

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Rudzik Excavating, Inc.

c/o Jeffrey Rudzik, President
401 Lowellville Road
Struthers, Ohio 44471

Plaintiff,

v.

Mahoning County

c/o Mahoning County Board of Commissioners
120 Market Street
Youngstown, Ohio 44503

David Ditzler (in his personal capacity)

6696 New Rd.
Youngstown, Ohio 44515

Carol Rimedio-Righetti (in her official and
personal capacities)

Mahoning County Commissioner
21 West Boardman Street
3rd Floor, Administration Building
Youngstown, Ohio 44503

and

Anthony Traficanti (in his official and personal
capacities)

Mahoning County Commissioner
21 West Boardman Street
3rd Floor, Administration Building
Youngstown, Ohio 44503

Defendants.

Case No. 4:24-cv-01876

Judge Benita Y. Pearson

Magistrate Judge Carmen E. Henderson

VERIFIED FIRST AMENDED AND SUPPLEMENTAL COMPLAINT WITH JURY DEMAND

NATURE OF ACTION

1. This is a civil-rights action for violations of the United States Constitution under 42 U.S.C. § 1983 (including violations of the First and Fourteenth Amendments to the Constitution), with pendent claims for violations of federal and Ohio law. The pendent claims are for declaratory judgment that there was no contract; statutory civil liability for criminal acts including tampering with records, mail fraud, attempted theft, falsification, and interference with civil and statutory rights.
2. This First Amended and Supplemental Complaint was timely filed under Fed. R. Civ. 15(a)(1)(B) “no later than... 21 days after service of a motion under Rule 12(b), (e), or (f).”
3. Plaintiff Rudzik Excavating, Inc., is an Ohio corporation, which through its employees/agents, engaged in constitutionally protected free speech and petitioning the government—as a private citizen—by its leaders speaking to several media outlets and radio talk shows, and by attending county commissioners’ board meetings and vocalizing its displeasure with Defendant Mahoning County’s requirement of costly project labor agreements (“PLAs”) on certain construction jobs.
4. PLAs are collective-bargaining agreements between building trade unions and contractors. They govern terms and conditions of employment for all workers—union and nonunion—on a construction project.
5. In the weeks and months that followed, James Tressa, a senior estimator/project manager of Rudzik Excavating, spoke at several commissioners’ meetings about the PLAs. He also spoke several times to local news-media outlets and on various radio talk shows to discuss the issue. Multiple media outlets, including the local newspaper and TV news stations, reported on the matter.
6. Defendant-Commissioner David Ditzler likewise made statements at the commissioners’ meetings, spoke on one radio talk show, and made other statements to the media about the

commissioners' and County's views of PLAs. Defendant-Commissioners Carol Rimedio-Righetti and Anthony Traficanti made public statements similar to Ditzler's on the topic. Each Defendant-Commissioner specifically mentioned Plaintiff Rudzik Excavating. The commissioners' meetings were published on YouTube.

7. In the spring of 2024, Rudzik Excavating submitted bids for two projects posted by Mahoning County. Both projects required the bidder to agree to and sign the PLAs. Rudzik Excavating submitted its bids, but declined to sign the PLAs on both projects. Mahoning County Commissioners issued two resolutions finding that Rudzik Excavating was the apparent low bidder, but because of its failure to execute the PLAs, the bids were nonresponsive and consequently rejected. No contract was entered into, causing Rudzik Excavating to be an unsuccessful bidder on both projects.

8. With its proposal, Rudzik Excavating submitted required bid bonds. And by Ohio law, once the bid was unsuccessful, Mahoning County was required to return Rudzik Excavating's bid bonds. After being informed by a non-defendant Mahoning County official that Mahoning County was going to seek forfeiture of the bid bonds, Tressa attended and protested at the commissioners' meeting. He informed the Defendant-Commissioners of the devastating effect that forfeiture of the bid bonds would have on Rudzik Excavating's business.

9. Rather than adhere to the law, Mahoning County Assistant Prosecutor Donald Duda issued two demand letters, on then-Mahoning County Prosecuting Attorney Gina DeGenova's office letterhead, to Rudzik Excavating's insurance agents—Western Surety Co. and Kernan Insurance Agency, Inc.—seeking forfeiture of Rudzik Excavating's bid bonds as payment for the difference between Rudzik Excavating's bid and the next lowest bidder. By law, Mahoning County is not entitled to forfeiture of the bid bonds to satisfy this amount. Nor is Mahoning County otherwise entitled to this payment.

10. The demand letters contained false and fraudulent statements.

11. Defendants' statements, including those made during commissioners' meetings, are not shielded from liability based on legislative privilege (absolute immunity) because (1) Defendants made the statements when no legislation was pending; (2) Defendants published their statements on YouTube, which is beyond the legislative forum and outside the meetings; and (3) Defendants were acting in an administrative function when they made the statements. By law, the legislative privilege (absolute immunity) does not apply to a scenario like the one here.

12. Defendants' actions, including the demand letters, are not shielded from liability based on the litigation privilege (or absolute immunity) because their actions (1) were not made in the regular course of preparing for or conducting such a proceeding contemplated in good faith and under serious consideration; (2) were not pertinent and material to the redress or relief sought; and (3) were not published only to persons who are directly interested in the proceeding. By law, the litigation privilege (absolute immunity) does not apply to a scenario like the one here.

13. Defendants' actions, including the demand letters, are not shielded from liability under the *Noerr-Pennington* doctrine because their attempt to seize the bid bonds is meritless and objectively baseless such that no reasonable litigant could realistically expect success on the merits. The entire basis for Defendants' claim to the bid bonds is the alleged existence of a contract, where, in truth and reality, no contract ever existed and Defendants stand no chance of succeeding on such a meritless claim. Defendants were acting in retaliation for Rudzik Excavating exercising its First Amendment rights. By law, the *Noerr-Pennington* (absolute immunity) does not apply to a scenario like the one here.

14. Defendants are not entitled to qualified immunity on the federal claims because the prohibition against retaliation by private citizens for exercise of First Amendment rights was clearly established law of which any government official should have known.

15. There is no qualified immunity for the state-law claims. Defendants also acted with malice, ill-will, spite, ulterior motives, and with intent to harm Rudzik Excavating.

16. Alternatively, Mahoning County is liable for breach of contract for violating its own policy regarding PLAs on projects under \$1 million.

17. As to all other Defendants, Plaintiff seeks both damages and injunctive relief, so those Defendants would not be entitled to qualified immunity for injunctive relief, even if they are entitled to qualified immunity for damages.

18. Again, given how clearly established the constitutional law is that Defendants are violating by retaliating for protected speech, no defendant sued individually is entitled to qualified immunity.

PARTIES

19. Plaintiff Rudzik Excavating, Inc. (“Rudzik Excavating”), is an Ohio private corporation with its headquarters located in Struthers, Ohio, Mahoning County. Jeffrey Rudzik is the president and 50% shareholder of Rudzik Excavating and his wife, Bonnie Rudzik, is the vice-president/treasurer and owns the other 50%.

20. Defendant Mahoning County is a political subdivision as defined in Ohio Rev. Code § 2744.01. Mahoning County includes members of its board of commissioners and its prosecutor’s office. Mahoning County employs Defendants Carol Rimedio-Righetti and Anthony Traficanti (both county commissioners), and a prosecuting attorney and assistant prosecuting attorneys. Mahoning County is vicariously liable for acts and omissions taken under its customs, policies, or practices. Mahoning County used to, at relevant times described below, employ Defendant David Ditzler, who was then also a commissioner. Mahoning County is also responsible for training and supervising its employees in carrying out their duties in a lawful manner. The Mahoning County Prosecuting Attorney acted under color of state law as an agent on other Defendants’ behalf. By political-party appointment at the time of filing, the Mahoning County Prosecuting Attorney was Gina DeGenova.

It is her and her office's illegal actions on the other Defendants' behalf that this amended and supplemental complaint documents. In November 2024, the voters rejected DeGenova's bid to be formally elected to the office she holds. On January 6, 2025, the new Mahoning County Prosecuting Attorney who defeated DeGenova will take office.

21. Defendant David Ditzler was at relevant times a Mahoning County Commissioner who was acting under color of state law. He lost his bid for re-election in November 2024 and left office by January 3, 2025. He resides in Mahoning County and is sued in his personal capacity.

22. Defendant Carol Rimedio-Righetti is a Mahoning County Commissioner and at all relevant times was acting under color of state law. She resides in Mahoning County. She is sued in both her official and personal capacities.

23. Defendant Anthony Traficanti is a Mahoning County Commissioner and at all relevant times was acting under color of state law. He resides in Mahoning County. He is sued in both his official and personal capacities.

JURISDICTION AND VENUE

24. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 2201, for federal claims under 42 U.S.C. 2000e, *et seq.* and 42 U.S.C. §§ 1983 and 1988, which provide for attorney and expert fees. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367.

25. This Court has personal jurisdiction over the Defendants, who reside in and conduct business in this District.

26. Venue is proper under 28 U.S.C. § 1391, because the events giving rise to the claims took place within this District.

FACTS

Rudzik Excavating, Inc. is a well-respected, family-owned Ohio corporation.

27. In 1998, Jeffrey Rudzik (“Rudzik”) founded Rudzik Excavating, Inc. in his hometown of Struthers, Ohio. Over the years, his business grew and became more successful.
28. James Tressa (“Tressa”) is a senior estimator/project manager with Rudzik Excavating.
29. Rudzik Excavating is a non-union employer with expertise in site-utility work.
30. Rudzik Excavating has successfully handled construction jobs worth millions of dollars for private and public entities, including the State of Ohio and multiple cities, townships, and counties throughout Ohio, including Mahoning County. Rudzik Excavating has likewise successfully handled construction projects paid for with local, state, and federal funds.
31. Rudzik Excavating has built a reputation of excellence and reliability with private developers, general contractors, municipalities, public-utility companies, and federal agencies. It prides itself on not just the successful completion of a project, but building long-term, valued relationships with contractors and developers throughout eastern Ohio and western Pennsylvania.
32. Rudzik Excavating provides real solutions to the many challenges and problems that its customers face, not only in planning, but also throughout the construction process and beyond.
33. Rudzik Excavating stands by its work even taking steps after completion of its projects to ensure reliability and satisfaction to those it serves.
34. Although Ohio does not require certain licenses to conduct excavating work, Rudzik Excavating holds several licenses in multiple states require such licensing.

Mahoning County seeks bids for two projects, which required bidders to succumb to project labor agreements (PLAs)—but later amends the PLAs after Rudzik Excavating publicly exposes Mahoning County for imposing an unconstitutional PLA.

35. In April 2024, Defendant Mahoning County advertised for bids on two projects:
 - Project 513 (Lake Milton Waterline Replacement Project) was advertised on April 2, 9, and 16.

- Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement) was advertised on April 9, 16, and 23.

36. Both projects were projected to cost more than \$1 million, were being financed wholly by Mahoning County funds, and required bidders to enter into Mahoning County's PLA.

37. Both advertisements provided, in part:

For all bids in excess of \$50,000.00 a certified check representing TEN percent (10%) of the proposal, drawn on a solvent bank, and payable to the Mahoning County Treasurer, or a bid bond in the sum of TEN percent (10%) of the proposal in lieu thereof must accompany each and every proposal as a guarantee that **if that bid is accepted, a contract will be entered into with the Board of County Commissioners**, in the manner provided by law.¹

38. On April 2, 2024, after viewing the advertisement for Project 513, James Tressa, a senior estimator/project manager with Rudzik Excavating, called a local talk-show radio program to discuss the issues with the PLA.²

39. As Tressa was discussing the PLAs, Defendant-Commissioner David Ditzler called in to argue in favor of Mahoning County's use of PLAs and in support of unions.³

40. Ditzler acknowledged that PLAs are not used on federally funded projects.⁴

41. According to Ditzler, per Mahoning County policy, PLAs are only required on projects over \$1 million. Ditzler stated:

- "We only put them on projects that are over a million dollars in Mahoning County."⁵

¹ Bid documents for Project 513 (Lake Milton Waterline Replacement Project) and Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement), attached as Exs. 1 and 2, respectively (emphasis added).

² iHeart, *Rob Verb* (April 2, 2024), https://www.iheart.com/podcast/744-ron-verb-27844538/episode/ron-talks-about-the-retirement-crisis-164252918/?cmp=ios_share&sc=ios_social_share&pr=false, at 1:51:24.

³ *Id.* at 1:58:50, 2:07:02.

⁴ *Id.*

⁵ *Id.* at 1:59:30.

- “It’s nothing new, and in fact, you know we have a threshold of a million dollars when neighboring communities have a hundred thousand as a threshold to put the same type of PLAs into their agreements.”⁶

42. As discussed below, Ditzler’s \$1 million threshold-claim was inaccurate because Mahoning County required a PLA on a project bid for less than \$1 million.

43. Ditzler then discussed a recent job in which a PLA was not used. The job entailed construction of a sanitary force main from one location, which was to connect with another existing sanitary system. The contractor failed miserably—missing the connection by 35 feet. Ditzler implied that, had a PLA been required on that job, the line would have been constructed and connected properly.⁷

44. During the radio show, Tressa was quick to correct Ditzler’s dissemination of misinformation about PLAs and the specific job Ditzler discussed. Tressa pointed out that the contractor, who failed to connect the line, was a union employer—not a non-union employer as Ditzler posited. Thus, including a PLA would have had the same effect—a failed project.⁸

45. Tressa then pointed out that, after the union contractor botched the project, Rudzik Excavating was hired to complete the project correctly.⁹

46. Ditzler tried to defend his position and stated, “But I can tell you that it’s been proven time and time again that when labor is done by the trades it comes out, especially in this area, that it’s a cheaper job, it’s a better job, and a well-done job and you’re not going back and refixing things and doing things over.”¹⁰

⁶ *Id.* at 2:00:30.

⁷ *Id.* at 2:00:30.

⁸ *Id.* at 2:02:20.

⁹ *Id.*

¹⁰ *Id.* at 2:07:02.

47. Ditzler admitted that the County Prosecutor's Office approves the commissioners' actions, saying, "We go through the prosecutor's office on everything that we do."¹¹

48. Despite his protestations, April 2, 2024 talk-show listeners would have understood that Ditzler lost the argument based on his factual misrepresentations and exaggerations on which he was caught and exposed.

49. Ditzler was embarrassed.

50. Two days later, on April 4, 2024, Jeffrey Rudzik, James Tressa, and several other employees from Rudzik Excavating attended the weekly commissioners' meeting. During the meeting, Tressa and Rudzik spoke during the public-comment portion of the meeting and objected to Mahoning County's PLA as being discriminatory against non-union employers and not beneficial to the taxpayers.¹²

51. Ditzler reiterated Mahoning County's policy on the dollar-amount threshold for PLAs:

- "We have a PLA, it's a million-dollar threshold."¹³
- "I sit down with you in-between, several times, and talked, and tried to come to a happy medium, that's why we're at a million and not at a hundred thousand. To try and make sure that other people get opportunities."¹⁴

52. Ditzler continued to exclaim his support for PLAs and the unions: "But I can tell that as a norm it's been proven a fact over and over again, that union labor does a job that has less recalls on coming back to fix things on, and saves the taxpayers money, you know, in the long run."¹⁵

¹¹ *Id.* at 2:07:37.

¹² YouTube, "April 4, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=4YV1qxbjAFw>, at 00:42.

¹³ *Id.* at 20:50.

¹⁴ *Id.* at 21:35.

¹⁵ *Id.* at 23:37.

53. Defendant-Commissioner Carol Rimedio-Righetti showed her animosity toward Rudzik Excavating and claimed (falsely) Rudzik Excavating's protests were politically motivated calling it "a damn shame" and "disgusting."¹⁶

54. Rimedio-Righetti also claimed, "We work for everybody."¹⁷

55. Rimedio-Righetti then claimed that "the PLA needs to be in place for the protection of the worker"—yet PLAs are not on every project.¹⁸

56. Defendant-Commissioner Anthony Traficanti remonstrated Rudzik Excavating representatives for their speech on the company's behalf, warning, "Maybe before you go to the airwaves, you just come on down to talk to us."¹⁹

57. The local media ran a story on the meeting.²⁰ That story contained Rudzik Excavating's criticisms of the commissioners, including a quote from Jim Tressa about protecting taxpayers. It also contained a link to video footage of the criticisms during the board meeting.

58. One week after that meeting, during the April 11, 2024, commissioners' meeting, Rudzik, Tressa, other Rudzik Excavating employees, and several other non-union contractors spoke during the meeting's public-comment period. As with the prior meeting, they again objected to Mahoning County's PLA as being discriminatory and not beneficial to the taxpayers.²¹

¹⁶ *Id.* at 24:15.

¹⁷ *Id.*

¹⁸ *Id.* at 25:20.

¹⁹ *Id.* at 26:30.

²⁰ WKBN (April 4, 2024), "Contractors question commissioners about Lake Milton water line project," <https://www.wkbn.com/news/local-news/lake-milton-news/contractors-question-commissioners-about-lake-milton-water-line-project/>.

²¹ YouTube, "April 11, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=WzZ6i8kN3R0>, at 04:00

59. Tressa pointedly questioned the Commissioners to explain how simply signing a PLA and paying union dues suddenly makes a non-union contractor competent.²² An employee of J.S. Bova Excavating LLC, another non-union contractor, raised the same issue.²³

60. An employee of Yarian Brothers Construction, Inc., another non-union contractor, voiced his disagreement with Ditzler's comments made on the talk-radio show.²⁴ When another Rudzik Excavating employee likewise questioned Ditzler's claims about the quality of union workmanship and asked to see the paperwork that Ditzler claimed proved it.²⁵

61. Rudzik stressed that PLAs direct the work to unions, only benefit the unions, and are implemented without input from non-union contractors.²⁶ Rudzik also questioned the commissioners' claims that PLAs save taxpayers money.²⁷

62. Rudzik also took issue with Rimedio-Righetti's allegations during the prior commissioners' meeting that Rudzik's speech was "disgusting" and "politically motivated." He criticized her as a "career politician."²⁸

63. When Rudzik finished, Rimedio-Righetti instructed Traficanti to cut back the public-comment portion of the meeting.²⁹

64. This as a speech-content-based reaction to speech criticizing the government during a designated public forum.

²² *Id.*

²³ *Id.* at 16:00.

²⁴ *Id.* at 18:00.

²⁵ *Id.* at 21:40.

²⁶ *Id.* at 23:30.

²⁷ *Id.*

²⁸ *Id.* at 25:25.

²⁹ *Id.* at 26:45.

65. Ditzler stated that he would have been willing to sit down and discuss the matter with Rudzik Excavating, but because he was informed that Rudzik threatened potential legal action after the prior meeting, his attorneys in the Mahoning County Prosecuting Attorney's office had advised him not to meet with them independently.³⁰

66. Rudzik tried to engage Ditzler about who informed Ditzler that Rudzik made such a threat, but Ditzler refused to discuss the matter stating "it's not a back-and-forth," to which Rudzik replied, "Well I've never said that, so, not true."³¹

67. Again, the local media ran a story on the meeting.³² The lede read: "For the second week in a row, Mahoning County commissioners were confronted by a group of local road construction contractors who claim they're kept from bidding on projects because they're non-union." And the report included various construction contractors', including Rudzik Excavating's, policy challenges to the commissioners. That included the Rudzik Excavating employee's challenge to Ditzler to prove his unsubstantiated claim that PLAs make contracts less expensive to taxpayers. The report also mentioned that Commissioner Traficanti had met with contractors to discuss the issues, but Ditzler had claimed he wouldn't do so based on supposed legal advice.

68. This media report, too, embarrassed the commissioners.

69. Back on December 30, 2019, Defendant-Commissioners Ditzler, Rimedio-Righetti, and Traficanti had enacted the PLA as issue ("original PLA"), via Resolution 19-12-034.³³ The original PLA contained the following unlawful provisions mandating that employees of non-union contractors working on county projects become union members for the project's duration:

³⁰ *Id.* at 43:40.

³¹ *Id.*

³² WKBN (April 11, 2024), "Non-union contractors continue fight against county's union work policy," <https://www.wkbn.com/news/local-news/youngstown-news/non-union-contractors-continue-fight-against-countys-union-work-policy/>.

³³ Resolution 19-12-034 with original PLA, attached as Ex. 3.

- Article III Section 2: For the duration of this Project, and for the term of this Agreement, all Employees working on the Project (1) in the employ of the Contractor at the time the Contractor enters into this Agreement shall, on the 8th day of employment hereunder, become members in good standing of the union for this Project only, and so remain during the term of this Agreement; (2) hired by the Contractor after entering into this agreement shall, during the term of this Agreement, be hired according to the terms and conditions of the applicable local collective bargaining agreement and, as a condition of employment, shall become members in good standing of the union for this Project only on the 8th day of employment and so remain for the term of this Agreement. This Union Security Section shall conform to the National Labor Relations Act (NLRA) and other applicable laws.
- Article III Section 3: All Union(s) shall make a notation on the union dues deduction card for all employees covered by this Agreement that it is for this Project only. Any employee working on this Project that has already executed a dues deduction card that is in current force and effect with a signatory union hereunder will not be required to execute a new Project-only dues deduction card.

70. Based on information and belief, Defendant-Commissioners enacted the original PLA to garner the union's political support for the then-upcoming, hotly contested 2020 elections.

71. But on June 27, 2018—*18 months before* Defendant-Commissioners enacted the original PLA—the U.S. Supreme Court decided the case of *Janus v. American Fed'n of State, County, and Municipal Employees, Council 31, et al.*, 585 U.S. 878 (2018). And in *Janus*, the U.S. Supreme Court ruled that under the First Amendment, states and public-sector unions may not, absent consent, extract fees from non-union members:

For these reasons, States and public-sector unions may no longer extract agency fees from nonconsenting employees. Under Illinois law, if a public-sector collective-bargaining agreement includes an agency-fee provision and the union certifies to the employer the amount of the fee, that amount is automatically deducted from the nonmember's wages. § 315/6(e). No form of employee consent is required. This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.

Id. at 929–30.

72. Because of the *Janus* decision, Article III Sections 2 and 3 of the original PLA violated the First Amendment to the U.S. Constitution.

73. *Despite* the 2018 *Janus* ruling, Mahoning County enacted the original PLA in 2019 and continued using it for several years.

74. Sometime between December 2019 and April 2024, the commissioners apparently drafted a revised PLA that was the same as the original PLA, except for two changes: (1) Article III Sections 2 and 3 were removed; and (2) Article XVIII Section 5 was added, which stated:

Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

75. Mahoning County inexplicably chose to include the unconstitutional original PLA in the Project 513 and Project 531 bid documents in which Rudzik Excavating was interested.

76. Only after Rudzik Excavating vigorously protested and questioned including the original PLA on Project 513 and Project 531 did the unions take notice of the wrongfulness of such inclusion of the original PLA.

77. On April 18, 2024, during the weekly commissioners' meeting, Defendant-Commissioners Traficanti and Rimedio-Righetti announced they were amending the original PLA to conform with the law.³⁴ Ditzler did not attend the meeting.

78. During that same meeting, Jim Taylor, vice-president of the Western Reserve Building Trades Council (which is composed of local unions), spoke about the inclusion of the original PLA in Project 513 and Project 531.³⁵ Taylor claimed that he and other union officials discovered

³⁴ YouTube, "April 18, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=44csbQvZ8S8>.

³⁵ *Id.* at 01:00.

Mahoning County's inclusion of the original PLA, rather than the revised PLA, after hearing Rudzik Excavating's protests. To his credit, Taylor acknowledged that the original PLA should not have been used and requested that the commissioners issue an addendum on Project 513 and Project 531 replacing the original PLA with the revised PLA.³⁶

79. According to Taylor, union representatives met with the commissioners in or around September 2020 after the *Janus* decision and informed the commissioners that the original PLA needed to be revised. Taylor said the unions prepared the revised PLA and that the commissioners adopted it via resolution on September 9, 2020.

80. In September 2024, Tressa requested from Mahoning County copies of the 2020 revised PLA and the September 2020 resolution. Mahoning County readily provided the 2020 revised PLA, which was the same one as the revised PLA added via addendum to Project 513 and Project 531.

81. But according to Mahoning County, "There are no responsive records to a September 2020 resolution revising the PLA."³⁷—leaving doubt as to when Mahoning County enacted the revised PLA, if ever.

82. During the public-comment portion of the April 18, 2024 commissioners' meeting, Rudzik, Tressa, and other Rudzik Excavating employees again voiced their objections to Mahoning County's PLA as being discriminatory and not beneficial to the taxpayers.³⁸

83. Tressa challenged Commissioner Rimedio-Righetti to go on a local radio talk show to discuss why PLAs were necessary on Project 513 and Project 531 or for anyone to articulate why the PLAs were necessary on these projects. Tressa referred to the language of the resolution adopting

³⁶ *Id.* at 05:55.

³⁷ Mahoning County public-records request response email September 6, 2024, attached as Ex. 4.

³⁸ YouTube, "April 18, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=44csbQvZ8S8>, at 10:48.

the PLAs, which provides, in part, that PLAs are used when “the board determines that the use of a PLA is necessitated by the project and is in the best interest of the Mahoning County taxpayer.”³⁹

84. Rimedio-Righetti admitted the original PLA was revised because of the *Janus* ruling; but could not explain why the unconstitutional original PLA was enacted after *Janus*, why it was continually used by Mahoning County for five more years, and why it was included in Project 513 and Project 531.⁴⁰

85. Despite Mahoning County being in the wrong, Rimedio-Righetti still saw fit to then publicly chastise Tressa for his speech criticizing the government. She admitted that “what upsets me most” was Tressa going on the local radio talk show to discuss the PLAs and “beat us up.”⁴¹

86. Commissioner Traficanti followed suit and claimed the commissioners’ had no idea how the original PLA was included in the bid documents for Project 513 and Project 531.⁴²

87. Rudzik spoke next and continued to question why PLAs were necessary on Project 513 and Project 531.⁴³ Rudzik pointed out that the PLAs eliminated competition from non-union contractors, which would drive up the bid costs from the unions. Rudzik further urged the commissioners to do the right thing.

88. An employee of J.S. Bova Excavating LLC spoke and discussed the cost ramifications and discriminatory effects of including PLAs on projects.⁴⁴

89. Before the J.S. Bova employee could finish his statement, Mahoning County Administrator Audrey Tillis interrupted stating that they already spoke to the Mahoning County Prosecuting

³⁹ *Id.* at 11:55.

⁴⁰ *Id.* at 14:03.

⁴¹ *Id.* at 15:05.

⁴² *Id.* at 15:45.

⁴³ *Id.* at 17:32.

⁴⁴ *Id.* at 41:24.

Attorney about the inclusion of the original PLA in the bid documents on Project 513 and Project 531 and that an addendum would be issued replacing the original PLA with the revised PLA.⁴⁵

90. Tillis further stated that the board works with the Mahoning County Prosecuting Attorney to ensure their documents are legal, but she, too, could not explain why the illegal original PLA was included in the bid documents on Project 513 and Project 531.⁴⁶

91. According to the commissioners and Tillis, all their contracts (presumably including bid documents and PLAs) are reviewed for legality by the Mahoning County Prosecuting Attorney's office, further calling into question why the unconstitutional illegal original PLA was ever included on Project 513 and Project 531.

92. Had the wrongful inclusion of the original PLA been a simple clerical mistake, the commissioners would have owned up to it when Rudzik Excavating first confronted them about it. But the commissioners did not. Instead, Defendants stonewalled and refused to take any action. Only after the public exposure had been too great and the illegality exposed (by the union as well) did Defendants finally act to follow the law.

93. Tillis continued making excuses for Mahoning County and even credited the unions for bringing the mistake to the commissioners' attention—when, Rudzik Excavating and the other non-union contractors had brought it to their attention. Unfortunately, the commissioners' chose to ignore Rudzik Excavating and the other non-union contractors and only listened when the unions acknowledged that Rudzik Excavating was right about the unlawful inclusion of the original PLA.

⁴⁵ *Id.* at 42:33.

⁴⁶ *Id.* at 58:55.

94. The local media ran a story on the April 18, 2024 meeting.⁴⁷ The lede read, “For the third Thursday in a row, a standing-room-only crowd greeted Mahoning County Commissioners to once again argue over the use of Project Labor Agreements (PLA) on certain construction projects.” The article quoted Commissioner Rimedio-Righetti’s express condemnation of free speech critical of the government: “All the same, Righetti was still upset over the election-year controversy. ‘You don’t go on the radio and make this a political issue—that’s my problem,’ Righetti said.”

95. Rudzik’s Excavating’s continuing speech critical of the government continued to embarrass and upset Defendants.

96. On April 19, 2024, Mahoning County sent the revised PLA to all bidders on both Project 513 and Project 531 with instructions to replace the original PLA with the revised PLA.⁴⁸

97. On April 25, 2024, at about 8:11 AM, after receiving the revised PLA, Rudzik Excavating emailed Mahoning County several critical questions about how to interpret the County’s revised PLA, including queries about ambiguities and apparent errors in the document.⁴⁹

98. Rudzik Excavating needed these questions answered before it could reach a meeting of the minds about PLAs with Defendant Mahoning County.

99. Mahoning County did not timely respond to the email. Finally, on May 6, 2024, at about noon—two days before the bids were due—Mahoning County Assistant Prosecutor Donald Duda responded to Rudzik Excavating’s email, but provided no real answers. Instead, Duda refused to answer questions he deemed to concern “policy,” stating “Matters of policy are within the sound

⁴⁷ WKBN (April 18, 2024), “Resolution in sight for union work problem in Mahoning County,” <https://www.wkbn.com/news/local-news/youngstown-news/resolution-in-sight-for-union-contract-problem-in-mahoning-county/>.

⁴⁸ Addendum #1 & Clarification and revised PLA, attached as Exs. 5 and 6, respectively.

⁴⁹ Rudzik Excavating email to Mahoning County on April 25, 2024, attached as Ex. 7 (containing questions).

discretions of the contracting authority.”⁵⁰ Duda instructed Rudzik to seek legal counsel for answers to other questions he deemed to concern “law.” And he also instructed Rudzik to contact the unions for answers to other questions.⁵¹

100. On May 6, 2024, at about 4:10 PM, Tressa forwarded Duda’s email to the commissioners with the following message:

We met in good faith with Audrey Tillis to discuss our concerns with the PLA. She told us she would consult with the prosecutor’s office regarding my questions submitted in writing to the Engineer’s Office. Those questions were submitted at 8:00 AM on Thursday, April 25th. Today I finally received a response to my questions. The response is below (all the way down). I now have less than 48 hours to request and receive information from the unions regarding material costs to my bid. This is a burden borne only by non-union contractors. It is not equal.⁵²

101. Left with little time to submit its bids, Rudzik Excavating was required to submit its bids without the benefit of having its questions answered and a lack of clarity about the revised PLAs. So Rudzik Excavating submitted its bid proposals without signing and consenting to the revised PLAs. Rudzik Excavating did submit its bid bonds with the bid proposals.⁵³

102. On May 30, 2024, Mahoning County sent Rudzik Excavating a letter about Project 513 (Lake Milton Waterline Replacement Improvement) “requesting the following document(s) necessary to execute the above referenced contract”: (1) Certificate of Insurance; (2) Project Labor Agreement; and (3) Performance Bond.⁵⁴ The letter did not state that Rudzik Excavating was the low bidder, did not state that Rudzik Excavating was the successful bidder, and did not state that Rudzik Excavating was being awarded the contract.

⁵⁰ Mahoning County email response to Rudzik Excavating on May 6, 2024, attached as Ex. 8.

⁵¹ *Id.*

⁵² Rudzik Excavating email to Mahoning County Commissioners on May 6, 2024, attached as Ex. 9.

⁵³ Rudzik Excavating bid bonds for Project 513 and Project 531, attached as Exs. 10 and 11, respectively.

⁵⁴ Mahoning County letter to Rudzik Excavating for Project 513 dated May 30, 2024, attached as Ex. 12.

103. Based on information and belief, similar letters were sent to other bidders who did not execute the revised PLAs.

104. Rudzik Excavating thereafter provided its Certificate of Insurance and Performance Bond on Project 513 to Mahoning County, but, again, did not sign and consent to the revised PLA.

105. On June 11, 2024, Mahoning County sent Rudzik Excavating a letter about Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement) “requesting the following document(s) necessary to execute the above referenced contract”: (1) Certificate of Insurance; and (2) Project Labor Agreement.⁵⁵ The letter did not state that Rudzik Excavating was the low bidder, did not state that Rudzik Excavating was the successful bidder, and did not state that Rudzik Excavating was being awarded the contract.

106. Rudzik Excavating thereafter provided its Certificate of Insurance and Performance Bond on Project 531 to Mahoning County, but, again, did not sign and consent to the revised PLA.

107. On June 25, 2024, Mahoning County sent Rudzik Excavating a letter about Project 513 (Lake Milton Waterline Replacement Improvement) stating, “The project labor agreement is part of the approved bid specifications on the above referenced project. **Please execute the Project Labor Agreement and return by Wednesday, June 26, 2024, 4:00 PM.**”⁵⁶ As with the prior letter, this letter did not state that Rudzik Excavating was the low bidder, that Rudzik Excavating was the successful bidder, and that Rudzik Excavating was being awarded the contract.

108. Rudzik Excavating did not sign and consent (that is, did not execute) the revised PLA on Project 513.

⁵⁵ Mahoning County letter to Rudzik Excavating for Project 531 dated June 11, 2024, attached as Ex. 13.

⁵⁶ Mahoning County letter to Rudzik Excavating for Project 513 dated June 25, 2024 (emphasis in original), attached as Ex. 14.

109. On June 25, 2024, Mahoning County sent Rudzik Excavating a letter concerning Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement) stating, “The project labor agreement is part of the approved bid specifications on the above referenced project. **Please execute the Project Labor Agreement and return by Wednesday, June 26, 2024, 4:00 PM.**”⁵⁷

As with the prior letter, this letter did not state that Rudzik Excavating was the low bidder, that Rudzik Excavating was the successful bidder, and that Rudzik Excavating was being awarded the contract.

110. Rudzik Excavating did not sign and consent (that is, did not execute) the revised PLA on Project 531.

After exposing Mahoning County’s use of the illegal original PLA, Rudzik Excavating continued to exercise its free-speech rights to publicly criticize Mahoning County’s wasteful and costly inclusion of PLAs on projects.

111. After exposing Mahoning County’s use of the unconstitutional original PLA on its projects, Rudzik Excavating continued to raise public awareness of the wasteful and costly effects of PLAs, including the increased cost to taxpayers and failure to ensure for quality workmanship.

112. James Tressa, Rudzik Excavating’s senior estimator/project manager, spoke on several local talk-radio programs, and spoke at the commissioners’ meetings. Tressa continued stressing that a contractor signing a PLA does not magically make a non-union contractor more qualified; a PLA increases the cost of the project—costs then passed onto taxpayers.

113. On May 16, 2024, Tressa appeared on another local radio talk show and again discussed the PLA issue—bringing even more public attention to the topic and more public embarrassment to Defendants.⁵⁸

⁵⁷ Mahoning County letter to Rudzik Excavating for Project 531 dated June 25, 2024 (emphasis in original), attached as Ex. 15.

⁵⁸ iHeart Radio, *The Dan Rivers Show* (May 16, 2024), <https://www.iheart.com/podcast/744-the-dan-rivers-show-27844521/episode/thursday-thoughts-and-more-176867585/>, at 1:20:10.

114. The talk-show host referred to the PLAs as being unfair and “unjust.” The host even wrote public commentary on the topic.

115. Tressa stated that Rudzik Excavating met with the commissioners in 2019 (before the hotly contested 2020 elections) to discuss the PLAs and thought the issue was resolved, but, now, four years later (and again during an election year), the commissioners have again implemented the PLAs.⁵⁹

116. The host invited the commissioners, unions, and any others with information on the topic, to appear on the show to discuss the PLA issue.⁶⁰

117. Based on information and belief, the commissioners implemented the PLAs around election years to garner the unions’ political and financial support—at the taxpayers’ expense.

Mahoning County rules Rudzik Excavating’s bid proposals to be “non-responsive” during a *special* commissioners’ meeting.

118. Defendant-commissioners typically hold their weekly public meetings on Thursday mornings in the commissioners’ meeting room located in the Mahoning County Courthouse.

119. With July 4, 2024, falling on a Thursday, the commissioners’ meeting was moved to Wednesday, July 3, at the same time and location as normal.

120. Tressa attended the July 3, 2024 commissioner’s meeting, but the bids on Project 513 and Project 531 were never discussed.

121. At about 1:44 PM on July 3, 2024, Tressa received a notification email from the Mahoning County Board of Commissioners that the commissioners were holding a *special* meeting on Friday, July 5, 2024, at 9:00 AM.

⁵⁹ *Id.* at 1:25:50.

⁶⁰ *Id.* at 1:38:55, 1:42:00.

122. The agenda for the special meeting provided, in relevant part:

A resolution pursuant to ORC General Provisions §9.312 to consider the bids for the Lake Milton Waterline Replacement Project, Improvement #513 & The Burgess Run Interceptor Sanitary Sewer Replacement, Improvement #531, Phase 1 to consider the responsiveness of the apparent lowest bidder where the bid submitted contained irregularities and/or deviations from the published bids specifications and to determine if the subject apparent lowest bidder's bid is non-responsive and responsible with the noted irregularities and/or deviations.

123. The agenda did not mention Rudzik Excavating specifically or the award of the contract to Rudzik Excavating. This, again, showed the non-existence of a contract.

124. Ohio Revised Code § 9.312(A), in relevant part, states that responsive bids are those that respond to bid specifications in all material respects and otherwise contain no irregularities or deviations from those specifications:

If a state agency or political subdivision is required by law or by an ordinance or resolution adopted under division (C) of this section to award a contract to the lowest responsive and responsible bidder, a bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage.

125. Based on information and belief, the commissioners scheduled this *special* meeting for the morning after July 4 in the hope of avoiding public scrutiny for what they were about to do. The commissioners could have addressed the July 5 *special* meeting's topic at their regularly scheduled meeting two days earlier, but choose instead to hold a *special* meeting the morning after the holiday.

126. When the *special* meeting began, the commissioners took their seats and immediately proceeded to vote. They dispensed with the normal public-comment process and the pledge of allegiance (the day after July 4th of all days).

127. Based on information and belief, unlike other commissioners' meetings, the commissioners did not post the July 5 special meeting to YouTube.

128. The Commissioners voted 3-0 in favor of Resolution 24-07-011, which stated that Rudzik Excavating was “the lowest apparent bidder” on both Project 513 and Project 531, but further found that Rudzik Excavating’s bids were “non-responsive” because of its refusal to execute the PLAs, which were “a material term of the specifications.”⁶¹

129. Resolution 24-07-011 provided Rudzik Excavating, in accordance with Ohio Rev. Code § 9.312, an opportunity to meet and protest the decision.

130. Rudzik Excavating provided a written request for a protest meeting.

131. The local media ran a story on the meeting.⁶²

132. According to the news article, the commissioners found Rudzik Excavating’s bids to be “unresponsive,” “Because the bid specs were not followed,” according to Mahoning County Administrator Audrey Tillis.⁶³

133. Before the protest meeting took place, Mahoning County Engineer Patrick Ginnetti (a non-defendant Mahoning County official) informed Jeff Rudzik that Defendants planned to seek the bid bonds’ forfeiture—contrary to the law discussed below. Ginnetti oversees projects like those at issue here.

134. On July 11, 2024, Tressa attended and spoke at the commissioners’ meeting.⁶⁴ Tressa blasted Mahoning County’s inclusion of the “wrong” original PLA in the bid documents, questioned the PLAs’ necessity, and blasted the Mahoning County Prosecuting Attorney’s office’s failure to provide

⁶¹ Resolution 24-07-011, attached as Ex. 16.

⁶² WKBN (July 5, 2024), “Mahoning Commissioners: Company claiming discrimination not following contract rules,” <https://www.wkbn.com/news/local-news/youngstown-news/mahoning-commissioners-company-claiming-discrimination-not-following-contract-rules/>.

⁶³ *Id.*

⁶⁴ YouTube, “July 11, 2024 Mahoning County Commissioners’ Board Meeting,” <https://www.youtube.com/watch?v=2uWTYk16yGs>, at 00:55.

timely and informative responses to Rudzik Excavating's pre-bid questions, which the bid documents permitted. Tressa referred to these failures as the "cause-and-effect of career politicians."

135. Tressa blasted the commissioners' "secret" meeting on July 5, 2024 and questioned why the resolution could not be discussed during the July 3 meeting when everyone was present.⁶⁵

136. Tressa said, "the County's business dealings are not proper and you should be ashamed."⁶⁶

137. Tressa then protested Mahoning County's threats to seize the bid bonds and informed the commissioners of the "devastating" effect that forfeiture of the bid bonds would have on Rudzik Excavating's business.⁶⁷ Tressa told the commissioners there was "no reason" to get Rudzik Excavating's bonding company involved and doing so was a "disgrace" and "shameful." Tressa told the commissioners that they should have left the bonding companies out of this ordeal.

138. To try to defend PLAs, Ditzler "ventured to say" that the Realty Tower explosion would not have occurred if a PLA was in place on that project.⁶⁸ Ditzler offered no explanation or evidence to support his "ventured" opinion.

139. Ditzler (a non-lawyer) then tried to explain the "ORC," claiming that the first bidder is responsible to the second bidder, the second bidder is responsible to the third bidder, and so forth. Ditzler stated that his opinion of the law was based on "the way we have been informed."⁶⁹

140. Ditzler stated that it was "the prosecutors" who make sure the commissioners follow the law and comply with their responsibilities.⁷⁰

⁶⁵ *Id.* at 2:38.

⁶⁶ *Id.* at 3:30.

⁶⁷ *Id.* at 3:35.

⁶⁸ *Id.* at 12:00.

⁶⁹ *Id.* at 15:15.

⁷⁰ *Id.* at 16:55.

141. Ditzler continued, “The process is going to follow its legal obligation as per the prosecutor’s office regardless.”⁷¹ That is, the commissioners and prosecutor agreed to seek forfeiture of Rudzik Excavating’s bid bonds.

142. Rimedio-Righetti chimed in, “Everything that we do here has been looked at five or six times by the prosecutor’s office. We don’t make these decisions on our own.”⁷² She was saying that the commissioners and prosecutors are equally responsible for the acts here.

143. On July 16, 2024, Rudzik Excavating attended the protest meeting to voice its displeasure with the decision and sought a dialogue with the commissioners and other county officials, including Assistant Prosecutor Donald Duda, who were present at the meeting.

144. Tressa asked, “If the prosecutors can’t answer a materially impacting question and the commissioners cannot answer this question, the terms of the contract are not clear. How am I to execute a contract when nobody can define the terms of the agreement?”

145. Neither the commissioners nor the other county officials engaged in a dialogue with Rudzik Excavating. They answered no questions.

146. The local news media were present for the protest meeting and reported on it,⁷³ as did the local newspaper.⁷⁴ The reporting included Rudzik Excavating’s criticisms of the commissioners’ conduct. It was embarrassing to the commissioners.

⁷¹ *Id.* at 17:35.

⁷² *Id.* at 18:45.

⁷³ WKBN (July 16, 2024), “Mahoning County Commissioners discuss bids on two local sewer projects,” <https://www.wkbn.com/news/local-news/youngstown-news/mahoning-county-commissioners-discuss-bids-on-two-local-sewer-projects/>.

⁷⁴ *The Vindicator*, “Company officials clobber county contract cancellation,” July 22, 2024, <https://www.vindy.com/news/local-news/2024/07/company-officials-clobber-county-contract-cancellation/>.

147. During their weekly meeting on July 18, 2024, the Commissioners voted 3-0 in favor of Resolution 24-07-020, which affirmed Resolution 24-07-011's finding that Rudzik Excavating's bids were "non-responsive."⁷⁵

148. So even though Rudzik Excavating was the apparent low bidder, because Rudzik Excavating refused to execute the PLAs, its bids were non-responsive and thereby rejected. Rudzik Excavating was thus not the successful bidder on either Project and was not awarded the contracts.

149. During the meeting, unable to hide her animus toward Rudzik Excavating and others who dared question the commissioners, Rimedio-Righetti thanked "all of our friends" in the unions and chastised the statements "spewed out of their mouths" by others, referring to Rudzik Excavating.⁷⁶

150. Rimedio-Righetti even complained about others, again referring to Rudzik Excavating, publicly addressing the issues during the commissioners' meeting, claiming it was "political" and "wrong," and further warning "don't bring it into here" (the commissioners' meetings) and "at the courthouse" (where the meetings take place).⁷⁷

151. Such public speaking and questioning/petitioning the government is protected First Amendment speech, which Defendants are trying to suppress and retaliate against.

152. Rimedio-Righetti continued, "What we do here has been reviewed a hundred times by the prosecutor's office."⁷⁸

153. Expressing her scarcely contained rage, Rimedio-Righetti added, "I can say more but then I might start saying stuff they might have to bleep out of everything."⁷⁹

⁷⁵ Resolution 24-07-020, attached as Ex. 17.

⁷⁶ YouTube, "July 18, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=nwiGMiE1Q00>, at 25:12.

⁷⁷ *Id.* at 26:50.

⁷⁸ *Id.* at 27:08.

⁷⁹ *Id.* at 27:25.

154. Ditzler took his turn to chastise Rudzik Excavating for exercising its First Amendment rights and speaking about the issue on the radio.⁸⁰

155. Ditzler spoke about the necessity of PLAs to ensure timely completion of projects, to protect workers, and to minimize costs, but then admitted that PLAs have only been included on six projects in 10 years⁸¹—raising the question that, if PLAs are so important and vital, why are they not included on all possible projects? And why does it seem that PLAs are only used during election years?

156. Despite Rudzik Excavating's repeated attempts to have questions answered by the commissioners and prosecutor's office regarding the PLAs, which went unanswered and ignored, Traficanti claimed that the commissioners are open and willing to talk to everyone, then joined his cohort-commissioners in chastising Rudzik Excavating, claiming their speech was "political."⁸²

157. The local media ran a story on the meeting.⁸³

158. On July 25, 2024, Tressa attended and spoke during the commissioners' meeting. Tressa pointed out the increased cost to taxpayers caused by the commissioners rejecting Rudzik Excavating's bids.⁸⁴ Tressa again challenged the commissioners to debate the matter publicly on the radio.

159. Rimedio-Righetti chastised Tressa for exercising his First Amendment rights to free speech and petition the government stating, "I have about had it with listening to the same rhetoric every

⁸⁰ *Id.* at 31:48.

⁸¹ *Id.* at 34:45.

⁸² *Id.* at 41:37.

⁸³ WKBN (July 18, 2024), "Commissioners reject contract from company," <https://www.wkbn.com/news/local-news/youngstown-news/commissioners-reject-contract-from-company/>.

⁸⁴ YouTube, "July 25, 2024 Mahoning County Commissioners' Board Meeting," <https://www.youtube.com/watch?v=PlaWrtZlJNo>, at 13:53.

meeting about the PLA,” and “everything that he is saying is not correct” and “none of it’s true”⁸⁵— even though what Tressa stated was indeed correct and true. Rimedio-Righetti claimed that it was political, although political speech is protected speech.

160. Ditzler, in keeping with the company-line, said, “It’s obviously that you know Mr. Tressa has done nothing but make it political since day one. That’s been the agenda.”⁸⁶

161. Ditzler sarcastically referred to Tressa as “the self-proclaimed expert on the ORC” and said that Tressa could have “Googled” his questions and gotten answers within “seconds,” as opposed to asking the commissioners and prosecutor for answers about the PLAs.⁸⁷

162. In fact, Tressa never proclaimed himself an expert on the ORC, as evident from him asking questions of Defendants about the PLAs—questions that Defendants refused to answer.

163. Continuing his rant, Ditzler opined that the Realty Tower explosion may not have occurred had a PLA been in place.⁸⁸

164. Mahoning County awarded the contracts to the next lowest bidder, J.S. Bova Excavating LLC, a non-union employer, that did execute the PLAs—after Defendants’ threats to (unlawfully) seize Rudzik Excavating’s bid bonds.

165. Based on information and belief, J.S. Bova Excavating LLC signed the PLA because of Defendants’ threats to seize Rudzik Excavating’s bid bonds.

166. Ohio Rev. Code § 307.90 provides that the bonds of unsuccessful bidders shall be returned to them immediately:

The award of all contracts subject to sections 307.86 to 307.92 of the Revised Code shall be made to the lowest and best bidder. **The bond or bid guaranty of all unsuccessful bidders shall be returned to them by the contracting authority**

⁸⁵ *Id.* at 30:20.

⁸⁶ *Id.* at 32:32.

⁸⁷ *Id.* at 34:40.

⁸⁸ *Id.* at 36:48.

immediately upon awarding the contract or rejection of all bids. The contracting authority may reject all bids.

(Bold emphasis added.)

167. Even though Mahoning County is required—by law—to “immediately” return Rudzik Excavating’s bid bonds, Defendants have chosen instead to break the law.

Defendants victimize Rudzik Excavating by engaging in acts of First Amendment retaliation and violations of other criminal statutes in retribution for Rudzik Excavating exposing their practices.

168. In August 2024, Rudzik Excavating’s bonding agencies, Western Surety Co. and Kernan Insurance Agency, Inc., received from Defendants a letter dated August 5, 2024 (“first demand letter”).⁸⁹

169. Defendants sent the first demand letter via U.S. mail.

170. The first demand letter was signed by Assistant Prosecutor Donald Duda and written on Mahoning County Prosecuting Attorney’s office letterhead.

171. The first demand letter contained no language signifying it was protected by mediation-privilege, subject to Federal Rule of Evidence 408 or Ohio Rule of Evidence 408, or any other provision limiting its admissibility as evidence.

172. The first demand letter was not made during negotiations and made no offers of consideration or attempts to compromise. Rather, the first demand letter simply contained an unconditional and unequivocal demand for payment of the bid bonds. *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997).

173. The first demand letter contained the following false and fraudulent statement:

The County Notified [*sic*] the low bidder (Rudzik) of its acceptance of the low bids on both projects and the Board of County Commissioners (“BMCC”) intent to award Rudzik both of the contracts once all of the required bid documents were received and signed.

⁸⁹ Mahoning County’s first demand letter dated August 5, 2024, attached as Ex. 18.

174. In truth, Rudzik Excavating was not notified of Mahoning County's "acceptance of the low bids on both projects." To the contrary, the May 30, June 11, and June 25 letters from Mahoning County do not mention Rudzik's Excavating's being the low bidder or Mahoning County's acceptance of its bids. The letters only requested Rudzik Excavating submit certain documents.

175. Rudzik Excavating was not notified of Mahoning County's "intent to award Rudzik both of the contracts once all of the required bid documents were received and signed." To the contrary, Mahoning County's May 30, June 11, and June 25 letters do not mention Mahoning County's intent to award Rudzik Excavating the contracts. The May 30 and June 11 letters only request Rudzik Excavating execute certain documents necessary to execute the contract. The June 25 letter states the PLA is part of the approved bid specifications and asks Rudzik Excavating to execute the PLA.

176. The first demand letter also contained the following false and fraudulent statement:

To accomplish the award, a letter was sent on May 30, 2024, to Rudzik seeking certain missing contract documents including a signed Project Labor Agreement. On June 25, 2024, a second letter was sent to Rudzik for both projects asking for the signed Project Labor Agreement by June 26, 2024, at 4:00 so that the contract could be awarded.

177. Mahoning County's May 30, June 11, and June 25 letters do not mention of Mahoning County's awarding of the contracts to Rudzik Excavating upon execution of the project labor agreements.

178. The first demand letter further contained a false and fraudulent statement by deceptively including only a fragment of the bid-bond language, but omitting material language necessary to interpret the bid bond. The first demand letter included the following portion of the bid bond:

Pursuant to the bid bonds submitted by Rudzik (the Principal) if the "...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*" then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the Principal's bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.

(Italicized emphasis included in original first demand letter.)

179. But the first demand letter failed to include relevant and material language from the bid bonds, which altered the bid bonds' interpretation. The actual bid-bond language also states:

NOW, THEREFORE, **if the Obligee accepts the bid of the Principal** and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of materials...

(Emphasis added to signify the material omission from the first demand letter.)

180. The “if the Obligee accepts the bid of the Principal” language is important because Mahoning County did not accept Rudzik Excavating's bids—and so no contracts existed.

181. Mahoning County's Resolution 24-07-011 and Resolution 24-07-020 both specifically found that Rudzik Excavating's bids were “non-responsive.” Neither resolution states that Mahoning County and Rudzik Excavating entered into a contract—because no contracts existed.

182. Under Ohio law, the elements of a contract are

- (1) offer;
- (2) acceptance;
- (3) meeting of the minds;
- (4) consideration; and
- (5) certainty as to the terms.

Clay v. Shriver Allison Courtley Co., 2018-Ohio-3371, ¶ 60 (7th Dist. 2018) (citations omitted).

183. Although Rudzik Excavating could have extended an offer (which did not include submission to the PLA), because Mahoning County required execution of the PLAs as part of the bid invitation, no actual offer occurred. This conclusion is reinforced by Mahoning County's finding that Rudzik Excavating's offers (bids) were “non-responsive.” At most, Rudzik Excavating extended a counteroffer that did not include the PLAs, which Mahoning County rejected.

184. Mahoning County did not accept Rudzik Excavating's offer (without the PLA). Mahoning County made multiple requests for Rudzik Excavating to execute the PLA, each time being refused.

185. So no acceptance occurred either.

186. There was no meeting of the minds. Rudzik Excavating sought answers regarding the revised PLAs, but Mahoning County through the Defendant commissioners and the Mahoning County Prosecuting Attorney failed to provide answers. Rudzik Excavating made an offer excluding PLAs, while Mahoning County apparently viewed that as not an option.

187. Thus, no meeting of the minds occurred either.

188. Neither Rudzik Excavating nor Mahoning County extended any consideration.

189. As with the failure of the meeting of the minds, the terms of the bids were not certain, as evident from Rudzik Excavating's unanswered questions surrounding the PLAs and Rudzik Excavating's refusal to sign the PLAs.

190. To declare the existence of a contract, Ohio law also requires "both parties to the contract must consent to its terms..." *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 360 (1991).

191. Rudzik Excavating did not consent to executing the PLAs. Mahoning County did not consent to Rudzik Excavating's bids without the PLAs being executed. Its commissioners not only did not authorize contracts with Rudzik Excavating, the board passed resolutions deeming the bids nonresponsive.

192. So no consent existed either.

Defendants continue demanding payment of the bid bonds from the surety companies, while failing to provide evidence of a written contract.

193. On August 20, 2024, Michael Keating, Western Surety's authorized representative, sent a letter to Defendants Mahoning County and Mahoning County Prosecuting Attorney's Office through Assistant Prosecuting Attorney Donald Duda seeking certain documentation, including the contract awarded to Rudzik Excavating and all accompanying documentation of the contract

between Rudzik Excavating and Mahoning County.⁹⁰ Keating also stated his belief that Rudzik Excavating was disputing the matter.

194. On August 30, 2024, Assistant Prosecutor Duda emailed Keating, stating, “I am having my client collect and scan the records this week and probably early next week after the holiday. Once compiled and reviewed by this office, I will send you the public documents. Have a good holiday.”

195. On October 7, 2024, Keating received a letter dated October 1, 2024 (“second demand letter”), from Duda, in which Duda restated Mahoning County’s \$68,962.70 demand for payment of the bid bonds.⁹¹

196. Included with the second demand letter was a flash-drive containing Resolution 24-07-011, Resolution 24-07-20, Bid Bond Project 513, and Bid Bond Project 531. Defendants provided no written contract on either project.

197. Defendants sent the second demand letter via U.S. mail.

198. As with the first demand letter, the second demand letter contained false and fraudulent statements, was written on Mahoning County Prosecuting Attorney’s office letterhead, and was signed by Assistant Prosecuting Attorney Donald Duda acting as Defendants’ agent.

199. The second demand letter contained no language signifying it was protected by mediation-privilege, subject to Federal Rule of Evidence 408 or Ohio Rule of Evidence 408, or any other provision limiting its admissibility as evidence.

200. The second demand letter was not made during negotiations and made no offers of consideration, offers of compromise, or attempts to compromise. Rather, the second demand letter simply contained an unconditional and unequivocal demand for payment of the bid bonds. *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997).

⁹⁰ Western Surety letter to Mahoning County dated August 20, 2024, attached as Ex.19.

⁹¹ Mahoning County’s second demand letter dated October, attached as Ex. 20.

201. The second demand letter contained a false and fraudulent statement by including only a fragment of the bid-bond language, but omitting material language necessary to interpret the bid bond. The second demand letter included the following portion of the bid bond:

Pursuant to the bid bonds submitted by Rudzik (the Principal) if the “...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*” then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the Principal’s bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.

(Italicized emphasis included in original second demand letter.)

202. The second demand letter failed to include relevant and material bid-bond language, which altered the bid bonds’ interpretation. The actual bid-bond language also states:

NOW, THEREFORE, **if the Obligee accepts the bid of the Principal and** the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of materials...

(Emphasis added to signify the material omission in the second demand letter.)

203. The “if the Obligee accepts the bid of the Principal” language is important because Mahoning County did not accept Rudzik Excavating’s bids and so no contracts existed.

204. The second demand letter also stated:

As you will note, both Bid Books and their respective advertisements for bids on these two projects, clearly stated:

This Improvement shall utilize a Project Labor Agreement as approved by the Mahoning County Commissioners and developed with the local trade council and various trade unions. Resolution RES-19-12-034 adopted by the Mahoning County Commissioners on December 30, 2019.

(Italicized emphasis in original second demand letter.)

205. As discussed above, Resolution 19-12-034 is unconstitutional because of the 2018 *Janus* decision.

206. The second demand letter also states, “The contractor (Rudzik) refused to execute the proper contract documents including the Project Labor Agreement in violation of the bid specifications and its bond.”

207. This further shows that no contract existed.

Additional evidence proves Mahoning County and Rudzik Excavating neither executed nor entered into a contract—underscoring that Mahoning County isn’t entitled to the bid bonds’ forfeiture.

208. The typical bidding process employs the following steps:

- (1) projects are advertised;
- (2) issuing authority issues bid documents;
- (3) bidders submit bids;
- (4) issuing authority accepts/denies bids;
- (5) issuing authority awards contract to lowest and best bidder; and
- (6) issuing authority and successful bidder entered into a written contract.

209. Mahoning County used the above process on Project 513 and Project 531.

210. Mahoning County’s own bid documents prove that a written contract is required and is only executed after the bid is accepted and the contract is awarded. Consider the following bid documents:

- For all bids in excess of \$50,000.00 a certified check representing TEN percent (10%) of the proposal, drawn on a solvent bank, and payable to the Mahoning County Treasurer, or a bid bond in the sum of TEN percent (10%) of the proposal in lieu thereof must accompany each and every proposal as a guarantee that **if that bid is accepted, a contract will be entered into with the Board of County Commissioners**, in the manner provided by law.⁹²

⁹² Bid documents for Project 513 and Project 531, Legal Notice Advertisement for Bids, attached as Exs. 1 and 2, respectively (emphasis added).

- The bid guarantee shall be conditioned to provide that **if the bid is accepted, the bidder will, after the award of the contract, enter into a proper contract** in accordance with the bid, plans, details, specifications, and bills of materials.⁹³
- The Guarantee will serve as security that **if he is awarded the Contract, he will enter into a written Contract...**⁹⁴

211. Because Mahoning County's bid documents provide that contracts will be entered into *after* the acceptance of a bid, no contract exists until both conditions are met (1) the bid is accepted and (2) the written contract is executed. *MacKinnon-Parker, Inc. v. Lucas Metro. Hous. Auth.*, 84 Ohio App.3d 453, 455–56 (1992) (citations omitted).

212. Rudzik Excavating's bids were never accepted, but were deemed "non-responsive," and Rudzik Excavating never entered into a contract, written or otherwise, with Mahoning County.

213. Rudzik Excavating and Mahoning County never entered into a contract, as further evidenced by the lack of a written contract.

214. Rudzik Excavating contacted Mahoning County Engineer Patrick Ginnetti, a senior responsible Mahoning County official who oversees implementation of such projects, about the first demand letter.

215. Ginnetti confirmed that Mahoning County never awarded the contracts for Project 513 and Project 531 to Rudzik Excavating.

216. He also confirmed that Mahoning County never even offered those contracts to Rudzik Excavating.

⁹³ Bid documents for Project 513 and Project 531, Instructions to Bidder, Section IB-9D, attached as Exs. 1 and 2, respectively (emphasis added).

⁹⁴ Bid documents for Project 513 and Project 531, Bid Forms B-1, attached as Exs. 1 and 2, respectively (emphasis added).

217. Defendant's claim that a contract existed, of which Rudzik Excavating breached, permitting forfeiture of the bid bonds, is meritless—so blatantly so that all suggestions to the contrary are frivolous.

Mahoning County Prosecuting Attorney's office representatives know, or reasonably should know, the basics of contract law.

218. Mahoning County Prosecuting Attorney's attorneys represent Mahoning County on various matters, including contracts.

219. As Defendant-Commissioners Ditzler and Rimedio-Righetti stated multiple times, prosecutors review commissioners' contracts and work multiple times.

220. Having even a basic knowledge of public-contract law, Mahoning County Prosecuting Attorney's office representatives knew, or reasonably should have known, that no contract existed between Rudzik Excavating and Mahoning County, written or otherwise.

221. Still, an office representative drafted and sent the demand letters stating falsely and fraudulently that the contracts were awarded to Rudzik Excavating, when, in unambiguous fact, they were not.

222. Indeed, the Mahoning County Prosecutor's office oversaw the crafting of the resolutions rejecting Rudzik Excavating's bids as non-responsive.

223. The knowing falsehood of the Mahoning County Prosecutor's representative was serious and malicious, on Defendants' behalf. This was a false statement of material fact or law to a third person and a failure to disclose a material fact when disclosure is necessary to avoid assisting an illegal or fraudulent act by a client. There was no good-faith basis for the falsehood.

224. The Mahoning County Prosecuting Attorney's office representative(s) knowingly (1) made a false statement of material fact or law—several as detailed above—to Western Surety Co. and Kernan Insurance Agency, Inc; and (2) failed to disclose a material fact—several as detailed above—

that were necessary to avoid assisting an illegal or fraudulent act by client Defendant-Mahoning County and the Defendant-Commissioners.

225. The demand letters were not made in the regular course of preparing for or conducting such a proceeding contemplated in good faith and under serious consideration. *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997) (citations omitted). The demand letters contained false and fraudulent statements to support an unequivocal and unconditional demand for payment of the bid bonds.

226. The demand letters were neither pertinent nor material to the redress or relief sought because (1) they failed to prove or disprove the point to be established, and (2) they did not have substantial importance or influence in producing the proper result. *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997) (citations omitted).

227. Again, the Mahoning County Prosecuting Attorney's office representative(s) chose to make false and fraudulent statements, that, if unchecked, would have resulted in Mahoning County receiving forfeiture of the bid bonds in contravention of the law. Their false statements did not prove or disprove a point to be established because the point is that no contract ever existed. Defendants breaking the law and getting paid for it is not the proper result.

228. The demand letters were not published only to persons who are directly interested in the proceeding—again no proceeding was occurring. *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997) (citations omitted).

229. In any event, the demand letters should have been directed to Rudzik Excavating as the principal on the bid bonds—not Western Surety Co. and Kernan Insurance Agency, Inc.

230. Based on information and belief, Defendants sent the demand letters to Western Surety Co. and Kernan Insurance Agency, Inc. to harm Rudzik Excavating and its business.

231. Defendants acted with actual malice, such as ill-will, spite, grudge, or other ulterior motives, in retaliation against Rudzik Excavating for its exercise of its First Amendment rights to free speech and to petition the government.

Defendants have a custom, policy, pattern, and practice of retaliating against those who exercise or are perceived to exercise First Amendment rights.

232. In fact, Defendants have a documented custom, policy, pattern, and practice of retaliating against those who exercise their First Amendment rights or otherwise question and expose wrongdoing by its officeholders. *See Morrison v. Mahoning County, et al.*, U.S. District Court, N.D. Ohio, Case No. 4:22-cv-02314⁹⁵; *Desmond v. Gains, et al.*; Mahoning County Common Pleas Court, Case No. 2018-CV-00771; and *Desmond v. Mahoning County Prosecutor's Off., Ohio State Pers. Board of Review*, Case Nos. 2020-RMD-04-0037, 2021-WHB-10-0143, 2021-REM-10-1040, 2021-MIS-10-0142, and 2021-INV-10-0141.

233. The commissioners and the Mahoning County Prosecuting Attorney are final decisionmakers and policymakers for purposes of all actions alleged in this suit.

Mahoning County has never sought forfeiture of bid bonds against Rudzik Excavating until now, thus showing Defendants' true retaliatory motive.

234. In the past, Rudzik Excavating has submitted bids on Mahoning County projects, but refused to execute the PLAs. In those instances, Mahoning County sought no forfeiture of the bid bonds. Now, *for the first time*, and *only after* Rudzik Excavating exposed Defendants' illicit use of the unconstitutional original PLA and further called in question the waste caused by imposing PLAs on projects, Defendants sought forfeiture of the bid bonds.

⁹⁵ The operative complaint in *Morrison* and the factual allegations in it are attached as Ex. 23 and incorporated by reference.

235. In 2009–10, Rudzik Excavating submitted a bid on the East Alliance Sanitary Sewer Improvement Project No. 470, which required execution of a PLA. Rudzik Excavating refused to execute the PLA.

236. Rudzik Excavating was the low bidder on Project No. 470, but Mahoning County rejected its bid because of the unsigned PLA.

237. Instead, Mahoning County awarded the contract on Project No. 470 to the next-low (or second lowest) bidder, which was a union contractor.

238. Despite Rudzik Excavating being the low bidder on Project No. 470 and refusing to sign the PLA, Mahoning County did not seek forfeiture of Rudzik Excavating's bid bond.

239. Again in 2009–10, Rudzik Excavating submitted a bid on the Sanitary Sewer Improvement Project No. 474, which required execution of a PLA. Rudzik Excavating again refused to execute the PLA.⁹⁶

240. Mahoning County rejected Rudzik Excavating's bid as having irregularities because of the unsigned PLA.

241. Rudzik Excavating was the third-lowest bidder on Project No. 474.

242. The top five lowest bidders on Project No. 474 all failed to sign and consent to the PLA.

243. Mahoning County rejected the top-five lowest bidders and awarded the contract on Project No. 474 to the sixth-lowest bidder, which did execute the PLA.

244. Despite Rudzik Excavating being a lower bidder on Project No. 474 and refusing to sign the PLA, Mahoning County did not seek forfeiture of Rudzik Excavating's bid bond.

245. Based on information and belief, Mahoning County also did not seek forfeiture of the bid bonds of any of the top-five lowest bidders, who failed to sign and execute the PLA.

⁹⁶ Mahoning County letter to Rudzik Excavating for Project 474 dated February 23, 2010, with bid records, attached as Ex. 21.

246. Only now, after Rudzik Excavating publicly spoke out and exposed Defendants' illicit use of the unconstitutional original PLA and the general waste of taxpayer dollars caused by the PLAs' implementation—and Defendant Commissioners expressed fury about being publicly criticized, have Defendants chosen to retaliate against Rudzik Excavating by seeking its bid bonds' forfeiture.

The harm to Rudzik Excavating's ongoing business and reputation has already begun.

247. Beyond the financial harm caused by Defendants seeking forfeiture of the bid bonds—to which they are not legally entitled—Rudzik Excavating has experience reputational damage caused by Defendants' improper threats.

248. After delivery of the first demand letter, Rudzik Excavating submitted a bid proposal for a project with the City of Twinsburg.

249. Rudzik Excavating was required to disclose Defendants' first demand letter, regardless of its illegality and lack of merit.

250. The City of Twinsburg has already contacted Mahoning County Engineer Patrick Ginnetti (a non-defendant Mahoning County official) to inquire about the issue.

251. Rudzik Excavating also bid on a project with Trumbull County. Despite Rudzik Excavating being the low bidder on the project, Trumbull County entered into a contract with the second-lowest bidder. Based on information and belief, Trumbull County refused to enter into the contract with Rudzik Excavating because of the issues Defendants' created.

252. As stated above, during the July 11, 2024 commissioners' meeting, Jim Tressa, a Rudzik Excavating senior estimator/project manager, warned Defendant-Commissioners of the harm their threatened forfeiture of bid bonds was causing and would cause.

253. Knowing the impending harm they would wreak, Defendants plowed ahead—displaying their actual malice, ill-will, and spite.

Defendants' adverse actions have deterred Rudzik Excavating from further engaging in First Amendment-protected free speech.

254. Rudzik Excavating, via its owner and employees, is a person of ordinary firmness.

255. Defendants' threats have had a chilling effect on Rudzik Excavating's First Amendment right to free speech.

256. Because of Defendants' threats to forfeit the bid bonds, Rudzik Excavating has been deterred from engaging in First Amendment-protected free speech.

257. Since the threats were issued, Rudzik Excavating representatives have neither appeared nor spoken at any commissioners' meeting. Nor have they spoken to the media. Nor have they appeared or spoken on any local radio talk shows.

258. Defendants' threats resulted in foreseeable harm, as detailed above.

259. Now, when bidding on future projects, Rudzik Excavating will be compelled to disclose Defendants' claims against its bid bonds. Such financial uncertainty casts Rudzik Excavating in a negative light to all future customers and clients.

260. Threats of financial harm and business ruination would cause an ordinary person, like Rudzik Excavating and its representatives, from engaging in protected activity. *Thaddens-X v. Blatter*, 175 F.3d 378, 398 (6th Cir. 1999). Such threats of financial harm and business ruination are not *de minimis*, but rise to the level of constitutional violations calling for First Amendment protection. *Id.*

261. Defendants' conduct wasn't not merely oral, but were reduced to writing, served upon the sureties, and displayed a true intent to proceed with forfeiture of the bid bonds or at least tar Rudzik Excavating.

262. Defendants' conduct was motivated by Rudzik Excavating's public speech about the PLAs and questioning the legality and wastefulness of those PLAs. For earlier bids *occurring before the free speech*—Rudzik Excavating was the low bidder but did not execute the PLAs. Yet Defendants sought no forfeiture of bid bonds.

263. J.S. Bova Excavating LLC, the next lowest bidder on Project 513 and Project 531, like Rudzik Excavating, did not originally execute the PLAs. On information and belief, when Mahoning County confronted Bova Excavating with similar requests to execute the PLAs, Bova—fearful of losing its bid bonds—acquiesced and signed the PLAs.

Defendants are not entitled to legislative privilege for statements made during the commissioners’ meeting because Defendants published the statements to the public.

264. Generally, an individual is entitled to absolute privilege for defamatory statements made during an official proceeding; whereas, statements not made during an official proceeding or related meeting, should only be afforded at most only qualified privilege. *Costanzo v. Gaul*, 62 Ohio St.2d 106, 110–11 (1980). And absolute privilege does not extend to statements made “where there is no pending legislation relating to the subject matter of the alleged defamation and where the publication is beyond the legislative forum.” *Id.*

265. To that end, statements made during an official proceeding, which are then published outside the proceeding, are not entitled to absolute privilege. *See April v. Reflector-Herald, Inc.*, 46 Ohio App.3d 95, 97 (6th Dist. 1988) (citations omitted).

266. An official acting in an administrative function and not judicial or legislative function, is not entitled to absolute privilege. *Curry v. Blanchester*, Nos. CA2009-08-010 & CA2009-08-012, 2010-WL-2807948, 2010-Ohio-3368, at ¶¶ 26–27 (12th Dist. 2010) (citations omitted).

267. Defendants’ statements, including those made during the commissioners’ meetings, were made where there no was no pending legislation. Thus, Defendants are not entitled to absolute privilege.

268. Defendants published the statements, made during the commissioners’ meetings, on YouTube, which is beyond the legislative forum and outside the meetings. So Defendants are not entitled to absolute privilege.

269. Defendants were acting in an administrative function when making the statements during the commissioners' meeting. Thus, Defendants are not entitled to absolute privilege.

Defendants are not entitled to the litigation privilege because the extrajudicial statements fail to satisfy the requirements for protection.

270. “The litigation privilege provides absolute immunity to parties, witnesses, lawyers, and judges from future lawsuits for *statements made during and relevant to judicial proceedings.*” *Reister v. Gardner*, 164 Ohio St.3d 546 at ¶ 8 (2020) (citations omitted) (emphasis added).

271. The false and fraudulent statements contained in the demand letters are considered “extrajudicial statements,” which are defined as “those statements not submitted as evidence, as a pleading, during oral argument or in any other court document...” *Michaels v. Berliner*, No. 20136, 2001 WL 111582, at *3 (9th Dist. 2001).

272. Only “[w]ithin strict limitations” and under “greater scrutiny,” has the litigation privilege been extended to extrajudicial communications. *Morrison v. Gugle*, 142 Ohio App.3d 244, 259–60 (10th Dist. 2001) (citations omitted).

273. For an extrajudicial communication—one not published during a judicial proceeding—to be afforded absolute immunity, it must

- (1) be made in the regular course of preparing for or conducting such a proceeding contemplated in good faith and under serious consideration;
- (2) be pertinent and material to the redress or relief sought; *and*
- (3) be published *only to persons who are directly interested in the proceeding.*

Michaels v. Berliner, 119 Ohio App.3d 82, 88 (9th Dist. 1997); referencing, *Theiss v. Scherer*, 396 F.2d 646, 648 (6th Cir. 1968) (emphasis added); *see also Morrison*, 142 Ohio App3d at 260; *Escue v. Sequent, Inc.*, No. 2:09-cv-765, 2010 WL 3365933, at *16 (S.D. Ohio 2010) (applying the *Michaels* test); *Hensley v. Wester Chester Twp.*, 1:21-cv-373, 2022 WL 4621432, at *10 (S.D. Ohio 2022) (applying *Michaels*).

274. Under prong (1), the demand letters were not made in the regular course or preparing for or conducting a proceeding in good faith—no proceedings were occurring, and Defendants were not acting in good faith because their claim for forfeiture of the bid bonds, for all reasons described above, flouts the law.

275. Under prong (2), “To be pertinent and material it must tend to prove or disprove the point to be established, and *have substantial importance or influence in producing the proper result.*” *Surace v. Wuliger*, 25 Ohio St.3d 229, 231 (1986), quoting *Mauk v. Brundage*, 68 Ohio St. 89, 97 (1903) (emphasis added). The false statements did not prove or disprove a point to be established because the point is that no contract ever existed. The false and fraudulent statements contained in the demand letters do not produce the proper result. To the contrary, Defendants’ claim to the bid bonds is contrary to law and the demand letters seek to achieve this unlawful forfeiture of the bid bonds, which is not the proper result.

276. Under prong (3), Defendants improperly published the demand letters to Western Surety Co., and Kernan Insurance Agency, Inc.

277. The litigation privilege “is not without limits” and “does not give a person *carte blanche* to defame another on the mere condition that a judicial proceeding is mentioned in, or somehow connected to, the defamatory statement.” *Michaels v. Berliner*, 119 Ohio App.3d 82, 87–88 (9th Dist. 1997).

278. “Attorneys and their clients retain a panoply of First Amendment rights and are free to speak to the public about their claims and defenses provided that they do not exceed the contours of protected speech and ethical rules that impose reasonable and necessary limitations on attorneys’ extrajudicial statements. See Prof.Cond.R. 3.6 (internal quote omitted).” *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366 at ¶ 90 (2012).

279. By issuing the demand letters, Mahoning County Prosecuting Attorney representative(s) are

not entitled to absolute immunity under the litigation privilege.

280. The litigation privilege provides absolute immunity for “statements” made during and relevant to judicial proceedings, but not for “actions” or “conduct that is simply connected in some way to litigation.” *Reister v. Gardner*, 164 Ohio St.3d. 546 at ¶ 10, citing *Willitzer v. McCloud*, 6 Ohio St.3d 447, 448–49 (1983).

281. So the litigation privilege does not extend to Defendants’ actions of serving the demand letters (in furtherance of their retaliation against Rudzik Excavating) upon Western Surety Co., and Kernan Insurance Agency, Inc.

282. Defendants are not entitled to qualified litigation privilege either. To claim qualified litigation privilege, a defendant must prove

- (1) he acted in good faith;
- (2) there was an interest to be upheld;
- (3) the statement was limited in its scope to this purpose of upholding the interest;
- (4) the occasion was proper; and
- (5) the publication was in a proper manner and to proper parties only.

Hahn v. Kotten, Ohio St.2d 237, 244 (1975). If all five requirements are met, the qualified litigation privilege can still be overcome by showing the defendant acted with actual malice, like ill-will, spite, grudge, or other ulterior motives. *Id.* at 248.

283. Defendants cannot satisfy the five requirements, but more importantly, the facts alleged and statements by Defendants documented above show they acted with actual malice, including ill-will, spite, grudge, and ulterior motives.

Even under the *Noerr-Pennington* doctrine, Defendants are not entitled to immunity because the demand for forfeiture of the bid bonds is a sham—the demand letters are objectively baseless because no reasonable litigant could realistically expect to succeed on the merits and the demands were subjectively made to retaliate against Rudzik Excavating and interfere with its business.

284. The *Noerr-Pennington* doctrine originally protected parties from antitrust liability for exercising their First Amendment right to petition the government for redress of their claims. *Knology, Inc. v. Insight Commissioners Co.*, 393 F.3d 656, 658 (6th Cir. 2004) (citations omitted).

285. The *Noerr-Pennington* doctrine applies to matters occurring during litigation, as well as pre-litigation matters, like demand letters. *J.M. Smucker Co. v. Hormel Food Corp.*, 526 F.Supp.3d 294, 308 (E.D. Ohio 2021).

286. Although it originated in antitrust cases, the *Noerr-Pennington* doctrine has since been expanded to 42 U.S.C. § 1983 cases. *Knology*, 393 F.3d at 658–59 (citations omitted).

287. The *Noerr-Pennington* doctrine also applies to state-law cases, including in Ohio. *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366 (2012).

288. But the *Noerr-Pennington* doctrine is not absolute. For instance, it does not apply to “shams.”

289. The U.S. Supreme Court set forth a two-part test to determine if litigation is a “sham”:

- “First, the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.”
- Second, if the litigation is objectively meritless, the court should focus on the subjective intent, such as “whether the baseless lawsuit conceals ‘an attempt to interfere *directly* with the business relationships of a competitor,” (citation omitted), through the ‘use [of] the governmental *process*—as opposed to the *outcome* of that process—as an anticompetitive weapon’ (citation omitted).”

Prof. Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 60–61 (1993).

290. The subjective intent also includes actions taken “to vex and annoy.” *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 373 (2012).

291. As discussed above, the Commissioners ruled—twice—that Rudzik Excavating’s bids were “non-responsive.”

292. Because Rudzik Excavating’s bids were non-responsive, Mahoning County rejected the bids.

293. Thus, Mahoning County and Rudzik Excavating never entered into contracts for Project 513 or Project 531.

294. And as discussed above, none of the elements necessary to have a contract were met—no offer, no acceptance, no consideration, no meeting of the minds, no certainty as to the terms, and no consent.

295. After rejecting Rudzik Excavating’s bids, Mahoning County awarded the contracts on both Projects 513 and 531 to the next lowest bidder—J.S. Bova Excavating LLC.

296. By law, under Ohio Rev. Code § 307.90, Mahoning County is *required* to “immediately” return Rudzik Excavating’s bid bonds.

297. Rather than following the law and immediately returning Rudzik Excavating’s bid bonds, Defendants sought their forfeiture, flouting Ohio Rev. Code § 307.90.

298. Defendants’ actions, including issuance of the demand letters, to seek forfeiture of Rudzik Excavating’s bid bonds is a sham.

299. The *Noerr-Pennington* litigation privilege (absolute immunity) does not extend to threaten legal actions, including demand letters, which are a sham.

300. Defendants’ actions, including the demand letters’ issuance seeking forfeiture of Rudzik Excavating’s bid bonds are objectively baseless and no reasonable litigant could realistically expect to succeed under such a preposterous scenario.

301. Defendants' actions, including the demand letters' issuance, to seek bid bonds' forfeiture was subjectively done to retaliate against Rudzik Excavating for exposing Mahoning County's use of the illegal original PLA. And it was done to retaliate for Rudzik Excavating's continued exercise of its First Amendment right to protest and petition the government about the harm Mahoning County's inclusion of PLAs on projects causes.

302. Defendants' actions, including demand-letter issuance, tried to interfere directly with Rudzik Excavating's business relationships, using the sham demand letters as an anticompetitive weapon to deter Rudzik Excavating and others from engaging in First Amendment-protected activities.

303. Beyond Defendants' actions, including the issuance of the demand letters, being a sham, these actions were done to vex and/or annoy Rudzik Excavating and to harm Rudzik Excavating's business and its relationships with other past, present, and future clients/customers.

304. So Defendants are not entitled to the *Noerr-Pennington* doctrine immunity as a matter of law.

CLAIMS

CLAIM 1

DECLARATORY JUDGMENT UNDER OHIO REV. CODE § 2721.01, *ET SEQ.* AND 28 U.S.C. § 2201 THAT THERE WERE NO CONTRACTS, BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANT MAHONING COUNTY

305. Plaintiff incorporates all previous allegations.

306. Ohioans can pursue declaratory judgment under Ohio Rev. Code § 2721.01 for purposes that include the determination of “question[s] of construction” under a contract. *City of Parma, Ohio v. Cingular Wireless, LLC*, 278 F. App'x 636, 641 (6th Cir. 2008); Ohio Rev. Code § 2721.01.

307. Under the relevant part of Ohio Rev. Code § 2721.03, “any person interested under a... written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a... contract... may have determined any question of construction or validity arising under the instrument, ... [or] contract... and obtain a declaration of rights, status, or other legal relations under it.”

308. Under Ohio Rev. Code § 2721.04, a plaintiff may seek declaratory judgment that no contract existed. “a contract may be construed by a declaratory judgment or decree either before or after there has been a breach of the contract.”

309. Federal courts have statutory authority granting jurisdiction to hear these types of declaratory judgments under 28 U.S.C. § 2201 (“In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”)

310. Declaratory action would settle the controversy.

311. Declaratory action would serve a useful purpose in clarifying the legal relations in issue.

312. Declaratory remedy is sought for a proper purpose, not for procedural fencing.

313. Use of a declaratory action would not increase friction between federal and state courts and improperly encroach upon state jurisdiction given the federal claims in this suit.

314. Out of an abundance of caution, Plaintiff will also seek an alternative remedy in state court, which federal courts might view as the preferred forum for this particular claim.

315. Equally cautious, Plaintiff lists this as a pendent claim here.

316. Defendants had declared by formal resolutions that Plaintiff Rudzik Excavating’s bids on Project 513 and Project 531 were “non-responsive.”

317. Defendants rejected Rudzik Excavating’s bids. Rudzik Excavating was therefore unsuccessful in its bids.

318. Here, for the reasons stated above, there were no contracts for Project 513 and Project 531, and the Court should declare that.

319. Ohio Rev. Code § 307.90 provides that the bonds of unsuccessful bidders shall be returned to them immediately:

The award of all contracts subject to sections 307.86 to 307.92 of the Revised Code shall be made to the lowest and best bidder. **The bond or bid guaranty of all unsuccessful bidders shall be returned to them by the contracting authority immediately upon awarding the contract or rejection of all bids.** The contracting authority may reject all bids.

(Emphasis added.)

320. With Rudzik Excavating being unsuccessful in its bids, and there being no contracts, Ohio Rev. Code § 307.90 required the contracting authority to return the bid bonds.

321. Plaintiff seeks declaratory judgment on these issues.

CLAIM 2
FIRST AMENDMENT AND FOURTEENTH AMENDMENT RETALIATION UNDER 42 U.S.C.
§ 1983 BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS MAHONING
COUNTY, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI IN THEIR
OFFICIAL AND PERSONAL CAPACITIES AND DEFENDANT DITZLER IN HIS PERSONAL
CAPACITY

322. Plaintiff incorporates all previous allegations.

323. Political speech lies at “the heart of the First Amendment.” *Lane v. Franks*, 573 U.S. 228, 235–36 (2014).

324. Plaintiff Rudzik Excavating is a private party who engaged in First Amendment–protected free speech, free association, free assembly, and the right to petition the government as a private citizen on a matter of public concern. Rudzik Excavating did so, through its president and employees, by speaking publicly on several local radio talk shows, attending and speaking at public Commissioners’ meetings including in association with other contractors, and speaking to several local TV stations.

325. The First Amendment applies to the states and political subdivisions through the Fourteenth Amendment.

326. Public speaking and attendance at public meetings concerning the illegality of Mahoning County's original PLA is a matter of public concern, as are related discussions about what Plaintiff believes is the wastefulness of PLAs, which it believes causes increased costs to taxpayers.

327. Rudzik Excavating, its president, and employees, acting as agents, were acting as private citizens by publicly speaking on the matter and attending the commissioners' meetings.

328. By publicly speaking and attending the meetings, Rudzik Excavating, its president, and employees engaged in constitutionally protected conduct or activity under the First and Fourteenth Amendments.

329. Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County knew Rudzik Excavating had engaged in constitutionally protected conduct or activity. Rudzik Excavating's constitutional rights were clearly established and a reasonable public official would have known about them.

330. Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County took adverse actions against Rudzik Excavating—including all the retaliatory acts described above—that would deter a person of ordinary firmness from continuing to engage in that conduct. These included, but were not limited to:

- a. Making derogatory public statements about Rudzik Excavating, its president, and employees;
- b. Threatening to seek forfeiture of Rudzik Excavating's bid bonds (done *before* issuing the sham first demand letter);
- c. Issuing two sham demand letters seeking forfeiture of the bid bonds, which are objectively baseless and meritless and subjectively motivated by retaliation;
- d. Forcing Rudzik Excavating to hire counsel and incur other expenses to litigate against Defendants' meritless and objectively baseless claims that no reasonable litigant could

realistically except to succeed under such a meritless scenario as the one here and to otherwise seek justice;

- e. Continuing to perpetuate and disseminate false and fraudulent claims that PLAs are necessary in public contracts to increase efficiency, increase effectiveness, increase safety, and reduce costs to taxpayers.
- f. Continuing to perpetrate and disseminate false and fraudulent claims that Rudzik Excavating's free speech and actions were politically motivated. But even if they were, political speech merits the highest level of protection.

331. Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County took the above-mentioned adverse actions while acting under color of state law.

332. Rudzik Excavating's First Amendment-protected assembly, association, petition, and speech were a substantial and motivating factor⁹⁷ in the adverse actions it suffered at the hands of Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County.

333. Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County lack any countervailing interest that outweighs Rudzik Excavating's interest in public speaking, speaking to the media, and attending public meetings to discuss this matter.

334. The contours of Rudzik Excavating's rights to assembly, association, speech, expression, and petitioning the government on matters of public concern as a private citizen were sufficiently clearly established when Rudzik Excavating exercised them to apprise a reasonable public employee that retaliating against it for exercising those rights was unlawful.

335. Defendants Ditzler, Rimedio-Righetti, Traficanti, and Mahoning County were at all relevant times sufficiently empowered Mahoning County officials that their acts constitute the customs,

⁹⁷ See, e.g., *Laster v. City of Kalamazoo*, 746 F.3d 714, 733 (6th Cir. 2014).

policies, and practices of Mahoning County. Defendants Ditzler, Rimedio-Righetti, and Traficanti, along with Prosecutor DeGenova, were the highest-ranking officials holding electoral offices in the county, and the Mahoning County Prosecuting Attorney herself was involved and approved Duda's actions, too. All are policymakers.

336. As a direct and proximate result of this unlawful campaign of retaliation that Mahoning County endorsed and adopted as its own, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Mahoning County, Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

337. All named Defendants are subject to injunctive relief.

338. Defendants Mahoning County, Ditzler, Rimedio-Righetti, and Traficanti's acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

CLAIM 3

CIVIL LIABILITY FOR CRIMINAL ACTS (TAMPERING WITH RECORDS) UNDER OHIO REV. CODE §§ 2307.60 AND 2913.42(A)(1) AND (2) BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS DAVID DITZLER, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI, IN THEIR PERSONAL CAPACITIES

339. Plaintiff incorporates all previous allegations.

340. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

341. Under Ohio Rev. Code § 2913.42(A)(1), "No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall... [f]alsify... any writing, computer software, data, or record" or, under § 2913.42(A)(2) "[u]tter any

writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.”

342. Under Ohio Rev. Code § 2901.22(B)

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

343. Violations of Ohio Rev. Code § 2913.42(A)(1) and (2) are criminal acts, indeed felonious under § 2913.42(B)(4), especially where the writing, data, computer software, or record is kept by or belongs to a local or state governmental entity like Mahoning County.

344. Defendants, knowing that they had no privilege to do so and with purpose to defraud and knowing they were facilitating a fraud, falsified the demand letters, a writing, computer software, data, or record. The false statements included, but were not limited to:

- a. “The County Notified the low bidder (Rudzik) of its acceptance of the low bids on both projects and the Board of County Commissioners (“BMCC”) intent to award Rudzik both of the contracts once all of the required bid documents were received and signed.”
- b. “To accomplish the award, a letter was sent on May 30, 2024, to Rudzik seeking certain missing contract documents including a signed Project Labor Agreement. On June 25, 2024, a second letter was sent to Rudzik for both projects asking for the signed Project Labor Agreement by June 26, 2024, at 4:00 so that the contract could be awarded.”
- c. “Pursuant to the bid bonds submitted by Rudzik (the Principal) if the “...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*” then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the

Principal's bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.”

345. Defendants, knowing they had no privilege to do so, with purpose to defraud and knowing they were facilitating a fraud and attempted fraud, and knowing the writing or records were tampered with, uttered and caused to be uttered the tampered writings or records to Western Surety Co. and Kernan Insurance Agency, Inc., to affect Rudzik Excavating.

346. The writing, data, computer software, or record is kept by or belongs to a local or state governmental entity—Mahoning County.

347. Defendants did all of this despite knowing that the writing, computer software, data, or record was false and that the writings and records they were uttering were tampered with.

348. Based on information and belief, under Ohio Rev. Code § 2923.03(A), Defendants Ditzler, Rimedio-Righetti, and Traficanti were complicit with one another and others in the commission of the offense—they knowingly (and where necessary purposely) solicited or procured another to commit the offense, aided or abetted another in committing the offense, conspired with another to commit the offense, or caused an innocent or irresponsible person to commit the offense.

349. Defendants would be liable as principals or complicitors in the offense's commission.

350. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

351. All named Defendants are subject to injunctive relief.

352. Defendants Ditzler, Rimedio-Righetti, and Traficanti acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

CLAIM 4

CIVIL LIABILITY FOR CRIMINAL ACTS (MAIL FRAUD) UNDER OHIO REV. CODE § 2307.60 AND 18 U.S.C. § 1341 BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS DAVID DITZLER, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI IN THEIR PERSONAL CAPACITIES

353. Plaintiff incorporates all previous allegations.

354. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

355. Under 18 U.S.C. § 1341, the elements of mail fraud are (1) devising or intending to devise a scheme to defraud (or to perform specific fraudulent acts); and (2) involving the use of the mail; (3) for the purpose of executing or attempting the scheme. *United States v. Frost*, 125 F.3d 346, 354 (6th Cir. 1997) (other citations omitted). The defendant must possess the specific intent to deceive or defraud. *Id.* (other citations omitted).

356. Violations of 18 U.S.C. § 1341 are criminal acts.

357. Defendants knew their demand letters contained materially false and fraudulent writings.

Such statements included, but are not limited to:

- a. “The County Notified the low bidder (Rudzik) of its acceptance of the low bids on both projects and the Board of County Commissioners (“BMCC”) intent to award Rudzik both of the contracts once all of the required bid documents were received and signed.”
- b. “To accomplish the award, a letter was sent on May 30, 2024, to Rudzik seeking certain missing contract documents including a signed Project Labor Agreement. On June 25, 2024, a second letter was sent to Rudzik for both projects asking for the signed Project Labor Agreement by June 26, 2024, at 4:00 so that the contract could be awarded.”
- c. “Pursuant to the bid bonds submitted by Rudzik (the Principal) if the “...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*” then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the

Principal's bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.”

358. Defendants, having devised this scheme to defraud or to perform the specific fraudulent acts, mailed and caused to be mailed the demand letters Western Surety Co. and Kernan Insurance Agency, Inc.

359. Defendants did so with purpose to execute or attempt to execute the scheme to defraud Rudzik Excavating of the bid bonds.

360. Defendants did all of this despite knowing that statements in the demand letters were fraudulent.

361. Based on information and belief, Defendants Ditzler, Rimedio-Righetti, and Traficanti conspired with one another and others in the commission of the offense with the requisite specific intent to defraud.

362. Defendants would be liable as principals or conspirators in the offense's commission.

363. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

364. All named Defendants are subject to injunctive relief.

365. Defendants Ditzler, Rimedio-Righetti, and Traficanti's acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

CLAIM 5

CIVIL LIABILITY FOR CRIMINAL ACTS (ATTEMPTED THEFT) UNDER OHIO REV. CODE §§ 2306.60, 2307.61, AND 2913.02(A) BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS DAVID DITZLER, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI IN THEIR PERSONAL CAPACITIES

366. Plaintiff incorporates all previous allegations.

367. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

368. Under Ohio Rev. Code § 2307.61, a property owner may recover damages for the commission of a theft, if the property owner brings a civil suit under Ohio Rev. Code § 2307.60.

369. Ohio Rev. Code § 2307.61's demand-and-accord requirements do not apply here because Defendants did not complete the theft, but they committed an "attempted" theft.

370. Under Ohio Revised Code § 2913.02(A)(3), "No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services ... [b]y deception." (Cleaned up.)

371. Under Ohio Revised Code § 2923.02(A), "No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense."

372. Under Ohio Rev. Code § 2901.22(B),

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

373. Violations of Ohio Rev. Code § 2913.02(A) are criminal acts, indeed felonious under § 2913.02(B)(2).

374. Defendants purposely or knowingly engaged in conduct that, if successful, would have resulted in a theft.

375. Defendants knew their demand letters contained materially false and fraudulent writings.

Such statements included, but are not limited to:

- a. “The County Notified the low bidder (Rudzik) of its acceptance of the low bids on both projects and the Board of County Commissioners (“BMCC”) intent to award Rudzik both of the contracts once all of the required bid documents were received and signed.”
- b. “To accomplish the award, a letter was sent on May 30, 2024, to Rudzik seeking certain missing contract documents including a signed Project Labor Agreement. On June 25, 2024, a second letter was sent to Rudzik for both projects asking for the signed Project Labor Agreement by June 26, 2024, at 4:00 so that the contract could be awarded.”
- c. “Pursuant to the bid bonds submitted by Rudzik (the Principal) if the “...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*” then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the Principal’s bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.”

376. Defendants knowingly attempted to obtain or exert control over Rudzik Excavating’s bid bonds by deception—using the false and fraudulent statements in the demand letters.

377. Defendants purposely engaged in the deceptive acts in an attempt to deprive Rudzik Excavating of its bid bonds.

378. Defendants did all of this despite knowing that the statements contained in the demand letters were false.

379. Based on information and belief, under Ohio Rev. Code § 2923.03(A), Defendants Ditzler, Rimedio-Righetti, and Traficanti were complicit with one another and others in the commission of

the offense—they knowingly (and where necessary purposely) solicited or procured another to commit the offense, aided or abetted another in committing the offense, conspired with another to commit the offense, or caused an innocent or irresponsible person to commit the offense.

380. Defendants would be liable as principals or complicitors in the offense’s commission.

381. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

382. All named Defendants are subject to injunctive relief.

383. Defendants Ditzler, Rimedio-Righetti, and Traficanti’s acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

CLAIM 6

CIVIL LIABILITY FOR CRIMINAL ACTS (FALSIFICATION) UNDER OHIO REV. CODE §§ 2307.60 AND 2921.13(A) BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS DAVID DITZLER, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI IN THEIR PERSONAL CAPACITIES

384. Plaintiff incorporates all previous allegations.

385. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

386. Under Ohio Rev. Code § 2921.13(A)(9), “No person shall knowingly make a false statement... when... [t]he statement is made with purpose to commit or facilitate the commission of a theft offense.” (Cleaned up.)

387. Under Ohio Rev. Code § 2901.22(B),

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such

knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

388. Violations of Ohio Rev. Code § 2921.13(A) are criminal acts, indeed felonious under § 2921.13(F)(2).

389. Defendants knew their demand letters contained materially false and fraudulent writings.

Such statements included, but are not limited to:

- a. “The County Notified the low bidder (Rudzik) of its acceptance of the low bids on both projects and the Board of County Commissioners (“BMCC”) intent to award Rudzik both of the contracts once all of the required bid documents were received and signed.”
- b. “To accomplish the award, a letter was sent on May 30, 2024, to Rudzik seeking certain missing contract documents including a signed Project Labor Agreement. On June 25, 2024, a second letter was sent to Rudzik for both projects asking for the signed Project Labor Agreement by June 26, 2024, at 4:00 so that the contract could be awarded.”
- c. “Pursuant to the bid bonds submitted by Rudzik (the Principal) if the “...*Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications...*” then the principal is obligated to pay to the Obligee (BMCC) an amount up to ten (10%) of the Principal’s bid in order to compensate the BMCC for its expenses and costs in awarding the contract to the next lowest bidder.”

390. Defendants knowingly made the false statements contained in the demand letters with purpose to facilitate the theft of the bid bonds from Rudzik Excavating.

391. Defendants did all of this despite knowing that the statements contained in the demand letters were false.

392. Based on information and belief, under Ohio Rev. Code § 2923.03(A), Ditzler, Rimedio-Righetti, and Traficanti were complicit with one another and others in the commission of the

offense—they knowingly (and where necessary purposely) solicited or procured another to commit the offense, aided or abetted another in committing the offense, conspired with another to commit the offense, or caused an innocent or irresponsible person to commit the offense.

393. Defendants would be liable as principals or complicitors in the offense’s commission.

394. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

395. All named Defendants are subject to injunctive relief.

396. Defendants Ditzler, Rimedio-Righetti, and Traficanti’s acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

CLAIM 7

CIVIL LIABILITY FOR CRIMINAL ACTS (INTERFERING WITH CIVIL AND STATUTORY RIGHTS) UNDER OHIO REV. CODE §§ 2307.60 AND 2921.45 BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANTS DAVID DITZLER, CAROL RIMEDIO-RIGHETTI, AND ANTHONY TRAFICANTI IN THEIR PERSONAL CAPACITIES

397. Plaintiff incorporates all previous allegations.

398. Under Ohio Rev. Code § 2921.45, no public servant, under color of the public servant’s office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right. This provision carries a criminal penalty.

399. Under Ohio Rev. Code § 2901.22(B),

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

400. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

401. Defendants Ditzler, Rimedio-Righetti, Traficanti, and attorneys of the Mahoning County Prosecuting Attorney's office are public servants. Under color of their office, employment, or authority, each knowingly deprived, conspired to deprive, or attempted to deprive Rudzik Excavating of its constitutional and statutory rights as detailed above, including its right to exercise its constitutional First Amendment rights to freedom of assembly, freedom of association, freedom to petition the government, and freedom of speech.

402. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic and non-economic damages for which Defendants Ditzler, Rimedio-Righetti, and Traficanti are liable, including, but not limited to, the loss of reputation, opportunity, revenue, and other terms, privileges, and conditions of business opportunity.

403. All named Defendants are subject to injunctive relief.

404. Defendants Ditzler, Rimedio-Righetti, and Traficanti's acts were malicious, in bad faith, performed in a wanton and reckless manner, willful, egregious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

**CLAIM 8
(ALTERNATIVE CLAIM)
BREACH OF CONTRACT AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING BY PLAINTIFF RUDZIK EXCAVATING AGAINST DEFENDANT
MAHONING COUNTY**

405. Plaintiff incorporates all previous allegations.

406. If Defendants insist on alleging that the existence of a contract, and such a contract existed (which it didn't), then Mahoning County breached that contract on Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement) and violated its own policy/regulation about PLAs. Mahoning County for breach of the implied covenant of good faith and fair dealing.

407. The elements of a breach-of-contract claim are

- (1) the existence of a contract;
- (2) plaintiff fulfilled his obligations;
- (3) defendant failed to fulfill his obligations; and
- (4) plaintiff suffered damages as a result of defendant's failure.

408. Defendant Mahoning County has a policy/regulation requiring PLAs on projects costing over \$1 million that are fully funded by Mahoning County and contain no federal or state funding.

409. Rudzik Excavating's bid on Project 531 (Phase 1 Burgess Run Interceptor Sanitary Sewer Replacement) was approximately \$571,000, which is significantly below the \$1 million threshold for PLAs.

410. By requiring Rudzik Excavating to execute a PLA on Project 531, Defendants Mahoning County, Ditzler, Rimedio-Righetti, and Traficanti violated their own policy/regulation by requiring a PLA, which is an abuse of discretion.

411. Consider the following timeline:

- **May 8, 2024:** Rudzik Excavating submitted its bid on Project 531, which was for \$571,000. At this point, Mahoning County was put on notice that Rudzik Excavating's bid was significantly below the \$1 million threshold for PLAs.
- **June 11, 2024:** Mahoning County still sent a letter to Rudzik Excavating requesting Rudzik Excavating execute a PLA on Project 531, even though Mahoning County was on notice that the bid was less than \$1 million.⁹⁸
- **June 19, 2024:** Rudzik Excavating sent a letter to Mahoning County stating, in relevant part, "Please be advised that based on the Commissioners' verbal interpretation of the

⁹⁸ Mahoning County letter to Rudzik Excavating for Project 531 dated June 11, 2024, attached as Ex. 13.

Resolution regarding Project Labor Agreements, the Burgess Run Interceptor Sanitary Sewer Replacement project clearly falls well below the set \$1,000,000.00 limit at \$571,957.00.”⁹⁹

- **July 5, 2024:** Ditzler, Rimedio-Righetti, and Traficanti issue Resolution 24-07-011 finding Rudzik Excavating’s bid on Project 531 was “non-responsive” because Rudzik Excavating did not execute the PLA.
- **July 16, 2024:** Protest meeting held.
- **July 18, 2024:** Ditzler, Rimedio-Righetti, and Traficanti issue Resolution 24-07-020 affirming the earlier resolution’s finding that Rudzik Excavating’s bid on Project 531 was “non-responsive” because Rudzik Excavating did not execute the PLA.

412. Defendant Mahoning County failed to fulfill its obligation to award Rudzik Excavating the contract on which Rudzik Excavating did not execute PLA, which Defendants required in violation of their own policy/regulation requiring PLAs only on projects over the \$1 million threshold.

413. Defendant Mahoning County, through the acts of its commissioners, Ditzler, Rimedio-Righetti, and Traficanti, and the Mahoning County Prosecuting Attorney violated its own policy/regulation, violated Ohio Rev. Code § 307.90, resulting in a breach of contract on Project 531 for which Defendant is liable.

414. As a direct and proximate result of these actions, Rudzik Excavating has suffered and will continue to suffer economic damages for which Mahoning County is liable.

⁹⁹ Rudzik Excavating letter to Mahoning County for Project 531 dated June 19, 2024, attached as Ex. 22.

PRAYER FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests the following relief from the Court:

- A. Declare that there were no contracts.
- B. Declare that Defendants' acts and conduct constitute violations of federal and state law and the United States Constitution;
- C. Enjoin Defendants from further intimidation and retaliation against Rudzik Excavating, Inc. and from further implementing any previous acts of intimidation and retaliation;
- D. Enter judgment in Rudzik Excavating Inc.'s favor on all claims for relief;
- E. Award Rudzik Excavating, Inc. full compensatory damages, economic and non-economic, including, but not limited to, lost opportunity, loss of reputation, and inconvenience that it has suffered and is reasonably certain to suffer in the future;
- F. Award Rudzik Excavating, Inc. punitive damages as appropriate for all intentional and malicious violations of federal and state law and constitutional rights;
- G. Award prejudgment and post-judgment interest at the highest lawful rate;
- H. Award Rudzik Excavating, Inc. its reasonable attorney fees, expert fees, and all other expenses of this suit;
- I. Award all other relief in law or equity to which Rudzik Excavating, Inc. is entitled and that the Court deems equitable just, or proper.

JURY DEMAND

Plaintiff Rudzik Excavating, Inc. demands a trial by jury on all issues within this complaint.

Dated: January 3, 2025

Respectfully submitted,

/s/ Per consent

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*Attorneys for Plaintiff
Rudzik Excavating, Inc.*

Verification under Oath

We, Jeffrey Rudzik and James Tressa, verify that the information contained in this *Verified First Amended and Supplemental Complaint with Jury Demand* is true and correct to the best of our knowledge and belief, under penalty of perjury.



Jeffrey Rudzik
President
Rudzik Excavating, Inc.



James Tressa
Senior Estimator/Project Manager
Rudzik Excavating, Inc.

Sworn and subscribed before me on this 3RD day of January, 2025.

 HEIDI SMITH

Notary Public (Signature and Printed Name)



Heidi Smith
Notary Public, State of Ohio
My Commission Expires:
May 24, 2027