7 grievances.

8 150. Because the Council Criticism Policy discriminates based on viewpoint and
9 content, it must satisfy strict scrutiny by being narrowly tailored to serve compelling state
10 interests. *Waln*, 54 F.4th at 1163.

11 151. Surprise has no compelling state interest in suppressing the public's ability
12 to exercise their rights to free speech and to petition by peacefully voicing criticism about
13 government officials.

14 152. To the extent the Council Criticism Policy is intended to prevent "disruption"
15 at City Council meetings, it is not narrowly tailored because a violation of the policy
16 requires no evidence of actual, imminent, or threatened disorder.

17 153. The reaction of the Mayor or City Council members to public criticism
18 cannot serve as a "disruption" justifying restricting the speech of members of the public.

19 154. To the extent that the Council Criticism Policy is intended to prevent the City
20 Council from acting on a formal complaint without advance notice to the public, the policy
21 is not narrowly tailored to achieve that goal.

22

23

1 155. Any interest in preventing the City Council from acting on a formal
2 complaint without advance notice to the public can be served without prohibiting the public
3 from making critical comments during public meetings.

4 156. For example, the City Council could prohibit its own members from acting
5 on a formal complaint until the next regular meeting.

6 157. But for the Council Criticism Policy and Surprise’s enforcement of the
7 policy, Plaintiffs would attend Surprise City Council meetings and criticize Surprise
8 government officials during the “Call to the Public” comment period.

9 158. The “loss of First Amendment freedoms, for even minimal periods of time,
10 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

11 159. Plaintiffs are entitled to an injunction against enforcement of the Council
12 Criticism Policy.

13 160. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the Council
14 Criticism Policy constitutes, on its face and as applied to nondisruptive criticism of
15 government officials like Massie’s, unlawful suppression of Plaintiffs’ First Amendment
16 right to be free from viewpoint and content discrimination.

17 161. As a direct and proximate result of the Council Criticism Policy, Plaintiffs
18 suffer and continue to suffer irreparable injury, including the denial of their constitutional
19 rights to free speech and petition. Plaintiffs are entitled to prospective and permanent
20 injunctive relief against the Council Criticism Policy.

21

22

23

1 162. Without declaratory and injunctive relief from this Court, the City of
2 Surprise’s viewpoint and content discrimination against Plaintiffs’ speech will continue
3 and Plaintiffs will suffer *per se* irreparable harm indefinitely.

4 **SECOND CLAIM**
5 **Violation of First and Fourteenth Amendments—Vagueness**
6 **42 U.S.C. § 1983**
7 **(All Plaintiffs against Defendant City of Surprise**
8 **for Injunctive and Declaratory Relief)**

9 163. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though
10 fully set forth herein.

11 164. The Council Criticism Policy is vague in violation of the First and Fourteenth
12 Amendments.

13 165. The First and Fourteenth Amendments prohibit restrictions on speech which
14 fail to provide members of the public fair notice of prohibited conduct. *Hill v. Colorado*,
15 530 U.S. 703, 732 (2000).

16 166. A government policy is unconstitutionally vague if it fails to provide people
17 of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.
18 *Gospel Missions of Am. v. City of Los Angeles*, 419 F.3d 1042, 1047 (9th Cir. 2005).

19 167. A government policy is similarly unconstitutionally vague if it fails to
20 provide officials charged with enforcing the policy sufficient precision and guidance
21 regarding its scope “so that those enforcing the law do not act in an arbitrary or
22 discriminatory way.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

1 168. “When speech is involved, rigorous adherence to those requirements is
2 necessary to ensure that ambiguity does not chill protected speech.” *Id.* at 253–54.

3 169. The Council Criticism Policy, which bars “complaints against any employee
4 of the City or members of the body regardless of whether such person is identified in the
5 presentation by name,” fails to provide members of the public sufficient notice of what is
6 restricted so that they may act accordingly. For example, the Council Criticism Policy
7 leaves residents guessing whether voicing concern about a department’s performance is
8 equivalent to a “complaint” about the head of that department. And it provides no guidance
9 as to whether objecting to an ordinance’s passage counts as a “complaint” against those
10 who voted for it. Nor does it make clear whether *any* criticism, or even a request that
11 officials carry out their duties differently than they have, constitutes a “complaint.”

12 170. The Council Criticism Policy similarly fails to provide sufficient precision
13 and guidance so that those enforcing the policy do not act in an arbitrary or discriminatory
14 way.

15 171. The Council Criticism Policy, which fails to provide members of the public
16 sufficient information to conform their conduct to the requirements of the policy, chills
17 Plaintiffs and other members of the public from engaging in protected First Amendment
18 speech.

19 172. The Council Criticism Policy codifies, invites, causes, and is used to
20 facilitate viewpoint discrimination.

1 **THIRD CLAIM**
2 **Violation of First and Fourteenth Amendments—**
3 **Overbreadth**
4 **42 U.S.C. § 1983**
5 **(All Plaintiffs against Defendant City of Surprise**
6 **for Injunctive and Declaratory Relief)**

7 180. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though
8 fully set forth herein.

9 181. The Council Criticism Policy is facially overbroad in violation of the First
10 Amendment.

11 182. A speech regulation violates the First Amendment on its face when a
12 substantial number of its applications violate the First Amendment compared to its
13 legitimate applications. *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024); *see also*
14 *Broadrick v. Oklahoma*, 413 U.S. 601, 611–12, 615 (1973).

15 183. A regulation of speech during the “Call to the Public” comment segment of
16 a public meeting is unconstitutionally overbroad where “it unnecessarily sweeps a
17 substantial amount of non-disruptive, protected speech within its prohibiting language.”
18 *Acosta v. City of Costa Mesa*, 718 F.3d 800, 816 (9th Cir. 2013).

19 184. The Council Criticism Policy sweeps up a substantial amount of
20 nondisruptive, protected speech within its prohibition on “complaints against any
21 employee of the City or members of the body.”

22 185. For example, the Council Criticism Policy has been applied or could be
23 applied to reach:

- 1 a) Massie’s non-disruptive criticism of the proposal to increase the
- 2 salary of the city attorney;
- 3 b) A speaker disagreeing with a councilmember’s vote; and
- 4 c) A statement that members of the City Council do not adequately
- 5 address storm drainage.

6 186. Mayor Hall, whose authority as presiding officer requires him to interpret the
7 rules applicable to public comments, has interpreted the Council Criticism Policy to reach
8 any “attack [on] any staff member” or city official. Ex. A at 2:01:51.

9 187. To the extent that the Council Criticism Policy is intended to prevent the City
10 Council from acting on a formal complaint without advance notice to the public, that
11 interest can be served without prohibiting the public from making negative comments
12 during public meetings.

13 188. For example, the City Council could prohibit its own members from acting
14 on a formal complaint until the next regular meeting.

15 189. The Council Criticism Policy therefore prohibits a significant amount of
16 protected core political speech: criticism of public employees during a public comment
17 period, which far eclipses any theoretical lawful application against formal complaint
18 submissions.

19 190. The City of Surprise has no legitimate state interest in suppressing the
20 public’s ability to exercise their rights to free speech and to petition by peacefully voicing
21 criticism about government officials.

22

23

1 increase for Surprise’s city attorney via the viewpoint-discriminatory Council Criticism
2 Policy. Mayor Hall’s actions deprived Massie of her First Amendment right to peacefully
3 criticize public officials and to speak about matters of public concern.

4 199. Mayor Hall engaged in impermissible content discrimination by using his
5 status as Chair of the City Council to suppress Massie’s criticism of a proposed pay
6 increase for Surprise’s city attorney via the content-discriminatory Council Criticism
7 Policy. Mayor Hall’s actions deprived Massie of her First Amendment right to peacefully
8 criticize public officials and to speak about matters of public concern.

9 200. It is clearly established that criticizing government officials “is at the very
10 center of the constitutionally protected area of free discussion.” *Rosenblatt*, 383 U.S. at 85.

11 201. It is clearly established that government actors may not discriminate against
12 speech based on the viewpoint expressed. *Rosenberger*, 515 U.S. at 828.

13 202. It is further clearly established that prohibitions on criticizing government
14 employees during public comment periods at City Council meetings are unconstitutional
15 viewpoint discrimination. *Norse*, 629 F.3d at 975.

16 203. It is clearly established that unreasonable restrictions on public comments at
17 City Council meetings violate the First Amendment. *Norse*, 629 F.3d at 975.

18 204. Using governmental authority to suppress public criticism of government
19 officials but allowing praise of state officials is an obvious constitutional violation.

20 205. At all times relevant, Mayor Hall was or should have been aware his actions
21 were unconstitutional.

1 e) Mayor Hall’s expulsion of Massie, at the hands of law enforcement,
2 for nondisruptive speech, in front of her 10-year-old daughter.

3 **FIFTH CLAIM**
4 **First Amendment Retaliation—**
5 **Freedom of Speech, Freedom of Petition**
6 **42 U.S.C. § 1983**
7 **(Plaintiff Massie against Defendant Hall for Damages)**

8 209. Massie re-alleges and re-incorporates the preceding paragraphs as though
9 fully set forth herein.

10 210. It is clearly established that “the First Amendment prohibits government
11 officials from subjecting an individual to retaliatory actions” for engaging in protected
12 speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

13 211. Massie engaged in protected First Amendment expression for the reasons
14 stated in Claims I and IV.

15 212. Mayor Hall violated Massie’s clearly established First Amendment rights by
16 censoring her remarks and directing police to detain her at the August 20, 2024, City
17 Council meeting based on Massie’s prior critical comments about Mayor Hall and Mayor
18 Hall’s allies.

19 213. In the alternative or in addition, Mayor Hall violated Massie’s clearly
20 established First Amendment rights by censoring her remarks and directing police to detain
21 her at the August 20, 2024, City Council meeting based on Massie’s critical comments
22 regarding Surprise’s city attorney.

1 214. But for Massie’s protected expression criticizing Mayor Hall, Mayor Hall’s
2 allies, and Surprise’s city attorney, Mayor Hall would not have censored her August 20,
3 2024, remarks or directed police to detain her.

4 215. Having remarks abruptly censored and being detained by police would deter
5 a person of ordinary firmness from continuing to engage in protected First Amendment
6 activity.

7 216. Mayor Hall’s actions not only prematurely curtailed Massie’s exercise of her
8 First Amendment rights, but also chilled her from engaging in protected First Amendment
9 activity since she is now refraining from criticizing Surprise government officials at City
10 Council meetings due to Mayor Hall’s actions on August 20, 2024.

11 217. As a direct and proximate cause of Mayor Hall’s actions, Massie was
12 deprived of her rights guaranteed by the First Amendment, and suffered damage to her
13 reputation, physical health, and mental health, and suffered mental anguish, emotional
14 distress, humiliation, and public embarrassment. Massie is entitled to actual and
15 compensatory damages against Mayor Hall in an amount to be proven at trial.

16 218. Mayor Hall’s conduct toward Massie recklessly and callously disregarded
17 and was indifferent to Massie’s rights because he acted with the intent to suppress her
18 nondisruptive political speech criticizing him, his allies, and the Surprise city attorney.
19 Accordingly, punitive damages are appropriate and necessary to punish Mayor Hall for
20 abridging Massie’s constitutional rights and to deter similar violations in the future.

21
22
23

1 actual and compensatory damages against Officer Shernicoff in an amount to be proven at
2 trial.

3 225. Officer Shernicoff’s conduct toward Massie recklessly and callously
4 disregarded and was indifferent to Massie’s First Amendment rights because he acted with
5 the intent to suppress her nondisruptive political speech. Accordingly, punitive damages
6 are appropriate and necessary to punish Officer Shernicoff for abridging Massie’s
7 constitutional rights and to deter similar violations in the future.

8 **SEVENTH CLAIM**
9 **Violation of Fourth Amendment—**
10 **Unlawful Seizure and False Arrest**
11 **42 U.S.C. § 1983**
12 **(Plaintiff Massie against Defendants Hall and Shernicoff for Damages)**

13 226. Massie re-alleges and re-incorporates the preceding paragraphs as though
14 fully set forth herein.

15 227. The Fourth Amendment provides that “[t]he right of the people to be secure
16 in their persons, houses, papers, and effects, against unreasonable searches and seizures,
17 shall not be violated, and no Warrants shall issue, but upon probable cause, supported by
18 Oath or affirmation, and particularly describing the place to be searched, and the person or
19 things to be seized.” U.S. Const. amend. IV.

20 228. “Under the Fourth Amendment, a warrantless arrest requires probable
21 cause.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

22 229. Probable cause for a warrantless arrest exists only when “under the totality
23 of circumstances known to the arresting officers, a prudent person would have concluded

1 that there was a fair probability that the defendant had committed a crime.” *Id.* (internal
2 citation omitted) (cleaned up).

3 230. Probable cause may not be based on speech protected by the First
4 Amendment. *Wayte v. United States*, 470 U.S. 598, 608 (1985).

5 231. Mayor Hall and Officer Shernicoff, acting at all times under color of state
6 law, knowingly arrested and detained Massie, or knowingly acted to cause the same,
7 against her will and without probable cause, in deprivation of Massie’s rights under the
8 Fourth and Fourteenth Amendments.

9 232. Lacking a valid basis to arrest Massie, Mayor Hall and Officer Shernicoff
10 knowingly arrested and detained her and/or caused her arrest and detention without
11 probable cause and against her will, based on her protected First Amendment political
12 speech.

13 233. Mayor Hall and Officer Shernicoff willfully arrested and detained Massie, or
14 willfully caused and directed her arrest and detention, with malice and/or a reckless and
15 callous disregard for, and deliberate indifference to, her constitutional rights.

16 234. Mayor Hall knew or should have known that his conduct would cause Officer
17 Shernicoff to inflict constitutional injury on Massie. *Johnson v. Duffy*, 588 F.2d 740, 743–
18 44 (9th Cir. 1978).

19 235. It is clearly established that an official or another acting under the color of
20 state law cannot deprive a person of due process and seize and detain her person without
21 probable cause. *Michigan v. Summers*, 452 U.S. 692, 700 (1981).

1 236. It is also clearly established that an official or another acting under the color
2 of state law cannot deprive a person of due process and seize her person in response to that
3 person engaging in constitutionally protected activity, including nondisruptive political
4 speech during the public comment period of a City Council meeting. *Lozman*, 585 U.S. at
5 101.

6 237. It would have been clear to any reasonable official and law enforcement
7 officer that no probable cause existed to arrest Massie.

8 238. As a direct and proximate cause of Mayor Hall's and Officer Shernicoff's
9 actions, Massie was deprived of her rights guaranteed by the Fourth Amendment and
10 suffered damage to her reputation, physical health, and mental health, and suffered mental
11 anguish, emotional distress, humiliation, public embarrassment, and legal and other costs.
12 Massie is entitled to actual and compensatory damages against Mayor Hall and Officer
13 Shernicoff in an amount to be proven at trial.

14 239. Mayor Hall's and Officer Shernicoff's conduct toward Massie recklessly and
15 callously disregarded and was indifferent to Massie's rights because they acted with the
16 intent to suppress her nondisruptive political speech. Accordingly, punitive damages are
17 appropriate and necessary to punish Mayor Hall and Officer Shernicoff for abridging
18 Massie's constitutional rights and to deter similar violations in the future.

19
20
21
22
23

EIGHTH CLAIM
Violation of First Amendment—
Retaliatory Arrest
42 U.S.C. § 1983

(Plaintiff Massie against Defendant Hall for Damages)

1
2
3
4 240. Massie re-alleges and re-incorporates the preceding paragraphs as though
5 fully set forth herein.

6 241. Massie engaged in constitutionally protected speech when she criticized
7 Mayor Hall, Mayor Hall's allies, and a proposed pay increase for Surprise's city attorney.

8 242. Despite knowing there was no probable cause to detain or arrest Massie for
9 her constitutionally protected speech, Mayor Hall intended and caused Officer Shernicoff
10 to detain and arrest Massie in retaliation for exercising her First Amendment rights.

11 243. But for Massie's protected speech regarding Mayor Hall, Mayor Hall's allies,
12 and Surprise's city attorney, Mayor Hall would not have caused Officer Shernicoff to
13 detain and arrest her.

14 244. Other speakers at Surprise City Council meetings have praised and otherwise
15 expressed views about government officials. Those speakers have not been detained or
16 arrested.

17 245. As a direct and proximate cause of Mayor Hall's actions, Massie was
18 deprived of her rights guaranteed by the First Amendment and suffered damage to her
19 reputation, physical health, and mental health, and suffered mental anguish, emotional
20 distress, humiliation, public embarrassment, and legal and other costs. Massie is entitled to
21 actual and compensatory damages against Mayor Hall in an amount to be proven at trial.

1 252. Because the Council Criticism Policy is an official policy of the City of
2 Surprise, the City of Surprise is responsible for Mayor Hall’s and Officer Shernicoff’s
3 constitutional violations enforcing that policy under 42 U.S.C. § 1983.

4 253. Under the City of Surprise Municipal Code, Mayor Hall was the presiding
5 officer of the City Council at the August 20, 2024, meeting.

6 254. As presiding officer, Mayor Hall is the final policymaker and has final
7 policymaking authority over the conduct of a City Council meeting because the City
8 Council’s rules provide that a member of the public may not speak “until after being
9 recognized by” the presiding officer. (Ex. B; Ex. C at 20.)

10 255. As presiding officer, Mayor Hall had final policymaking authority for the
11 City of Surprise to order Massie to stop speaking and to order police to remove Massie
12 from the meeting.

13 256. Mayor Hall’s actions as presiding officer at the August 20, 2024, City
14 Council meeting violated Massie’s constitutional rights for the reasons stated in Claims I,
15 II, III, IV, V, VII, and VIII.

16 257. Because Mayor Hall’s actions at the August 20, 2024, City Council meeting
17 constituted the acts of a final policymaker of the City of Surprise, or are fairly attributable
18 to the city as official city policy, the City of Surprise is responsible for the Mayor’s
19 constitutional violations under 42 U.S.C. § 1983.

20

21

22

23

DEMAND FOR JURY TRIAL

In compliance with Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by jury on all issues so triable.

Dated: September 3, 2024

Respectfully submitted,

/s/ Daniel J. Quigley

Daniel J. Quigley
(State Bar No. 011052)
DANIEL J. QUIGLEY, P.L.C.
5425 E. Broadway Blvd., Ste. 352
Tucson, Arizona 85711
(520) 867-4430
quigley@djqlc.com

Conor T. Fitzpatrick*
(Mich. P78981 / D.C. 90015616)
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
700 Pennsylvania Ave. SE, Ste. 340
Washington, D.C. 20003
(215) 717-3473
conor.fitzpatrick@thefire.org

Adam B. Steinbaugh*
(Penn. 326476 / Cal. 304829)
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
510 Walnut St., Ste. 900
Philadelphia, PA 19106
(215) 717-3473
adam@thefire.org

Counsel for Plaintiffs

* *Pro hac vice* application forthcoming.