



**DATE:** January 24, 2019

**TO:** Colorado Springs City Council

**FROM:** City Attorney's Office

**SUBJECT:** *VDARE Foundation v. City of Colorado Springs, et al.*  
Case No. 18-cv-03305-CMA-KMT

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

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

Plaintiff, VDARE Foundation, has filed an action in the United States District Court for the District of Colorado against the City of Colorado Springs ("City") and Mayor John Suthers ("Mayor") asserting claims for a violation of 42 U.S.C. § 1983 and the First Amendment.

In the complaint, Plaintiff alleges that it is a controversial "non-profit educational organization" with a mission to inform the public about "the unsustainability of current U.S. immigration policy" and "whether the U.S. can survive as a nation-state." Plaintiff alleges that it had an agreement in place with the Cheyenne Mountain Resort to host one of its conferences in April 2018. Plaintiff claims a public statement made by the Mayor on August 14, 2017 caused Cheyenne Mountain Resort to terminate the contract. The alleged statement indicated, in part, that "[t]he City of Colorado Springs will not provide any support or resources to this event, and does not condone hate speech in any fashion." Plaintiff contends that this statement "amounted to a refusal to provide city services, including police protection, for the [c]onference due to, among other things, its controversial subject matter." Plaintiff alleges that the City and the Mayor infringed upon Plaintiff's right to freedom of speech and freedom of association under the First Amendment and equal protection under the Fourteenth Amendment. Plaintiff also alleges that the City had an official policy, custom or practice that "it would not 'provide any support or resources,' including police and fire services, parking, security and other basic municipal services, for any events or groups it deems to constitute, engage in or include 'hate speech.'"

Plaintiff claims that it suffered lost revenue and negative publicity due to the statement. As redress, Plaintiff seeks compensatory damages of \$1,000,000, punitive damages, presumed damages, injunctive relief, attorney's fees, and prejudgment interest.

## **RECOMMENDATION**

The Civil Action Investigation Committee met on January 23, 2019 and has recommended City representation for the Mayor as required by the Colorado Governmental Immunity Act. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.