

STATE OF SOUTH DAKOTA
COUNT OF LINCOLN

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

LINCOLN COUNTY,

41Civ. 20-000275

Plaintiff,

ANSWER AND COUNTERCLAIM

DAVID TUNTLAND,

Defendant.

COMES NOW, Defendant David Tuntland, and through his counsel, responds as follows for his Answer to the Plaintiff's Complaint, his affirmative defenses, and counterclaims.

A. Unless otherwise specifically stated, Tuntland denies each and every allegation asserted in the Plaintiff's Complaint.

INTRODUCTION

B. David Tuntland seeks in his counterclaims first, declaratory relief for the action of the Lincoln County, South Dakota, Board of Commissioners (the "Board") for the passing of Resolution 2002-27 (the "Resolution"), in which the Board approved a lease purchase agreement and a \$50 million bond levy without requisite proper notice or statutorily required more than 60 percent vote of the five-member Board. Here, four votes are required; the Board only achieved three.

Second, Tuntland also counterclaims against Lincoln County for violating his First Amendment right to free speech and the right to petition under 42 U.S.C. § 1983. The legal action *commenced by* Lincoln County against a private citizen for declaratory judgment—in which Tuntland contends the County is seeking an advisory opinion—is retaliatory for Tuntland’s aggressive opposition to the County’s actions. Tuntland has been specifically targeted because of his protests and now must incur the legal fees and costs for an unprecedented legal action.

Finally, since the County has brought the fight to Tuntland, in an almost mythical and Biblical Goliath versus David sense, he seeks a writ of prohibition, or in the alternative a writ of mandamus, to prevent further County action on the Resolution such as the selling of the required bonds or to pronounce the enactment of Resolution 2002–27 invalid as violating the law or both. Further, Tuntland seeks relief under 42 U.S.C. § 1983 for the violation of his First Amendment rights of free speech and right to petition the government for a redress of grievances.

JURISDICTIONAL STATEMENT

1. In response to the allegations in paragraph 1 of the Complaint, Tuntland denies the allegations in Paragraph 1 insofar as it alleges this Court has jurisdiction for the claims asserted under SDCL 21-24, South Dakota’s Declaratory Judgments Act. Tuntland admits he had letters sent to the Board regarding the legalities of the Resolution dated February 18, 2020 regarding a lease purchase and bond offerings of up to \$50 million (Resolution 2002-27) and demanded a course of action to rescind that Resolution. To the extent the allegations assert legal conclusions regarding the authority to pass the cited Resolution, Tuntland denies the

allegations. As to the referenced “attached Exhibit 1,” admits it is a copy of a letter Tuntland instructed his counsel to send to the Board dated March 24, 2020. All other specific or general allegations not otherwise specifically admitted or denied in Paragraph 1 are denied.

2. Defendant Tuntland admits the allegation in paragraph 2 of the Complaint that Lincoln County is an entity or person defined under SDCL 21-24-1.

3. In response to the allegations contained in paragraph 3 of the Complaint, Defendant denies that the referenced Resolution “passed” as a “lease purchase agreement,” and affirmatively asserts that the Resolution referenced was improperly acted upon by the Board and approved by only three members of the Board. Tuntland affirmatively asserts the Board did not garner the necessary a vote of more than 60% of the members-elect of the board as required by SDCL 7-21-16.1. Tuntland admits the referenced Resolution calls for the “issuance of bonds,” he denies that the Board had authority to issue the referenced bond. Tuntland admits that SDCL 21-24-3 is cited in Paragraph 1, but it is a legal conclusion and therefore, denies its relevance. To the extent that any other allegation contained in Paragraph 3 of the Complaint is inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Tuntland denies those allegations.

4. In response to the allegations contained in paragraph 4 of the Complaint, Tuntland denies but for any allegations raised in his counterclaims or affirmative defenses. Tuntland admits that the reference to SDCL 21-24-6 is for declaratory relief.

5. In response to the allegations contained in paragraph 5 of the Complaint, Tuntland denies but for any allegations raised in his counterclaims or affirmative defenses.

6. Defendant denies the allegations contained in paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. The allegations as asserted in Paragraph 8 are conclusory and legal conclusions and therefore, Tuntland denies.

FACTS

9. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 9 of the Complaint, and therefore denies those allegations.

10. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 10 of the Complaint, and therefore denies those allegations.

11. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 11 of the Complaint, and therefore denies those allegations.

12. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 12 of the Complaint, and therefore denies those allegations.

13. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 13 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 2 is a document dated August 13, 2019, referencing the Board of Commissioners, "Routine Business," and "Claims," but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the specific

allegations asserted in paragraph 13 of the Complaint, therefore, denies it as supporting the allegations asserted.

14. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 14 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 3 is a document dated December 3, 2019, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the specific allegations asserted in paragraph 14 of the Complaint, therefore, denies it as supporting the allegations asserted.

15. In response to the allegations contained in paragraph 15 of the Complaint, Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 15 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 4 is a document dated January 2, 2019, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the specific allegations asserted in paragraph 15 of the Complaint, therefore, denies it as supporting the allegations asserted.

16. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 16 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 4 is a document dated January 2, 2019, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document

as it relates to its authenticity as to the specific allegations asserted in paragraph 16 of the Complaint, therefore, denies it as supporting the allegations asserted.

17. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 17 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 5 is a document dated March 26, 2019, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the specific allegations asserted in paragraph 17 of the Complaint, therefore, denies it as supporting the allegations asserted.

18. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 18 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 5 is a document dated March 26, 2019, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the specific allegations asserted in paragraph 18 of the Complaint, therefore, denies it as supporting the allegations asserted.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint. Further, Defendant affirmatively alleges that there are statutory sections other than SDCL 7-25-19 and 7-25-20 that apply to and control the lease purchase agreement and bonding issues related to the Resolution. Other applicable statutes include SDCL 6-8B, which is referenced in the Resolution, as well as other provisions of SDCL 7-25, also referenced in the Resolution,

and sections such as SDCL 7-21-16.1, which applies because it governs “lease purchase agreements,” as described in the Resolution.

20. With regard to the allegations contained in paragraph 20 of the Complaint, Defendant admits that an agenda item was to “Consider a motion to bond for a public safety center.” Tuntland admits that the referenced attachment, Exhibit 6 is a document dated February 18, 2020, referencing the Board of Commissioners, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity as to the remaining specific allegations asserted in paragraph 20 of the Complaint, therefore, denies it as supporting the allegations asserted. To the extent that the allegations contained in Paragraph 20 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

21. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 21 of the Complaint, and therefore denies those allegations.

22. With regard to the allegations contained in paragraph 22 of the Complaint, Defendant admits that Commissioner Schmidt made a motion. Tuntland also admits that a vote of 3-2 occurred. However, Tuntland affirmatively states that at least two motions were made relating to the proposed Public Safety Center, and that the comments at the meeting demonstrate the Commissioners were confused about the particulars of the motions. Defendant further affirmatively alleges that there was no written version of a resolution which either the Commissioners or concerned citizens could review prior to voting on it. The

allegations as asserted in Paragraph 22 regarding references to SDCL 7-25-19 and 7-25-20 are conclusory and legal conclusions and therefore, Tuntland denies them. To the extent that all other allegations contained in Paragraph 22 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

23. With regard to the allegations contained in paragraph 23 of the Complaint, Defendant admits a resolution was published. Tuntland is without sufficient information or knowledge regarding whether the newspapers referenced are legal newspapers as described and therefore denies. Tuntland admits that the referenced attachment, Exhibit 7 reproduces copies of four affidavits of publication with an attached referenced Resolution 2002-27.

24. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 24 of the Complaint, and therefore denies those allegations.

25. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 25 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 8 is a document dated approximately March 5, 2020 from the Lennox Independent newspaper titled "Notice of Meetings to discuss a Lincoln County Public Safety Center," but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity to the remaining specific allegations asserted in paragraph 25 of the Complaint, therefore, denies it as supporting the allegations asserted.

26. Defendant admits the allegations contained in paragraph number 26 of the Complaint.

27. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 27 of the Complaint, and therefore denies those allegations. Tuntland admits that the referenced attachment, Exhibit 9 is an article dated February 24, 2020, titled “Lincoln County to build a new jail as part of planned public safety center,” from the Argus Leader, but is without knowledge and information sufficient to form a belief as to the truth or falsity of the document as it relates to its authenticity to the remaining specific allegations asserted in paragraph 20 of the Complaint, therefore, denies it as supporting the allegations asserted.

28. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 28 of the Complaint, and therefore denies those allegations.

29. Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 29 of the Complaint, and therefore denies those allegations.

30. Defendant admits the allegations contained in paragraph 30 of the Complaint.

31. With regard to the allegations contained in paragraph 31 of the Complaint, Defendant denies that the letters “imply potential litigation.” Defendant is without knowledge and information sufficient to form a belief about the truth or falsity of the remaining allegations in Paragraph 31 of the Complaint, and therefore denies those allegations.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint.

ISSUE ONE

35. The allegations of paragraph 35 are speculative, conclusory, and improper legal conclusions, therefore, Defendant denies the allegations contained in paragraph 35 of the Complaint.

36. The allegations of paragraph 36 are speculative, conclusory, and improper legal conclusions, reference a partial quote, fail to cite to the exact case the partial quote is from and therefore Tuntland denies any direct or implied allegation asserted.

37. The recitation of a state statute is not an asserted fact and as alleged to support its relevance to any claim against Tuntland is speculative, conclusory, and improper legal conclusion and therefore, Defendant denies any allegations contained in paragraph 37 of the Complaint.

38. The allegations of paragraph 38 are speculative, conclusory, and improper legal conclusions. Moreover, the Defendant is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 38 of the Complaint, and therefore denies those allegations.

39. Tuntland denies the allegations asserted in Paragraph 39.

40. Tuntland denies the allegations asserted in Paragraph 40.

41. The allegations of paragraph 41 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 41 of the Complaint.

42. The allegations of paragraph 42 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 42 of the Complaint.

ISSUE TWO

43. The allegations of paragraph 43 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 43 of the Complaint.

44. With regard to the allegations contained in paragraph 44 of the Complaint, the Defendant admits that a “pre-drafted resolution was not present, depriving the public and commission of adequate notice.” The remaining allegations do not appear to form a complete sentence and therefore the meaning is unintelligible. To the extent that the allegations contained in Paragraph 44 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

45. The allegations of paragraph 45 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 45 of the Complaint.

46. The allegations of paragraph 46 are speculative, conclusory, and improper legal conclusions. With respect to the allegations contained in paragraph 46 of the Complaint, Defendant affirmatively alleges that the comments of the commissioners at the meeting, when discussing the Resolution and the Motion, demonstrate they were confused by the referenced Motion. Defendant further alleges that SDCL 7-25-19 and 7-25-20 do not have any provisions relating to passage of them, and do not control the Resolution. To the extent that the allegations contained in Paragraph 46 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

47. Defendant denies the allegations contained in paragraph 47 of the Complaint.

48. The allegations of paragraph 48 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 48 of the Complaint. Further, Defendant affirmatively asserts that the Board of Commissioners cannot opt out of applicable South Dakota law.

49. The allegations of paragraph 49 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 49 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

50. The allegations of paragraph 50 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 50 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

ISSUE THREE

51. The allegations of paragraph 51 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 51 of the Complaint.

52. Defendant admits the allegations contained in paragraph 52 of the Complaint.

53. The allegations of paragraph 53 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 53 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

54. The allegations of paragraph 54 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 54 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

55. The allegations of paragraph 55 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 55 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

56. The allegations of paragraph 56 are speculative, conclusory, and improper legal conclusions. Defendant denies the allegations contained in paragraph 56 of the Complaint.

57. The allegations of paragraph 57 are speculative, conclusory, and improper legal conclusions. To the extent that the allegations contained in Paragraph 57 of the Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, Defendant denies those allegations.

CLAIM FOR RELIEF

58. Defendant Tuntland denies that Lincoln County is entitled to the relief requested.

AFFIRMATIVE DEFENSES

Defendant David Tuntland asserts the following Affirmative Defenses:

First Affirmative Defense

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted. Lincoln County does not meet the required criteria for relief under the Declaratory Judgments Act.

Second Affirmative Defense

1. Plaintiff has failed to join necessary parties pursuant to Rule 19. Although it is implied that the Plaintiff "Lincoln County" encompasses the Board of Commissioners, each individual Board member who voted in favor of Resolution 2002-27 must also be individually named since if their actions are incorrect, they are personally liable for any action resulting in the issuance of bonds as found within that Resolution. Moreover, as to the Defendant Tuntland, the Plaintiff has only identified him as the only opponent of the Resolution. All taxpayers opposed to the Resolution must be identified before proper relief can be granted if any in favor of the Plaintiff.

Third Affirmative Defense

2. This Court lacks subject matter jurisdiction to the Plaintiff's claim for declaratory relief to the extent Lincoln County seeks an advisory opinion on speculations of possible litigation.

Fourth Affirmative Defense

3. The Plaintiff's action is improper and is made in bad faith as it seeks to retaliate against a taxpayer of Lincoln County for his protest of the County's action in passing a resolution he deemed to be improper causing Tuntland to expend attorney fees and incur costs to defend his First Amendment right to free speech.

Fifth Affirmative Defense

4. The Plaintiff's action is improper and is made in bad faith as it seeks to retaliate against a taxpayer of Lincoln County for his protest of the County's action in passing a resolution he deemed to be improper causing Tuntland to expend attorney fees and incur costs to defend his First Amendment right to petition.

Sixth Affirmative Defense

5. The Plaintiff's action is improper and is made in bad faith as it seeks to retaliate against a taxpayer of Lincoln County for his protest of the County's action in passing a resolution Tuntland deemed to be improper, as a prior restraint of his right to exercise core political speech activities protected under the First Amendment as warning not to protest against Lincoln County or be subject to expensive litigation processes involving attorney fees and costs.

Seventh Affirmative Defense

6. To the extent that the Counterclaim raises defenses, Defendant Tuntland asserts those in defense to the Complaint.

Eighth Affirmative Defense

7. Defendant reserves the right to assert additional affirmative defenses.

COUNTERCLAIMS

David Tuntland, for his Counterclaims, incorporates the preceding allegations of his Answer where material and as if fully restated.

I.

Declaratory Relief

1. David Tuntland is a citizen, resident, and taxpayer of Lincoln County, South Dakota.
2. The Plaintiff Lincoln County, includes by reference the County Board of Commissioners, as demonstrated in paragraph 3 of its Complaint. The Board of Commissioners includes: Joel Arends of District 1; David Gillespie of District 2; Tiffani Landeen of District 3; Michael Poppens of District 4; and Jim Schmidt of District 5.
3. The state of South Dakota created Lincoln County as a governmental entity.
4. Because Lincoln County is a subordinate arm of the State of South Dakota, it has only such authority specifically given to the county by the state Legislature.
5. In other words, Lincoln County has only such powers that are expressly conferred to it by statute or those *reasonably* implied from those expressly granted.
6. Lincoln County, is a public corporation which exists only for public purposes connected with the administration of state government, therefore, it lacks inherent authority and derives its power only from the Legislature.
7. And as for Lincoln County's revenue, control of how that revenue is derived is subject to state Legislative control where there is no express contrary restriction.
8. Only three Board of Commissioner members Landeen, Schmidt, and Poppens, voted in the affirmative for Resolution 2002-27.
9. Two Board of Commissioner members, Arends and Gillespie, voted in opposition to Resolution 2002-27.

10. Prior to the Lincoln County Board of Commissioners' meeting on February 18, 2020, the Agenda for the meeting included as one of the agenda items, "[c]onsider a motion to bond for a public safety center."

11. At the Lincoln County Board of Commissioners' meeting on February 18, 2020, the Board of Commissioners voted 3-2 to pass Resolution No. 2002-27 which approve a new Public Safety Building, and to approve \$50,000,000.00 to pay for it.

12. Recordings of the February 18, 2020 meeting reveal that the Commissioners expressed apparent confusion about what exactly they were voting on as reflected in the following exchanges among Board members:

"And did we draft a resolution?" Commissioner Schmidt;

"Bill [Deputy State's Attorney William Golden] has seen that then?" Chairman Poppen;

"I don't believe in the Nancy Pelosi method of you gotta pass something in order to know what's in it." Commissioner Ahrens;

"What I'm going to want to see is public meeting so that voters can come to the table and be a part of the process." Unidentified Commissioner;

"I'm gonna be hard pressed to approve this today just given the fact that we received the information [the Agenda, but not draft of the Resolution] on Friday." Unidentified Commissioner.

13. Upon information and belief, no draft of the Resolution was provided to the Board of Commissioners prior to the February 18, 2020 meeting; nor was it provided to the Board of Commissioners at the meeting.

14. Likewise, prior to the Board of Commissioners meeting and at the time of the meeting, no copy of the complete Resolution 2002-27 was available to the public, including Tuntland who attended the February 18th meeting.

15. Therefore, at the February 18, 2020 meeting, upon information and belief, Board members had not seen the complete text of Resolution 2002-27 prior to casting their vote on the measure.

16. Recordings of the February 18, 2020 Board of Commissioners public meeting revealed apparent confusion regarding the Resolution's terms to be voted upon:

“I motion that the Lincoln County Board of Commissioners offer bonds for \$50,000,000 to build a new public safety facility.”

Commissioner Schmidt;

“Your motion is to do a \$50 million on a level debt? Not a wrap?”

Commissioner Poppens;

“Wrapped bond? Or stand-alone bond?”

“I need help [understanding it]”

Unidentified Commissioner.

17. The Commissioners voted 3-2 to approve the Resolution 2002-27 despite the lack of a complete writing of any kind of the Resolution at the meeting.

18. Resolution 2002-27 was later published. It read in part:

“Resolution relating to lease-purchase of new County Lincoln County Public Safety Center: Authorizing the execution and delivery of a ground lease agreement, a lease-purchase agreement, trust agreement, and approving and authorizing execution of related documents and levy of taxes for the payment thereof.”

19. The later published Resolution 2002-27 further stated that it “was authorized by South Dakota Codified Laws Ch. 7-25 and Ch. 6-8B, inclusive,” the “Lease-Purchase

Agreement constitutes a bond,” and the term is “not exceeding 30 years...” to construct the “new Lincoln County Public Safety Center.”

20. Chapter 6-8B is entitled “Bonds of Local Public Bodies” and requires “an election [of] sixty percent of voters” in favor of issuing the bonds. SDCL 6-8B-2.

21. South Dakota has a specific statute which authorizes a “lease-purchase agreement” for jails or juvenile detention facilities. That statute states as follows:

The provisions of §7-21-16 or any other provision of law notwithstanding, any county may enter into a lease-purchase agreement for a term of years, not exceeding ten, for the purchase or lease by the county of real or personal property. However, if a lease-purchase agreement is for the purchase or lease of a jail or juvenile detention facility, the agreement may be for a term of years, not exceeding twenty years.

Any lease-purchase agreement for a term exceeding one year requires the approval of more than sixty percent of the members-elect of the board of commissioners. The final adoption of any lease-purchase agreement shall be by resolution which may be referred pursuant to chapter 7-18A.

SDCL §7-21-16.1 (emphasis added).

22. Tuntland asserts that the statute specifically addresses the “lease-purchase agreements” for jails or juvenile detention facilities requires “more than sixty percent of the members-elect” of the board of commissioners to pass such a resolution.

23. Tuntland asserts that Resolution 2002-27 failed to be properly enacted because it did not have “more than sixty percent of the members-elect” of the board of county commissioners.

24. Tuntland asserts that SDCL §7-21-16.1 was enacted in 1995 *after* the enactment of SDCL §7-25-19 and §7-25-20 relied upon by the Board of Commissioners as the proper procedure to enact Resolution 2002-27.

25. Tuntland asserts that the Board of Commissioners' reliance upon SDCL Ch. 7-25 and particularly §§7-25-19 and 20, enacted in 1984, are statutes general in nature.

26. Tuntland asserts that the South Dakota Supreme Court has declared in matters of statutory construction the "terms of a statute relating to a particular subject matter will prevail over general terms of another statute." *Nelson v. School Board of Hill City*, 459 N.W.2d 451, 454 (S.D. 1990).

27. In addition, Tuntland asserts that the South Dakota Supreme Court has declared a more recent statute will govern over an older statute. *See, Peterson, Ex Rel. Peterson v. Burns*, 635 N.W.2d 556, 567 (S.D. 2001).

28. Tuntland asserts that based upon his belief, Resolution 2002-27 was improperly and illegally enacted because the Board of Commissioners relied upon the wrong statutes. For instance, SDCL §7-21-16.1 is the more specific and later enacted statute, and is the proper statute to enact a bonding issuance through a Board resolution that requires "more than sixty percent of the members elected" or 4 members of the 5 member Lincoln County Board of County Commissioners.

29. On February 18, 2020, the Lincoln County Commissioners failed to pass Resolution 2002-27 by "more than sixty percent of the members-elect" of the Board of County Commissioners. Tuntland therefore asserts the resolution is void. SDCL §7-21-17, §7-21-26.

30. Tuntland further asserts that because Resolution 2002-27 was improperly and illegally enacted, should any issuance of a bond under the Resolution occur, Board of Commissioners who voted in favor of the measure would potentially expose themselves to personal liability. *See* SDCL §7-21-17, 7-21-27, and 7-27-28.

31. Further, the Resolution finally published by Lincoln County indicated that the County was acting under the authority of SDCL Chapter 6-8B, which requires a public vote on bond issues, and the County has indicated that it has no intention of holding such a vote.

32. Accordingly, David Tuntland seeks declaratory relief declaring Resolution 2002-27, enacted by the Lincoln County Board of Commissioners on February 18, 2020, as improper, illegal, and thus void. Tuntland requests that the Court issue a writ of prohibition under SDCL §21-30-1 on the grounds that the enactment of Resolution 2002-27 by the Board of Commissioners was in excess of the Board's power or authority.

33. Tuntland seeks declaratory relief that the Board enactment of Resolution 2002-27 was illegal as violative of South Dakota law.

34. Tuntland seeks declaratory relief that Resolution 2002-27 is void.

35. Tuntland seeks declaratory relief and a writ of prohibition to prevent Lincoln County from taking any action that would result in the issuance of bonds as granted under Resolution 2002-27.

36. Tuntland seeks a writ of prohibition to prohibit the enforcement of any provision of Resolution 2002-27.

II.

42 U.S.C. §1983 CLAIMS

Violations of the First and Fourteenth Amendments of the U.S. Constitution

37. David Tuntland, incorporates the preceding allegations where material as if fully restated for the support of his 42 U.S.C. § 1983 claims.

38. The First Amendment of the United States Constitution protects the right to free speech:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.

39. The First Amendment protects an individual's right to engage in core political speech activities.

40. Core political speech is the interchange of ideas for the bringing about of political and social changes desired by the people.

41. The First Amendment also protects an individual's right to petition the government for the redress of grievances.

42. An individual has the right to exercise his First Amendment freedoms without facing retaliation from government officials.

43. The Fourteenth Amendment of the U.S. Constitution protects the due process rights of citizens.

44. Lincoln County Resolution 2002-27, as enacted, seeks to have constructed a county jail, approve a lease payment agreement, and approve a bond levy of up to \$50 million.

45. The Lincoln County Board of Commissioners, prior to February 18, 2020, did not provide its County taxpayers notice of Resolution 2002-27.

46. Tuntland, as a taxpayer, has an interest in Board resolutions that directly affect him, namely payment of County debt through taxes.

47. Tuntland, as a taxpayer, has an interest in Board resolutions in so much that when it concerns capital improvements such as a county jail, he may voice his opinion on the project such as to the cost, the method of payment, or whether the project is necessary at all, *prior* to any formal action by the Board.

48. Tuntland is an opponent of the proposed county jail as referenced in Resolution 2002-27 enacted by the Board on February 18, 2020.

49. Tuntland is an opponent of the methodology of financing the county jail project as referenced in Resolution 2002-27 enacted by the Board on February 18, 2020, such as through a lease-payment agreement, and through bond levies.

50. The Lincoln County Board of Commissioners, prior to February 18, 2020, did not provide its County taxpayers any hearing regarding Resolution 2002-27.

51. Tuntland did not have notice prior to February 18, 2020 of Resolution 2002-27.

52. The Board did not provide adequate notice of Resolution 2002-27 as reflected in its full publication of the Resolution, until *after* the Board's vote.

53. At the Board meeting of February 18, 2020, the Board did not give taxpayers an opportunity to be heard on Resolution 2002-27.

54. Prior to the Board meeting of February 18, 2020, the Board did not give taxpayers an opportunity to be heard on Resolution 2002-27.

55. At the Board meeting of February 18, 2020, the Board did not give Tuntland an opportunity to be heard on Resolution 2002-27.

56. Prior to the Board meeting of February 18, 2020, the Board did not give Tuntland an opportunity to be heard on Resolution 2002-27.

57. Notably, *after* the *enactment* of Resolution 2002-27, the Board held public hearings on the county jail. Tuntland attended one of the hearings. However, he believed the hearing worthless since the County Board had already rendered its judgment on the project and decision regarding its funding methodology.

58. Tuntland's right to due process under the Fourteenth Amendment was violated when the Board failed to provide notice, adequate notice, constructive notice, or timely notice of any hearing on Resolution 2002-27.

59. Tuntland's right to due process under the Fourteenth Amendment was violated when the Board failed to provide any hearing on Resolution 2002-27, prior to or on February 18, 2020.

60. Tuntland sought legal assistance through counsel to voice his opposition to the actions of the Board that occurred on February 18, 2020 *and* to identify the illegalities of the Board's actions.

61. At the instruction of Tuntland to express his voice, through counsel, wrote two letters to Lincoln County concerning the passage of the Resolution and the potential issuance of the bonds. Tuntland hired attorney Vincent Fahnlander, to write letters dated March 24, 2020 and April 3, 2020, concerning the lack of notice with respect to the issuance of the bonds and passage of the resolution, and the failure of the Board to pass the resolution with more than 60 percent of the five member Board.

62. While Tuntland made demands of the County Board to rescind Resolution 2002-27, he did not state he would sue the Board.

63. Tuntland believes that other County taxpayers opposed Resolution 2002-27.

64. Although Tuntland believes other County taxpayers opposed Resolution 2002-27, he was the only taxpayer that wrote to the Board not only his opposition but reasons for his opposition.

65. The Board's direct response to the submitted Tuntland letters was to sue him individually for declaratory relief.

66. The Board did not identify as a defendant any other County taxpayer who opposed Resolution 2002-27.

67. The Board specifically targeted Tuntland as a defendant in its legal action.

68. Writing a letter or letters to a government entity in opposition to its actions is a core political speech activity.

69. Although Tuntland sought legal assistance in writing letters to the government to convey his opposition and the legal basis for his opposition, Tuntland, as a defendant to the County's legal action, must expend moneys for attorney fees and costs he neither welcomed nor can afford. Nevertheless, as a defendant Tuntland must defend against the claims asserted by the Board.

70. As a direct result of having submitted his letters to Lincoln County, the Board violated Tuntland's First Amendment right of free speech.

71. As a direct result of having submitted his letters to Lincoln County, the Board sued Tuntland in retaliation for exercising protected First Amendment rights.

72. As a direct result of having submitted his letters to Lincoln County, the Board sued Tuntland as prior restraint to Tuntland's exercise of First Amendment right of free speech.

73. As a direct result of having submitted his letters to Lincoln County, the Board sued Tuntland to chill his exercise of protected core political speech activities under the First Amendment.

74. As a direct result of having submitted his letters to Lincoln County, the Board actions to sue Tuntland has chilled Tuntland from further core political speech activities. For instance, Tuntland, fearful of further retaliation, must now consider whether or not to speak to the press or make other public statements about Resolution 2002-27 or any other future Board action in which he may oppose.

75. The actions of the Board—Lincoln County—resulted in the violation of Tuntland’s protected constitutional rights under the First and Fourteenth Amendments as a violation of his civil rights under 42 U.S.C. § 1983.

76. Because the First and Fourteenth Amendment rights of Tuntland under 42 U.S.C. § 1983 were and are violated, he is entitled to attorney fees, costs, and disbursements.

WHEREFORE, Mr. Tuntland respectfully requests that the Court dismiss the Complaint on the merits, and with prejudice, that the Court issue an Order declaring that the resolution adopted by the Lincoln County Board of Commissioners on February 18, 2020, concerning the lease-purchase for a public safety building and potential issuance of bonds is void, invalid, and without authority, that the Court issue a Writ of Prohibition prohibiting Lincoln County from acting upon the invalid resolution and prohibiting it from issuing any bonds under the resolution, that Mr. Tuntland be awarded damages, and attorney’s fees and such further relief as the Court may deem appropriate.

SCHAFFER LAW OFFICE, PROF. LLC

/s/ Michael J. Schaffer

Dated this 22nd day of May, 2020.

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DEMAND FOR JURY TRIAL

Mr. Tuntland, the Defendant, demands a trial by jury on all issues so triable.

/s/ Michael J. Schaffer

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant hereby certifies that a true and correct copy of the “Answer and Counterclaim” was served by electronic filing with the Clerk of the Court by using the Odyssey File & Serve system, which sent notification of such filing upon:

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Canton SD 57013
Attorneys for Plaintiff

this 22nd day of May, 2020.

/s/ Michael J. Schaffer
