

UNITED STATES OF AMERICA

IN THE DISTRICT COURT FOR WESTERN DISTRICT OF MICHIGAN

Thomas Mitchell Rotta  
Plaintiff

Docket No.

v.

John E. Shay, individually,  
City of Ludington, a Michigan  
municipal corporation,  
Defendant

Hon.  
U.S. District Court Judge

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J. Nicholas Bostic P40653  
Attorney for Plaintiff  
909 N. Washington Ave.  
Lansing, MI 48906  
517-706-0132

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**COMPLAINT AND JURY DEMAND**

Plaintiff, for his complaint, states:

1. Plaintiff Thomas Mitchell Rotta is a resident of Mason County, Michigan.
2. Defendant John E. Shay, named individually, was at all times pertinent the city manager of the City of Ludington, is a resident of Mason County, Michigan, and he conducts his business in Mason County in the Western District of Michigan.
3. Defendant City of Ludington is a municipal corporation organized under the laws of the State of Michigan and has its principal offices in Mason County in the Western District of Michigan
4. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4).
5. All Defendants were at all times acting under color of law.

GENERAL ALLEGATIONS

6. Paragraphs 1 through 5 above are incorporated herein by reference.

7. On or about August 25, 2008, Plaintiff was issued a motor vehicle civil infraction by a Ludington City police officer for disregarding a stop sign while Plaintiff was on a bicycle.

8. At the time of the infraction, Plaintiff was a paid member of the Ludington City fire department.

9. Plaintiff sent letters protesting the ticket and requesting a hearing.

10. Plaintiff's documents were shared with the Defendant City of Ludington police chief who in turn shared them with Defendant City of Ludington fire officials.

11. Defendant City of Ludington fire officials then pressured Plaintiff into withdrawing his request for a hearing under threat of termination.

12. Plaintiff submitted freedom of information action requests to Defendant Shay in his capacity as city manager and created additional friction due to the submission of the requests, Defendant Shay's responses, and publicity surrounding them.

13. Due to the hostility toward Plaintiff by other members of Defendant City of Ludington's fire and police departments, Plaintiff resigned his position within the fire department.

14. Plaintiff obtained employment in April 2008 with Advocate Investigations & Protection (AI&P Tactical, LLC) as a guard.

15. Plaintiff was assigned to work by AI&P at Occidental Chemical Corporation (formerly Dow Chemical) facilities in the Ludington area.

16. John Henderson was at all times pertinent the mayor of Defendant City of Ludington and was head of security for Occidental Chemical and controlled the contract between Occidental Chemical and AI&P.

17. In 2009, Plaintiff started a blog based on the Internet designed to provoke frank public

discussion of local events and local community leaders.

18. Throughout 2010, Plaintiff continued to pursue freedom of information act requests to Defendant Shay and posted information on his blog critical of the Defendants.

19. Plaintiff specifically criticized what he perceived as cronyism, corruption, and poor spending decisions on his blog.

20. On February 14, 2011, Plaintiff posted a blog with pictures of various city officials and Downtown Development Authority officials along with claims of conflicts of interest, sweet real estate deals, and the address of the location of one of the questionable real estate transactions.

21. On February 18, 2011, counsel for Plaintiff wrote a letter to the private attorney hired to prosecute city traffic and ordinance violations warning her that failure to acknowledge the invalidity of the stop sign and contempt findings would result in a request for civil damages, attorney fees, and other lawful remedies.

22. On February 28, 2011, the Ludington City council passed a resolution implementing a trespass letter policy.

23. On March 1, 2011, Defendant Shay signed a letter of trespass for City Hall and had the letter served on Plaintiff by a Ludington city police officer. See Attachment A.

24. Also on March 1, 2011, a trespass letter identical to the one signed by Defendant Shay except for the address and the signature was signed (signature is illegible) and served by the same officer at the same time as Defendant Shay's letter.

25. The city attorney for Defendant City of Ludington has denied that the illegible letter for 201 North Washington is a city document.

26. The policy has an appeal process via the city attorney and Plaintiff utilized this process.

27. The trespass letter was modified but not removed.

28. Plaintiff has never been informed of the reason for the trespass letter.

29. On or about March 1, 2011, Defendant Shay provided a public statement in the Ludington Daily News concerning the trespass letter and claimed that a city employee felt threatened.

30. On or about March 12, 2011, AI&P terminated Plaintiff's employment based on his Internet blogs.

31. On April 27, 2012, Defendant Shay unilaterally rescinded the letter of trespass for the Ludington City Hall and Ludington Police buildings due to the "seemingly improving relationship" between Plaintiff and "the City."

**COUNT I – 42 U.S.C. §1983**  
**(first amendment retaliation – Defendant Shay)**

32. Paragraphs 1 through 31 above are incorporated herein by reference.

33. Plaintiff engaged in constitutionally protected speech when he criticized government officials for their spending decisions.

34. Plaintiff engaged in constitutionally protected speech when he criticized government officials for treating their friends with favoritism regarding doing business with the government or government programs.

35. Plaintiff engaged in constitutionally protected speech when he published his criticism to others by using his Internet blog.

36. Plaintiff engaged in constitutionally protected speech that addressed matters of public concern as identified in paragraphs 33 through 35 above.

37. Defendant Shay engaged in an adverse action in that he unjustifiably banned Plaintiff

from city owned property.

38. The blanket ban imposed by Defendant Shay was unreasonably overbroad and unnecessary.

39. Defendant Shay engaged in an adverse action in that he made a public press release concerning the alleged reasons for the trespass letter which placed Plaintiff in an unfavorable light.

40. Plaintiff suffered an injury as a direct and proximate cause of Defendant Shay's action in that Plaintiff's employment was terminated.

41. Plaintiff suffered an injury in that he suffered humiliation, embarrassment, anxiety and stress as a result of Defendant Shay's conduct.

42. Defendant Shay's conduct toward Plaintiff was motivated by Plaintiff's constitutionally protected speech.

43. Defendant Shay's conduct would chill the likelihood that a reasonable person would exercise his or her constitutional rights to express criticism of government officials.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment for Plaintiff and against Defendant Shay in an amount not less than \$25,000.00.

**COUNT II – 42 U.S.C. §1983  
(procedural due process – Defendant Shay)**

44. Paragraphs 1 through 43 above are incorporated herein by reference.

45. Defendant Shay sent a proposed "workplace safety policy" to the Ludington City Council for its consideration on February 24, 2011.

46. Upon information and belief, the Ludington City Council adopted this "workplace safety policy" on or about February 28, 2011.

47. The “workplace safety policy” is in fact an arbitrary and capricious method of issuing “letters of trespass” for vague, unspecified subjective criteria without notice or an opportunity to be heard to the person receiving the letter.

48. The Plaintiff’s right to address city officials at public events is a first amendment right protected under the due process clause of the fourteenth amendment.

49. The March 1, 2011 letter of trespass was created, issued, served, and threatened to be enforced without any notice to Plaintiff, without any opportunity for him to respond prior to its issuance, and without any justification to Plaintiff.

50. The policy implemented by Defendant City of Ludington contained an appeals process to the city attorney that was inadequate in that it had no standards for review, it did not require that justification for the issuance of the letter be provided to Plaintiff so he could refute the allegations, it contained no time frames for the City Attorney’s response, and contained no guidelines for the City Attorney to follow.

51. The appeal as applied in this case resulted in an inadequate remedy because Plaintiff remained arbitrarily banned from the lobby of city hall.

52. The appeal process was inadequate because it contained no further method of review after the city attorney’s arbitrary review and action.

53. Plaintiff suffered an injury in that he suffered humiliation, embarrassment, anxiety and stress as a result of Defendant Shay’s conduct.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment for Plaintiff and against Defendant Shay in an amount not less than \$25,000.00.

**COUNT III – DENIAL OF FIRST AMENDMENT FREE SPEECH  
(42 U.S.C. §1983 – Defendant Shay)**

54. Paragraphs 1 through 53 above are incorporated herein by reference.

55. From March 1, 2011 through November 9, 2011, Plaintiff was completely banned from any utilization of 400 N. Harrison or 408 N. Harrison which prohibited his attendance at all city council, zoning board, planning board, council committee, or any other type of governmental meetings.

56. Pursuant to state law, members of the public have a right to peacefully attend the meetings as described in paragraph 55 above.

57. Pursuant to state law and the first amendment, members of the public – including Plaintiff – have a statutory and first amendment right to verbally address the elected or appointed officials presiding or participating in the meetings as described in paragraph 55 above.

58. Defendant Shay's letter of trespass of March 1, 2011, unlawfully denied Plaintiff his first amendment right to speak at these meetings as described in paragraph 55 above.

59. On November 9, 2011, the city attorney for Defendant City of Ludington modified the March 1, 2011 letter of trespass so that it no longer banned Plaintiff from attending the City Council Chamber, the Community Room, the lobby adjacent to the Community Room, the exterior of City Hall and the exterior of the City Police Department.

60. The remainder of the March 1, 2011 letter of trespass continued to unlawfully ban Plaintiff from the lobby of City Hall so that he could obtain and view notices of meetings, cancellations of meetings, notice of special meetings, notices of potential ordinance amendments or enactments or other publicly posted information.

61. The letter of trespass between November 9, 2011 and April 27, 2012 continued to deprive

Plaintiff of his rights under the first amendment because he had no meaningful notice of knowing when his opportunity to exercise his first amendment rights would be available.

62. Plaintiff suffered an injury in that he suffered humiliation, embarrassment, anxiety and stress as a result of Defendant Shay's conduct.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment for Plaintiff and against Defendant Shay in an amount not less than \$25,000.00.

**COUNT IV– 42 U.S.C. §1983 – UNCONSTITUTIONAL MUNICIPAL POLICY  
(Defendant City of Ludington)**

63. Paragraphs 1 through 62 above are incorporated herein by reference.

64. Defendant City of Ludington has promulgated a specific policy authorizing “no trespass” letters pursuant to its legislative powers granted by state law and its charter.

65. Defendant City of Ludington utilized this policy to unlawfully deny Plaintiff of his rights under the first and fourteenth amendments to the United States Constitution.

66. Defendant City of Ludington has failed to include in its policy procedural protections granting citizens any notice or an opportunity to be heard.

67. Defendant City of Ludington has failed to include in its policy an adequate post-deprivation remedy.

68. Defendant City of Ludington has failed to include in its policy decision making standards which will prevent arbitrary and capricious denials of a citizen's first and fourteenth amendment rights under the United States Constitution.

69. Defendant City of Ludington has instituted a policy of utilization of these trespass letters which promotes retaliatory use of these ordinances by its elected officials, appointed officials and employees.



70. The policies in the preceding paragraphs violate the due process clause of the fourteenth amendment to the United States Constitution.

71. Defendant City of Ludington has instituted a policy of utilization of these letters which promotes enforcement under the threat of arrest.

72. Defendant City of Ludington is utilizing the policy to chill a citizen's right to free speech as protected by the United States Constitution.

73. The policies of enforcement authorized and promoted by Defendant City of Ludington were likely to and in fact did cause a violation of a citizen's right to due process of law or freedom of speech.

74. Defendant City of Ludington's policies of enforcement are the result of a deliberate indifference to the constitutional protections of its citizens.

75. Defendant City of Ludington's policies of enforcement are a direct and proximate cause of violations of Plaintiffs' rights under the due process clause of the fourteenth amendment or the first amendment.

76. As a result of the violations of Plaintiff' rights, Plaintiff has suffered the loss of the protection of the first and fourteenth amendments as wells as emotional distress, anxiety, and stress.

WHEREFORE, Plaintiff requests that this Court enter judgment in favor of Plaintiff and against Defendant City of Ludington in an amount not less than \$25,000.00.

**COUNT V- EXEMPLARY DAMAGES**

77. Paragraphs 1 through 76 above are incorporated herein by reference.

78. The actions of Defendant Shay were engaged in with malice toward Plaintiff.

79. The actions of Defendant Shay were engaged in with reckless indifference to the federally protected rights of Plaintiff.

80. The actions of Defendant Shay caused excessive anxiety, stress, inconvenience, and emotional distress to Plaintiff.

81. The conduct of Defendant Shay entitles Plaintiff to exemplary or punitive damages.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment for Plaintiff and against Defendant Shay in an amount not less than \$50,000.00.

#### COUNT VI – INJUNCTIVE RELIEF

82. Paragraphs 1 through 81 above are incorporated herein by reference.

83. On February 28, 2011, Defendant City of Ludington through its City Council adopted a “workplace safety policy” that expressly states “VII. Application[.] This order constitutes City policy, and is not intended to enlarge the employer or employee’s civil or criminal liability in any way. . . .”

84. The policy allows for arbitrary and capricious denial of first amendment rights of citizens including Plaintiff in violation of Plaintiff’s due process rights

85. The policy allows for denial of first amendment rights without proper notice or an opportunity to be heard before being deprived of these first amendment rights as protected by the fourteenth amendment of the United States Constitution.

86. The policy fails to provide meaningful and adequate post-deprivation appeal or review by failing to impose timelines and by failing to impose any standards of review.

87. Plaintiff remains a resident of the City of Ludington and it is likely that he will be

subject to application of the unlawful policy in the future.

88. Plaintiff remains at risk for additional retaliatory or unlawful conduct on the part of Defendant City of Ludington and its employees particularly Defendant Shay.

89. If injunctive relief is not granted, Plaintiff has no adequate remedy at law because the policy does not provide an adequate review process or adequate review standards and is issued on an ex parte basis.

90. If injunctive relief is not granted, Plaintiff has no adequate remedy at law to prevent irreparable injury in the form of being denied opportunities to engage in protected speech in a timely fashion.

91. If injunctive relief is granted, no unreasonable harm will be imposed on Defendants because any alleged improper conduct on the part of Plaintiff can be redressed though currently available statutes in either a civil or criminal context.

92. If injunctive relief is granted, the public as well as Plaintiff will be protected from arbitrary and capricious denials of first amendment rights.

93. Plaintiff is likely to succeed on his claim because the Defendants are not providing citizens notice or an opportunity to be heard.

94. Plaintiff is likely to succeed on his claim because the Defendants are acting in an arbitrary and capricious manner.

95. Plaintiff is likely to succeed on his claim because the conduct of Defendants is retaliatory and serves no legitimate governmental interest.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter a permanent injunction prohibiting Defendant City of Ludington, Defendant John Shay, or any successor

appointee or other employee of Defendant City of Ludington from:

- a. issuing letters of trespass to any citizen including but not limited to Plaintiff without prior notice and a hearing;
- b. charging anyone against whom a letter of trespass has been issued or served with any crime solely as a result of failing to abide by any letter of trespass issued prior to this Court enjoining such conduct;
- c. enforcing or utilizing letters of trespass without a substantial factual basis for doing so after a meaningful hearing where the person restrained has an opportunity to cross-examine those requesting the letter and presenting evidence on his or her own behalf.

**REQUEST FOR RELIEF**

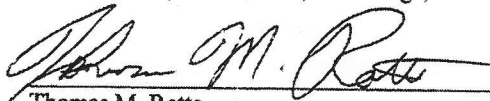
WHEREFORE, Plaintiff requests that judgment enter for Plaintiff and

1. Against all Defendants as stated in the individual counts above;
2. Against all Defendants for punitive damages as allowed by 42 U.S.C. §1983;
3. Against all Defendants for his attorney fees as allowed by 42 U.S.C. §1988;
4. Against all Defendants for interest on any money awards to the date of filing the complaint as allowed by law;
5. Against all Defendants for such other relief as equity and justice require.

Verification and signature by Plaintiff:

I declare that the statements above are true to the best of my information, knowledge, and belief.

8-27-2012

  
Thomas M. Rotta  
Plaintiff

Signature by Attorney:

09/11/2012

/s/ J. Nicholas Bostic  
J. Nicholas Bostic P40653  
Attorney for Plaintiff

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all counts.

09/12/2012

/s/ J. Nicholas Bostic  
J. Nicholas Bostic P40653  
Attorney for Plaintiff  
909 N. Washington  
Lansing, MI 48906  
517-706-0132  
barristerbostic@att.net

AO 440 (Rev. 01/09) Summons in a Civil Action - MIWD (Rev. 11/09)

**SUMMONS IN A CIVIL ACTION**  
**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN**

Thomas Mitchell Rotta

Case No. 1:12-cv-973

Hon.

v.  
John E. Shay, City of Ludington, a Michigan municipal corporation.

TO: John E. Shay  
ADDRESS: 400 S. Harrison St.  
Ludington, MI 49431

A lawsuit has been filed against you.

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days after service of this summons on you (not counting the day you received it). If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the Court, whose address is indicated below.

PLAINTIFF OR PLAINTIFF'S ATTORNEY NAME AND ADDRESS

J. Nicholas Bostic  
Bostic & Associates  
909 N. Washington Ave.  
Lansing, MI 48906

TRACEY CORDES, CLERK OF COURT

By: \_\_\_\_\_  
(Deputy Clerk)

Dated: \_\_\_\_\_

399 Federal Building  
110 Michigan St., NW  
Grand Rapids, MI 49503

P.O. Box 698  
229 Federal Building  
Marquette, MI 49855

B-35 Federal Building  
410 W. Michigan Ave.  
Kalamazoo, MI 49007

113 Federal Building  
315 W. Allegan  
Lansing, MI 48933

**PROOF OF SERVICE**

This summons for John E. Shay was received by me on \_\_\_\_\_  
(name of individual and title, if any) (date)

I personally served the summons on the individual at \_\_\_\_\_  
on \_\_\_\_\_ (date) \_\_\_\_\_ (place where served)

I left the summons at the individual's residence or usual place of abode with \_\_\_\_\_, a person  
(name)  
of suitable age and discretion who resides there, on \_\_\_\_\_, and mailed a copy to the individual's last known address.  
(date)

I served the summons on \_\_\_\_\_, who is designated by law to accept service  
(name of individual)  
of process on behalf of \_\_\_\_\_ on \_\_\_\_\_  
(name of organization) (date)

I returned the summons unexecuted because \_\_\_\_\_

Other (specify) \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_

I declare under the penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

Additional information regarding attempted service, etc.:

\_\_\_\_\_  
Server's printed name and title

\_\_\_\_\_  
Server's address

AO 440 (Rev. 01/09) Summons in a Civil Action - M(WD) (Rev. 11/09)

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ADDRESS: c/o City Clerk  
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This summons for City of Ludington was received by me on \_\_\_\_\_  
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I personally served the summons on the individual at \_\_\_\_\_  
on \_\_\_\_\_  
(date) (place where served)

I left the summons at the individual's residence or usual place of abode with \_\_\_\_\_, a person  
(name)  
of suitable age and discretion who resides there, on \_\_\_\_\_, and mailed a copy to the individual's last known address.  
(date)

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(name of individual)  
of process on behalf of \_\_\_\_\_, on \_\_\_\_\_  
(name of organization) (date)

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I declare under the penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

Additional information regarding attempted service, etc.:

\_\_\_\_\_  
Server's printed name and title

\_\_\_\_\_  
Server's address