



**DATE:** September 24, 2018

**TO:** Colorado Springs City Council

**FROM:** Civil Action Investigation Committee

**SUBJECT:** *Candace Aguilera v. City of Colorado Springs, Danielle McClarin, Angie Nieves, Roger Vargason, Brett Lacey, Robert Mitchell*, Case No. 18-cv-02125-KMT, United States District Court, District of Colorado

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the involved City employees.

#### **NATURE OF THE CASE**

Plaintiff's complaint arises out of an occupancy check at GreenFaithMinistry on July 10, 2017. Plaintiff is a member of GreenFaithMinistry, an alleged "non-denominational spiritual/religious establishment"<sup>1</sup> located at 1850 North Academy Boulevard in Colorado Springs. Fire Inspectors McClarin and Nieves and Police Officer Vargason approached Plaintiff outside the GreenFaithMinistry building at mid-day and announced that they were there "to check the occupancy of the building." Plaintiff explained that she was not authorized to let them into the building and directed them to contact the church's Reverend. In response, Inspector McClarin allegedly stated, "If you do not let us in, nobody will be allowed in."

Plaintiff asked the three City employees for identification. Inspectors McClarin and Nieves handed their business cards to Plaintiff; Officer Vargason allegedly refused to identify himself. Plaintiff entered the GreenFaithMinistry building and locked the door.

While the City employees contacted the Reverend by telephone from the front of the Building, other GreenFaithMinistry members approached the building. Inspector Nieves allegedly questioned one of the members, with one of her questions beginning,

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<sup>1</sup> Quotations are taken from the Complaint.

"If marijuana is being consumed inside the building ...." The various members who approached the building while the City employees were present left the premises.

Officer Vargason allegedly pulled on the locked entrance door to the building, attempting to enter without a warrant. Plaintiff came to the door. The following exchange allegedly took place:

Vargason: "Open this door. If you do not open this door, you will be in trouble."

Plaintiff : "This is private property. Do you have a warrant?"

Vargason: "Oh now I am talking to Rob Corry?<sup>[2]</sup> We know you have an illegal grow in there. What you're doing is illegal.... Praise the Lord."

Officer Vargason left a voicemail for the Reverend in which he stated that GreenFaithMinistry is a retail marijuana establishment. He allegedly took photos of the license plates of the vehicles parked in front of the Building, including Plaintiff's. After approximately 45 minutes, the City employees left the premises.

Fire Marshal Brett Lacey allegedly worked with the City and Defendant Mitchell to execute the aforementioned "7/10 enforcement" action.

Plaintiff asserts four claims under 42 U.S.C. § 1983 against the City Defendants:

1. Establishment Clause, First Amendment
2. Free Exercise Clause, First Amendment
3. Attempted Warrantless Search, Fourth Amendment
4. Various Constitutional Clauses and Amendments

Plaintiff has not identified in the complaint the damages sought. In her notice of claim, she claims "no less then [sic] \$1,000,000."

### **RECOMMENDATION**

The Civil Action Investigation Committee met on September 13, 2018 and recommends that the City represent Fire Inspectors McClarin and Nieves, Officer Vargason, and Fire Marshal Lacey as required by the Colorado Governmental Immunity Act and, with respect to Officer Vargason, the Peace Officer's Liability Act. The City employees were acting in the course and scope of their employment and not in a willful and wanton manner. As

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<sup>2</sup> Rob Corry is a "Marijuana lawyer out of Denver."

usual, it is recommended that the City reserve the right to not pay any award of punitive damages.