

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

L. LOUISE LUCAS,

Plaintiff

Civil Action No.
A JURY TRIAL IS DEMANDED

V.

ANGELA GREENE

AND

KEVIN MCGEE,

Defendants.

2021 JUN 28 PM 3 53
CITY OF PORTSMOUTH
CLERK OF COURT

COMPLAINT

NOW COMES Plaintiff, L. Louise Lucas ("Senator Lucas, Lucas or Plaintiff"), by counsel, and files this Complaint for judgment against Defendants Angela Greene ("Chief Greene or Greene") and Kevin McGee ("McGee, Sgt. McGee"), ("collectively as Defendants") and for her grounds, hereby alleges as follows:

NATURE OF THE CASE

INTRODUCTION

1. This matter arises from the unlawful criminal prosecution of Plaintiff, L. Louise Lucas, for a charge on August 17, 2020, and August 26, 2020, with felony destruction of property valued at \$1,000 or more under Va. Code § 18.2-137 and Conspiracy to commit a Felony under Va. Code § 18.2-22 for alleged incidents occurring on June 10, 2020, involving a Confederate monument located in the City of Portsmouth, Virginia. A violation of Virginia Code § 18.2-137 is a class 6 felony offense punishable by a term of imprisonment of up to five (5) years and a fine of \$2,500.00. A violation of Virginia Code § 18.2-22 is a class 6 felony offense punishable by a term of imprisonment of up to five (5) years and a fine of \$2500.00.

2. Sgt. Kevin McGee instituted criminal proceedings against Plaintiff, wholly without probable cause, upon false, incomplete, and misdirected information provided to the Magistrate and bypassing the Portsmouth Commonwealth's Attorney, with actual malice, reckless disregard for Plaintiff's rights, and intent to injure Plaintiff.

3. Police Chief Angela Greene, participated in instituting the criminal proceedings against Plaintiff, wholly without probable cause, upon false, incomplete, and misdirected information provided to the Magistrate and

bypassing the Portsmouth Commonwealth's Attorney, with actual malice, reckless disregard for Plaintiff's rights, and intent to injure Plaintiff.

4. Prior to instituting the criminal proceeding against Plaintiff, former Police Chief Greene told the then city manager Lydia Pettis Patton and the city Council members that she had a conflict of interest and could not pursue charges.

5. The City manager at the time, Lydia Pettis Patton said Portsmouth police were supposed to drop an investigation into a June protest and vandalism at the Confederate monument. Patton said she didn't know charges were coming until officers took out warrants against 14 people...including Plaintiff.

6. Police Chief Greene accompanied by Sgt. McGee held a press conference on the day the warrants were issued and confirmed she supported the charges against Plaintiff and indicated Plaintiff had committed the two felonies she was charged with. The accusations made in the press conference were unfounded and defamatory accusation about Plaintiff that she was a criminal.

7. On November 16, 2020, the criminal prosecution of the charges against Plaintiff terminated favorably for Plaintiff by a dismissal with prejudice on motion by the Commonwealth's Attorney.

CONFEDERATE MONUMENTS

8. This case centers around the removal of a confederate statue located in the City of Portsmouth. Memorials have been erected on public spaces (including on courthouse grounds) either at public expense or funded by private

organizations and donors. Numerous private memorials have also been erected. According to Smithsonian Magazine, "Confederate monuments aren't just heirlooms, the artifacts of a bygone era. Instead, American taxpayers are still heavily investing in these tributes today." The report also concluded that the monuments were constructed and are regularly maintained in promotion of Lost Cause, white supremacist mythology, and over the many decades of their establishment, African American leaders regularly protested these memorials and what they represented. Palmer, Brian; Wessler, Seth Freed (December 2018)" "The Costs of the Confederacy", Smithsonian Magazine.

9. The death of George Floyd lead to the removal - - by protesters in some cases and city leaders in others - - of contentious statues that have riled some residents for decades, if not longer. Floyd, a 46-year-old Black man, died on May 25, 2020 in Minneapolis. While being arrested, Floyd was held down by a Minneapolis police officer's knee for more than eight minutes. He was pronounced dead shortly afterward. His death, which was captured on video, sparked widespread protests across the U.S., with people calling for an end to police brutality against people of color.

10. Controversial monuments, especially Confederate monuments, have been the subject of nationwide debate, particularly since Dylann Roof killed nine African Americans in a Charleston, South Carolina, church in 2015 in an effort to "start a race war." It flared up again after white nationalists marched in 2017 to protest the removal of a Robert E. Lee statue in Charlottesville, Virginia, where a counter protester was killed amid violent clashes between demonstrators. Some

say they mark history and honor heritage. Others argue they are racist symbols of America's dark legacy of slavery. While some cities have already made efforts to remove them, others have passed laws to protect them.

11. On June 10, 2020, a crowd of protesters in Richmond brought down the statue of Jefferson Davis, the president of the Confederacy, according to CNN affiliate WRIC. On July 1, 2020, Richmond Mayor Levar Stoney ordered the immediate removal of several confederate statues in a video to the public. The mayor said all of the statues that were being removed over the several days, would be put in storage.

12. Crews in Charleston removed a statue of politician John C. Calhoun from its pedestal in Marion Square on June 24, 2020. Calhoun, a former vice president of the United States and US senator, is known for defending slavery and owning about 80 slaves himself. A Clemson University biography called him an ardent believer in white supremacy.

13. The Virginia General Assembly passed a law which removed the current prohibition on interfering with war monuments. The state law, starting July 1, 2020, gives cities, counties, and localities the authority to remove, relocate or alter any monument or memorial for war veterans, regardless of when those monuments were erected. **It is important to note that the legislation is one that is permissive and not mandatory, so a locality does not have to remove monuments.**

14. Virginia Governor Ralph Northam said, "Virginia is home to more than 220 public memorials to the Confederacy." Northam said Confederate monuments tell a particular view of history that doesn't include everyone. See *2020 Scripps Media, Inc.*

15. On June 10, 2020, protesters in Portsmouth, Virginia partially removed a Confederate monument. Plaintiff was not present at the time the monument was removed.

PARTIES

16. L. Louise Lucas, (hereinafter "Plaintiff, Senator Lucas, or Lucas") a resident of the Commonwealth of Virginia, maintains her principal residence in Portsmouth, Virginia. Lucas, prior to the events giving rise to this complaint, enjoyed a distinguished reputation in the community at large, as a prominent businesswoman, an active member of her church and a Virginia State Senator.

17. Angela Greene (hereinafter "Chief Greene or Greene") was a resident of the Commonwealth of Virginia. At all times relevant to this lawsuit, she maintained her principal residence in Portsmouth, Virginia. Greene was acting within the scope of her employment as Chief of Police for the City of Portsmouth.

18. Sergeant K.T. McGee (hereinafter "Sgt. McGee or McGee") of the Portsmouth Police Department was a resident of the Commonwealth of Virginia. At all times relevant to this lawsuit, he maintained his principal residence in Portsmouth, Virginia. McGee was acting within the scope of his employment as sergeant with the Portsmouth Police Department.

JURISDICTION AND VENUE

19. This court has subject matter jurisdiction over this dispute as the events complained of herein occurred in the Commonwealth of Virginia and the parties reside and conduct business in the Commonwealth of Virginia and in the City of Portsmouth, Virginia.

20. The alleged conduct and accusation against the Plaintiff took place in the City of Portsmouth.

FACTS

21. Plaintiff has a business located in the City of Portsmouth, has employed hundreds of people and provides services to the disabled.

22. Plaintiff also serves as a Virginia State Senator and has provided the public service for many years.

23. Plaintiff has always advocated for the public.

24. On June 10, 2020, at approximately 2:15 p.m., Lucas was made aware that the local leaders of the NAACP had been arrested for trespass.

25. Lucas drove to downtown Portsmouth and Lucas asserted that the citizens of Portsmouth had the right to peacefully protest, and no one should be arrested.

26. Lucas advised Chief Greene, Portsmouth's Police Chief, that she had spoken to Dr. Patton, Portsmouth's City Manager, who had assured Senator Lucas that no one would be arrested for trespass or for peacefully protesting.
27. Lucas advised that the area where protesters stood was city property.
28. Lucas asked Chief Greene to call Dr. Patton to verify that what she was saying was true.
29. Lucas never advised the citizens to do anything unlawful.
30. Lucas was on site no longer than approximately 30 minutes.
31. Lucas left the site at approximately 2:45 p.m. on June 10, 2020, and never returned.
32. Lucas was not conducting official senate or legislative business.
33. On June 11, 2020, Sgt. McGee sent a letter via email to City Council members and the City Manager regarding Senator Lucas. The email is attached herein and made a part of the pleading. Exhibit # 1.
34. Sgt. McGee stated "[i]f Senator Lucas wants to place blame on anyone for this incident, she should start by looking in the mirror." Page 3 para 5.
35. Sgt. McGee also stated, "I was the first line, front supervisor on scene for the majority of the events of June 10th, 2020. From the time Senator Lucas and other elected officials made their statements to participants, until the tragic end when a man was seriously injured by a falling statue and the crowd was peacefully dispersed."

36. "I (Sgt. McGee) was there when Senator Lucas gave the protesters the green light to do whatever they wanted to do. I was also told by the participants that the commonwealth Attorney told them they would not be prosecuted, and I have no reason to doubt them." Email, Pg. 1, ¶ 7.

37. McGee further stated, "[w]hen the damage shifted from spray paint to sledgehammers Senator Lucas did not ask them to stop." ¶ 8, page 1 8.

38. McGee swore out warrants before Mandy Owens, District 3 Chief Magistrate, on August 17, 2020.

39. Plaintiff was charged, based upon McGee's false statements to the Magistrate with two felonies. A violation of Code of Virginia § 137. A Class 6 felony, which provides for a penalty of up to five years in Virginia Department of Corrections, and a violation of Code of Virginia § 18.2-22, a Class 5 felony, which also provides for a penalty of up to five years in the Virginia Department of Corrections.

40. Lucas was never charged with any crime for her allegedly causing injury to an individual.

41. McGee made the following sworn statement to secure the warrants for Senator Lucas:

Senator Lucas then approached a group of police officers and told them she just talked to the Mayor and City Manager and said "they are going to put some paint on this thing, and y'all can't arrest them" while gesturing towards the monument. LUCAS continued by saying "they gonna do it, and you can't stop them... They got a right, go ahead!" PPD Sergeant Johnson informed Senator LUCAS that she could not tell people they can do that. LUCAS replied, "I'm not telling them to do anything, I'm telling you, you can't arrest them."

"No state or local official, or any other person or entity had any Legal authority to direct or allow any citizen to go upon, damage, Or deface the monument and neither the city Manager or Mayor Told Senator LUCAS anyone had permission to paint, damage, Or otherwise alter the monument which is subject to Virginia Codes 18.2-137 and 15.2-1812."

The full "probable cause summary" is attached as Exhibit # 2.

42. McGee also attempted to subpoena the Commonwealth Attorney, alleging she had a conflict of interest.

43. McGee also attempted to have the court issue a subpoena for Chief Angela Greene. A copy of the "Request for Witness Subpoena" signed by McGee is attached as Exhibit # 3.

44. At a press conference announcing the issuance of the warrants on August 17, 2020, the Chief of the Portsmouth Police Department, Angela Greene, stated:

As a result of Mr. Green's life-threatening injury from activities of that evening, I asked the Virginia State Police to investigate the accident."

During the State Police department's active investigation of the injury, requests were made for state and federal assistance to conduct an independent investigation of all events and circumstances that led up to and including the significant injury sustained by Mr. Green. Understandably, these requests fell outside of the scope of investigation for those law enforcement entities. Furthermore, when

a discussion with the Commonwealth Attorney regarding a special grand jury and special prosecutor did not yield any action, it was the duty of the Portsmouth police department to begin a thorough and comprehensive investigation into this incident."

"Since the conclusion of the State Police department's accident investigation on July 22nd, a team of detectives and supervisors began to compile all written, video, and audio evidence surrounding the circumstances that led to the felonious destruction of the monument and ultimately the life-threatening injury to Mr. Green."

"As a result of the investigative team's findings, it was determined that several individuals conspired and organized to destroy the monument, as well as summoned hundreds of people to join in the felonious acts, which not only resulted in hundreds of thousands of dollars in damage to the monument, but also permanent injury to an individual."

"As your chief of police, I take seriously my public and my officers trust that I will ensure all the laws of the state and constitution are upheld and that I would not place any citizen or officer in undue danger. You have placed faith and trust in me to take appropriate law enforcement actions when necessary and today I want to thank my citizens and my officers for having this unwavering trust and patience in me, which led us to completing this comprehensive investigation. As a result of our efforts in this

matter, we have identified and secured arrest warrants of numerous individuals who conspired, organized, and participated in a felonious acts on June 10th. This investigation yielded the same results of holding individuals who commit crimes in our city accountable but was done in a safe manner so that my officers and no other members of the public were harmed."

"Therefore, on today's date, felony warrants for conspiracy to commit a felony and felony injuring to a monument in excess Of \$1,000 have been obtained for the following individuals:

Senator L. Louise Lucas"

45. Plaintiff is a member of the Senate of Virginia representing the Eighteenth District and has done so since 1992. See <https://apps.senate.virginia.gov/Senator/memberpage.php?.id=S19> (last visited August 29, 2020).

46. Additionally, Plaintiff is the president pro tempore of the Senate and serves on/ or chair of multiple committees. Id.

47. Plaintiff was scheduled to begin a special session of the General Assembly during this time, focused in part on police reform the day after these warrants were taken out.

48. Code of Virginia § 52-8.2 states in relevant part:

No investigation of an elected official of the Commonwealth or any political subdivision to determine whether a criminal

violation has occurred, is occurring or is about to occur under the provision of § 52-8.1 shall be initiated, undertaken or continued except upon the request of the Governor, Attorney General or a grand jury.

Va. Code § 52-8.2.

49. As Chief Greene stated at the August 17, 2020, press conference, the Portsmouth Police Department undertook the investigation that culminated in the warrants against a sitting senator completely independently of the Virginia State Police or any grand jury.

50. There was no request from the Governor or the Attorney General to initiate or continue any investigation.

51. As the investigation was not conducted pursuant to a grant of jurisdiction from the Code of Virginia, the two felony warrants should never have been issued.

52. A Motion for Prohibition of Issuance of Subpoena to Commonwealth Attorney Stephanie N. Morales was filed. A copy is attached as Plaintiff Exhibit # 4.

53. The court granted the Motion for Prohibition of Issuance of Subpoena to Commonwealth Attorney.

54. The Portsmouth Commonwealth Attorney's Office filed a Motion to Dismiss the warrants against Lucas with prejudice.

55. The Motion includes information that supports their finding that there was no probable cause to issue the warrants. See Commonwealth Attorney's Motion herein Plaintiff Exhibit # 5.

56. The Court granted the Commonwealth Attorney's Motion and Dismissed the warrants with prejudice. See certified copies of the two warrants indicating dismissals. Exhibit #6.

57. The Commonwealth Attorney's Motion to Dismiss includes arguments based upon case law: "The United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment makes clear that law enforcement officials may not punish conduct which they endorsed, either expressly or impliedly. In *Raley v. Ohio*, 360 U.S. 423, 425-33 (1959), the Court held, convictions for four individuals were overturned as violations of Due Process Clause of the Fourteenth Amendment when a Commissioner of the State erroneously advised individuals that they may invoke their rights against self-incrimination when testifying before a commission notwithstanding an Ohio statute indicating that such information could not be used against them in a criminal proceeding. The Commissioner during the hearing never advised them of the immunity and the appellants were subsequently indicted and convicted for failure to answer questions during said inquiry. See Commonwealth Attorney's Motion to Dismiss, pages 11 and 12.

58. A number of officers with the Portsmouth Police Department remained present on scene while observing various persons inflict damage on the monument and failed to intervene for several hours. The Commonwealth Attorney for the City of Portsmouth said that "[i]t is clear that the failure to act on

the part of the police department is as a result of decisions made by the City Attorney and Police Chief. Specifically, the City Attorney and Police Chief Green indicated that they were concerned with the preservation of life, not the preservation of property." See (Page 14 of Commonwealth's Attorney's Motion to Dismiss, on file in General District court, Portsmouth).

59. The court found that "the chairman of the Commission, who clearly appeared to be the agent of the State in a position to give such assurances, apprised three of the appellants that the privilege in fact existed, and by his behavior toward the fourth obviously gave the same permission." *Id.* At 360 U.S. at 437 (1959). See (Page 12 of Commonwealth Attorney's Motion to Dismiss, on file in General District Court, Portsmouth). The court said [t]o sustain the judgment of the Ohio Supreme court on such a basis after the Commission had acted as it did would be to sanction the most indefensible sort of entrapment by the State - - convicting a citizen for exercising a privilege which the State clearly had told him was available to him." *Id.* At 438. Cited in Commonwealth Attorney's Motion to Dismiss.

60. Later, the Supreme Court expanded that rationale to include implied grants of authority to citizens. In *Cox v. Louisiana*, 379 U.S. 559 (1965), a demonstration leader was convicted of picketing near a courthouse. The officials on scene were aware of the demonstration and told the leader that the demonstration could be held on the far side of the street opposite the courthouse. The Supreme Court noted that "the highest police officials of the city, in the presence of the Sheriff and Mayor, in effect told the demonstrators that they

could meet where they did, 101 feet from the courthouse steps.” *Id.* At 572. The Court further noted, “[t]he record shows that at no time did the police recommend, or even suggest, that the demonstration be held further from the courthouse than it actually was.

61. The decisions of cases like *Raley* and *Cox* make it clear that due process prohibits individuals from sustaining a criminal conviction when they engage in specific conduct based on the apparent permission granted by a governmental authority. This is the exact case with regard to the incident that occurred at the monument located at 400 Court Street in the city of Portsmouth on June 10, 2020. A number of city officials had given permission both expressly, as well as impliedly by the conduct of all governmental officials who were present on the scene at the time the incident began. Additionally, a number of officers with the Portsmouth Police Department remained present on scene while observing various persons inflict damage on the monument and failed to intervene for several hours. It is clear that the failure to act on part of the police department is a result of decisions made by the City Attorney and Police Chief. (See *Commonwealth Attorney's Motion to Dismiss*).

62. The Court granted the Commonwealth Attorney's Motion and Dismissed the warrants with prejudice. See certified copies of the two warrants indicating dismissals. Exhibit # 6.

COUNT I
MALICIOUS PROSECUTION
(AGAINST GREENE AND MCGEE)

63. The Plaintiff realleges and incorporates herein all of the paragraphs 1-62 set forth above.

64. At all material times, Greene and McGee were acting under the color of State law as officers for the Portsmouth Police Department.

65. Senator Lucas has a right against unreasonable seizures under the Fourth Amendment of the Constitution of the United States and the Fourteenth Amendment of the Virginia Constitution.

66. Sgt. McGee instituted criminal proceedings against Senator Lucas by swearing out criminal complaint on August 17, 2020 and presenting such criminal complaint to Magistrate Owens.

67. The criminal proceedings were authorized and encouraged by Greene.

68. At a press conference the former chief stated:

As a result of our efforts in this matter, we have identified and secured arrest warrants of numerous individuals who conspired, organized, and participated in a felonious acts on June 10th. This investigation yielded the same results of holding individuals who commit crimes in our city accountable but was done in a safe manner so that my officers and no other members of the public were harmed."

"Therefore, on today's date, felony warrants for conspiracy to commit a felony and felony injuring to a monument in excess

of \$1,000 have been obtained for the following individuals:

"Senator L. Louise Lucas"

69. Pursuant to Sgt. McGee's criminal complaint and presentation, Magistrate Owens issued felony arrest warrants pursuant to a violation of Code of Virginia § 137, a Class 6 felony, which provides for a penalty of up to five years in Virginia Department of Corrections, and a violation of Code of Virginia § 18.2-22, a Class 5 felony, which also provides for a penalty of up to five years in the Virginia Department of Corrections.

71. Neither Greene nor McGee had authority to pursue an arrest warrant against Senator Lucas.

72. The August 24, 2020, letter from Chief Greene stated, "Mr. Ashby instructed me at this point it is preservation of life and not property. I advised my officers of the same and proceeded back to my office as I could not take any legal action without a victim. If the property holders, city leaders, determined citizens could damage same, then I don't have a crime... Therefore, I had no other alternative but to await confirmation or denial from city leaders in order to prevent false arrest or incite the crowd...so citizens assumed they were acting without criminal intent." See page 14, paragraph 19 of *Portsmouth Commonwealth Attorney's Motion to Dismiss*.

73. On information and belief, Sgt. McGee provided false facts to Magistrate Owens to obtain the criminal complaint against Senator Lucas.

74. Chief Greene had the same facts and authorized Sgt. McGee to proceed with obtaining the criminal complaint.

75. The facts and circumstances known to Sgt. McGee, on which he acted, at the time he presented the criminal complaint to Magistrate Owens were such that a reasonable and prudent person acting on the same facts and circumstances would not have believed Senator Lucas committed a crime.

76. The facts and circumstances only support the conclusion that Senator Lucas never should have been charged with a crime.

77. Thereafter, on November 16, 2020, the felony charges against Senator Lucas were dismissed with prejudice on Motion of the Commonwealth Attorney, ending the criminal proceeding in a manner favorable to Senator Lucas.

78. As a result of the intentional and reckless actions of former Police Chief Greene and Sgt. McGee, Senator Lucas was unlawfully seized, arrested and fingerprinted in violation of the Fourth Amendment of the Constitution of the United States and the Fourteenth Amendment of the Virginia Constitution, pursuant to legal process that was not supported by probable cause.

79. Due to the malicious prosecution of Senator Lucas, Senator Lucas' Fourth Amendment and Fourteenth Amendment rights to be free from unlawful seizure and arrest were violated and she suffered great emotional and mental distress, attorneys' fees and costs, inconvenience, loss of enjoyment of life, suffered from a rise in blood pressure, humiliation, embarrassment, mortification, shame, vilification, great personal trauma, stress, fear, worry, facing up to Five(5)

years on each felony, loss of freedom, and injury to her good name and reputation.

COUNT II
DEFAMATION PER SE
AGAINST GREENE

80. The Plaintiff realleges and incorporates herein all of the paragraphs 1-79 set forth above.

81. On August 17, 2020, during a press conference, former Police Chief Greene announced that Senator Lucas was being charged with two felony warrants:

As a result of our efforts in this matter, we have identified and secured arrest warrants of numerous individuals who conspired, organized, and participated in a felonious acts on June 10th. This investigation yielded the same results of holding individuals who commit crimes in our city accountable but was done in a safe manner so that my officers and no other members of the public were harmed.”

“Therefore, on today’s date, felony warrants for conspiracy to commit a felony and felony injuring to a monument in excess of \$1,000 have been obtained for the following individuals:

Senator L. Louise Lucas1.)

82. Greene's statements about Senator Lucas are false statements of fact.

83. Greene made the statements intentionally, without any supporting evidence, knowing them to be false, and in reckless and willful disregard for the truth of the statement.

84. Greene caused Senator Lucas to be charged with a crime that if convicted she would spend time in the prison with the Department of Corrections.

85. Greene failed to comply with the laws of the Commonwealth of Virginia and/or the Criminal Justice Services, and/or failure to otherwise prevent her misconduct, reveals a response that she had actual or constructive knowledge that was so inadequate as to show deliberate indifference to Senator Lucas.

86. As a result of the above-referenced misconduct by Greene, Senator Lucas suffered great emotional and mental distress, loss of enjoyment of life, humiliation, embarrassment, mortification, shame, vilification, great personal trauma, stress, fear, worry, and injury to her good name and reputation. the decedent suffered: severe physical and/or medical expenses.

COUNT III
FALSE IMPRISONMENT
(AGAINST GREENE AND MCGEE)

87. The Plaintiff realleges and incorporates herein all of the paragraphs 1- 86 set forth above.

88. Chief Greene and Sgt. McGee had Senator Lucas arrested.

89. Chief Greene and Sgt. McGee did not have probable cause to arrest Senator Lucas.

90. Chief Greene and Sgt. McGee intentionally restricted Senator Lucas' freedom of movement without legal right.

91. Chief Greene and Sgt. McGee intentionally used force, words, or acts which Senator Lucas was afraid to ignore, or to which she reasonably believed she had to submit.

92. As a result of the above-referenced actions and omissions by the Defendants, agents and employees, acting within the scope of their employment, the Plaintiff has suffered severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical expenses.

COUNT IV
GROSS NEGLIGENCE
(AGAINST GREENE)

93. The Plaintiff realleges and incorporates herein all of the paragraphs set forth above.

94. The City of Portsmouth and Greene's retention of the Police Officers, and/or failure to otherwise prevent their misconduct, reveals a response that they had actual or constructive knowledge that was so inadequate as to show deliberate indifference to or tacit authorization of the conduct of the Police Officers.

The Policy and "Custom and Usage" of the Portsmouth Police Department

95. The policymakers of the Portsmouth Police Department, having the final authority to establish and implement their policies, created a policy under which the Portsmouth City Police force was deficiently trained. The Portsmouth

City Police Department's training policy deficiencies included express and/or tacit authorizations of unconstitutional conduct as well as failures to adequately prohibit or discourage readily foreseeable unconstitutional conduct in light of the known exigencies of police duty.

96. The unconstitutional conduct of the Police Officers was so widespread and persistent that it assumed the quality of the "custom or usage" of the Portsmouth Police Chief.

97. The Police chief had actual or constructive knowledge of the "custom or usage" and either specifically intended that the "custom or usage" continue or deliberately indifferent to stopping or correcting the unconstitutional conduct. Under the circumstances then and there existing, Defendant Greene owed Plaintiff a duty to exercise reasonable and ordinary care in the performance of their ministerial duties as these ministerial duties related to compliance with the training of officers consistent with the mandatory requirements of the Criminal Justice Services.

98. These duties notwithstanding, Defendant Greene negligently, carelessly and recklessly failed to exercise ordinary care in the ministerial obligations to comply with the mandatory training requirements of the Criminal Justice Services.

99. The aforementioned actions and omissions, careless, negligent and reckless conduct by Defendant were the direct and proximate cause of the Plaintiff's physical and emotional injuries.

100. At all times relevant hereto the conduct of Defendant Greene constituted gross negligence which showed such indifference to the safety and well being of Plaintiff as to constitute an utter disregard of caution amounting to a complete neglect of the safety of Plaintiff. It was negligence that would shock the conscience of fair-minded people.

101. The aforementioned actions and omissions by Greene in not providing the appropriate training for the Police Officers in compliance with Criminal Justice Services and/or the laws of the Commonwealth of Virginia, allowing/ and or causing a Virginia State Senator to be charged with two felonies the direct and proximate cause of the Plaintiff's physical and emotional injuries.

102. Chief Greene by law and job requirements with the City of Portsmouth had a duty to provide supervision and training for the police officers.

103. Chief Greene breached that duty to the police officers under her control and supervision.

104. As a result of the above-referenced actions and omissions, the City's agents and employee, acting within the scope of their employment, the Plaintiff has suffered severe physical and mental pain, suffering an emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical and psychological expenses

105. At all times relevant hereto the conduct of Defendant Greene constituted gross negligence which showed such indifference to the safety and well-being of Plaintiff as to constitute an utter disregard of caution amounting to a

complete neglect of the safety of Plaintiff. It was negligence that would shock the conscience of fair-minded people.

106. The aforementioned actions and omissions by Greene by retaining individual police officers involved causing Senator Lucas to be charged with two felony warrants and in breaching her duty to provide the appropriate training for the Police Officers in compliance with Criminal Justice Services were the direct and proximate cause of the Plaintiff's physical and emotional injuries.

107. As a result of the above-referenced actions and omissions by Greene agents and employees, acting within the scope of their employment, the Plaintiff has suffered and will continue to suffer severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical expenses.

COUNT V
GROSS NEGLIGENCE
(AGAINST MCGEE)

108. The Plaintiff realleges and incorporates herein all of the paragraphs set forth above.

109. McGee failed to comply with the laws of the Commonwealth of Virginia and/or the Criminal Justice Services, and/or failure to otherwise prevent his misconduct, reveals a response that he had actual or constructive knowledge that was so inadequate as to show deliberate indifference to Senator Lucas.

110. These duties notwithstanding, Defendant McGee negligently, carelessly and recklessly failed to exercise ordinary care in the ministerial

obligations to comply with the mandatory training requirements of the Criminal Justice Services.

111. The aforementioned actions and omissions, careless, negligent and reckless conduct by Defendant were the direct and proximate cause of the Plaintiff's physical and emotional injuries.

112. At all times relevant hereto the conduct of Defendant McGee constituted gross negligence which showed such indifference to the safety and well-being of Plaintiff as to constitute an utter disregard of caution amounting to a complete neglect of the safety of Plaintiff. It was negligence that would shock the conscience of fair-minded people.

113. The aforementioned actions and omissions by McGee in not complying with the laws of the Commonwealth of Virginia and in compliance with Criminal Justice Services, by causing a Virginia State Senator to be charged with two felonies the direct and proximate cause of the Plaintiff's physical and emotional injuries.

114. Sgt McGee breached that duty to Senator Lucas.

115. As a result of the above-referenced actions and omissions, McGee, acting within the scope of his employment, the Plaintiff has suffered severe physical and mental pain, suffering an emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical and psychological expenses

116. At all times relevant hereto the conduct of Defendant McGee constituted gross negligence which showed such indifference to the safety and well-being of Plaintiff as to constitute an utter disregard of caution amounting to a

complete neglect of the safety of Plaintiff. It was negligence that would shock the conscience of fair-minded people.

117. As a result of the above-referenced actions and omissions by Greene agents and employees, acting within the scope of their employment, the Plaintiff has suffered and will continue to suffer severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

1) Against the Defendants Greene and McGee, under Count I, Malicious Prosecution in the amount of One Million Dollars (\$1,000,000.00) and 00/00 in compensatory damages and \$350,000.00 in punitive damages against the Defendants, collectively and individually, and that the Plaintiff be awarded any other further and general relief to which it may appear they are entitled.

2) Against Greene under Count II, Defamation Per Se in compensatory damages in an amount not less than One Million Dollars (\$1,000,000.00) and 00/00 and punitive damages in an amount not less than \$350,000.00. Plaintiffs be awarded any other further and general relief to which it may appear they are entitled.

3) Against Defendants Greene and McGee under Count III, False Imprisonment in compensatory damages in an amount not less than One Million Dollars (\$1,000,000.00) and 00/00 and punitive damages in an amount not less

than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; collectively and individually; and the Plaintiff be awarded any other further and general relief to which it may appear they are entitled.

4) Against Defendant Greene under Count IV, Gross Negligence compensatory damages in an amount not less than One Million Dollars (\$1,000,000.00) and 00/00 and punitive damages in an amount not less than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; and the Plaintiff be awarded any other further and general relief to which it may appear they are entitled.

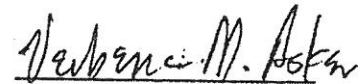
5) Against Defendant McGee under Count V, Gross Negligence compensatory damages in an amount not less than One Million Dollars (\$1,000,000.00) and 00/00 and punitive damages in an amount not less than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; and the Plaintiff be awarded any other further and general relief to which it may appear they are entitled.

A JURY TRIAL IS DEMANDED

L. LOUISE LUCAS

Herbert M. Aske

Verbena M. Askew, Esquire (VSB# 19511)
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Counsel for Plaintiff

A handwritten signature in cursive script that reads "Verbena M. Askew". The signature is written in black ink and is positioned above a horizontal line.

Verbena M. Askew