



## The Voice

### And The Defense Wins

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DRI Governmental Liability Committee members [Steven F. Coronado](#) and [Christopher L. Heigele](#), partners at **Coronado Katz** in Kansas City, Missouri, recently obtained summary judgment for their clients in a §1983 First Amendment retaliation case pending in the U.S. District Court for the Western District of Missouri, in *John Young, et al. v. The Mercer County Commission, et al.*, Case No. 14-CV-06094-DW (W. Dist. Mo. January 4, 2016).

Plaintiffs, the elected part-time county prosecutor and his wife, alleged the county commissioners retaliated against them for complaining about the assignment of their street address after the county's adoption of a 911 addressing system. Plaintiffs claimed the county cut the prosecutor's budget, terminated his lease agreement with the county, and requested the Missouri attorney general investigate the potential unconstitutional nature of the lease agreement and plaintiff's practice of using public employees in his private law office. In addition, plaintiffs claimed the installation of an address street sign alongside their property constituted a taking.

Plaintiff has been the county's elected prosecutor for the past decade. After his first election, plaintiff prepared a lease agreement that provided for the payment of rent to his private law practice. The rent was to offset expenses for the prosecuting attorney's office, which plaintiff operated out of his private law office (instead of the county courthouse). The lease prepared by plaintiff also provided for the payment for one full time secretary for the prosecutor's office, again to office in plaintiff's private office. The county commissioners relied on plaintiff as the county prosecutor, with respect to the lease agreement's legality.

The county commission enacted an ordinance to assign street addresses to every residence and business in the county for emergency responders and hired a company to map out the county and assign addresses to the residences and businesses in the county. Plaintiffs did not like their address assignment on Gaza Place and complained to the commission. Plaintiffs demanded an address on the adjoining state highway. The county refused to change the plaintiffs' address.

The plaintiffs requested the county seek independent legal advice to avoid litigation over the address dispute. At the same time the county's yearly budgetary process began. The county did not accept the plaintiffs' line item for another part-time secretary because it was not called for the lease agreement, and initially refused to pay for the payroll submitted for part-time secretarial help. After plaintiffs threatened litigation again, the county's independent attorney determined the lease agreement and the use of county employees for plaintiffs' private law practice violated the Missouri Constitution's prohibition against using public monies to benefit private individuals. Based on counsel's advice, the county terminated the lease agreement and requested the attorney general to investigate.

The district court granted the county's initial motion to dismiss in part, ruling the county commissioners were vested with absolute legislative immunity for the decision to assign plaintiffs' address. However the court indicated there was evidence of retaliation and a potential taking and allowed discovery on those claims. After discovery, the district court ruled on summary judgment the county commission was vested with absolute immunity in not accepting the plaintiff's proposed budget, absolute immunity for terminating the lease agreement between the plaintiff and the county, and absolute immunity for requesting the attorney general to investigate. The court also found the county commissioner's actions were objectively reasonable for purposes of qualified immunity because they relied in good faith on the advice of

independent counsel. The court also ruled the takings claim failed because Missouri statute explicitly allowed the county to install street signs for emergency responders. Plaintiffs have filed a notice of appeal to the 8th Circuit.

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