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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA  
BY \_\_\_\_\_

**UNITED STATES DISTRICT COURT BY FAX**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM D. FITZGERALD,  
Plaintiff,  
vs.  
ORANGE COUNTY; BILL  
CAMPBELL, in his official and  
individual capacities; JOHN  
MOORLACH, in his official and  
individual capacities; JANET  
NGUYEN, in her official and  
individual capacities; JAMES C.  
PENA, in his official and individual  
capacities,  
Defendants.

Case No.: SA CV 11-01355 JVS (MLGx)

SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND NOMINAL  
DAMAGES

[Pursuant to 42 U.S.C. § 1983 - for  
violation of the First and Fourteenth  
Amendments; Cal. Const. art. I § 2]

1 Plaintiff William D. Fitzgerald alleges as follows:

2 1. This action seeks declaratory and injunctive relief, as well as nominal  
3 damages, to remedy the deprivation of Mr. Fitzgerald's federal and state  
4 constitutional and statutory rights. When Mr. Fitzgerald criticized the Orange  
5 County Board of Supervisors during open and public Orange County Board of  
6 Supervisors meetings, Defendants silenced him, violating Mr. Fitzgerald's rights  
7 to free speech and due process, as well as his right to petition the government for  
8 redress of grievances.

9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the federal civil rights claim under 28  
11 U.S.C. §§1331 and 1343. Declaratory and/or injunctive relief is authorized under  
12 28 U.S.C. §§2201 and 2202. This Court has supplemental jurisdiction over the  
13 state law claims under 28 U.S.C. §1367(a).

14 3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because  
15 Defendants reside in, and all incidents, events, and occurrences giving rise to this  
16 action occurred in, the County of Orange, California.

17 **PARTIES**

18 **A. Plaintiff**

19 4. Plaintiff William D. Fitzgerald is now, and at all times mentioned in  
20 this Complaint was, a resident of Orange County, California. Mr. Fitzgerald is one  
21 of the Directors of Anaheim Homeowners for Maintaining our Environment  
22 ("HOME"), a twenty-two-year-old unincorporated association of Orange County  
23 homeowners who oppose government waste and corruption in order to protect  
24 homeowners' rights. The majority of HOME's membership now consists of  
25 elderly, long-time homeowners.

26 5. Mr. Fitzgerald is a military veteran who is deeply interested in local  
27 politics. He has spoken at various meetings of the Orange County Board of  
28 Supervisors during the portions of the meetings that are reserved for public

1 participation. Mr. Fitzgerald speaks at these meetings to inform elected officials  
2 not only of his own opinion and facts on matters, but also of the opinions of  
3 members of HOME who are hesitant to speak or too elderly to do so. As a veteran  
4 who has fought to defend such important freedoms, he sees such participation as a  
5 civic responsibility, which he takes very seriously, and desires to continue to  
6 express his opinion on various matters of public concern during appropriate times  
7 at Orange County Board of Supervisors meetings.

8 **B. Defendants**

9 6. Defendant Orange County (“County”) is a political division of the  
10 State of California. The cities and unincorporated areas of the County are divided  
11 into five Supervisorial Districts, and each district elects a Supervisor to a four-year  
12 term. Each Supervisor can serve two four-year terms. These five elected officials  
13 comprise Defendant County’s Board of Supervisors (“Board” or “OCBOS”). In  
14 its legislative duties, the Board adopts ordinances, resolutions, and minute orders,  
15 as well as Rules of Procedures that govern conduct at Board meetings.

16 7. Defendant Bill Campbell is a member of the Orange County Board of  
17 Supervisors and is the Chair of the Board. He was first elected to the Board in  
18 January 2003. He was elected Chairman of the Board by his colleagues for the  
19 first time in January 2005, for a second term in January 2006, and most recently in  
20 January 2011. Generally, the Chair acts as the presiding officer at all meetings of  
21 the Board, charged with preserving order and decorum and decide all questions of  
22 order. ORANGE COUNTY RULES OF PROCEDURE, RULE 9.<sup>1</sup> On information and  
23 belief, Defendant Campbell is now, and at all times mentioned in this Complaint  
24 was, a resident of Orange County, California.

25 8. Defendant John Moorlach is a member of the Orange County Board  
26

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27 <sup>1</sup> Unless otherwise indicated, all references to “Rule” shall mean the  
28 Orange County Rules of Procedure, which were adopted by the Orange County  
Board of Supervisors on January 27, 2009.

1 of Supervisors and is Vice Chair of the Board. He was first elected to the Board in  
2 2006. In the absence, or inability to act, of the Chair, the Vice Chair shall have  
3 and exercise all the powers and duties of the Chair. RULE 10. On information and  
4 belief, Defendant Moorlach is now, and at all times mentioned in this complaint  
5 was, a resident of Orange County, California.

6 9. Defendant Janet Nguyen is a member of the Orange County Board of  
7 Supervisors. She was first elected to the Board in February 2007. Defendant  
8 Nguyen was elected Chair of the Board in December 2009 and served as Chair  
9 until December 2010. As Chair, Defendant Nguyen acted as the presiding officer  
10 at all meetings of the Board, charged with preserving order and decorum and  
11 decide all questions of order. RULE 9. On information and belief, Defendant  
12 Nguyen is now, and at all times mentioned in this complaint was, a resident of  
13 Orange County, California.

14 10. Defendant James C. Pena is a Deputy Sheriff employed by the  
15 Sheriff's Department of Orange County. Defendant Pena serves as the  
16 Sergeant-at-Arms responsible for maintaining order during Orange County Board  
17 of Supervisor's meetings. Rule 41. Defendant Pena was present during OCBOS  
18 meetings on July 27, 2010 and August 23, 2011 in his capacity as  
19 Sergeant-at-Arms. On information and belief, Defendant Pena is now, and at all  
20 times mentioned in this complaint was, a resident of Orange County, California.

21 11. [DELETED]

22 12. At all times mentioned in this Complaint, unless otherwise alleged,  
23 each Defendant is an agent, employee, and/or co-conspirator of every other  
24 Defendant, and in doing the acts alleged in this Complaint, was acting within the  
25 course, scope, and authority of that agency or employment, and in furtherance of  
26 the conspiracy to violate Plaintiff's constitutional and statutory rights, with the  
27 knowledge and consent of each of the other Defendants.

28 ///

1 **FACTS**

2 13. The California Legislature has found and declared that public  
3 commissions, boards and councils, like the Orange County Board of Supervisors,  
4 exist to aid in the conduct of the people’s business, and their actions are intended  
5 to be taken openly and their deliberations be conducted openly. *See* CAL. GOV’T  
6 CODE § 54950. Accordingly, “[a]ll meetings of the legislative body of a local  
7 agency shall be open and public, and all persons shall be permitted to attend any  
8 meeting of the legislative body of a local agency.” CAL. GOV’T CODE § 54953(a).  
9 Moreover, “[e]very agenda for regular meetings shall provide an opportunity for  
10 members of the public to directly address the legislative body on any item of  
11 interest to the public, before or during the legislative body’s consider of the item,  
12 that is within the subject matter jurisdiction of the legislative body, provided that  
13 no action shall be taken on any item not appearing on the agenda.” CAL. GOV’T  
14 CODE § 54954.3(a). “The legislative body of a local agency shall not prohibit  
15 public criticism of the policies, procedures, programs, or services of the agency, or  
16 of the acts or omissions of the legislative body.” CAL. GOV’T CODE § 54954.3(c).  
17 The local legislative body may, however, “limit[] the total amount of time  
18 allocated for public testimony on particular issues and for each individual  
19 speaker.” CAL. GOV’T CODE § 54954.3(b).

20 **A. Meetings of the OCBOS - Generally.**

21 14. At all relevant times, the Board’s meetings are governed by the  
22 Orange County Board of Supervisor’s Rules of Procedure, which were adopted by  
23 the Board on January 27, 2009. The Board also issues “Speaker Guidelines,”  
24 which are made available to provide guidance to the public who may wish to  
25 address the Board at a public meeting.

26 15. The regular meetings of the Board are held each Tuesday beginning at  
27 9:30 a.m. RULE 4. The order of business at regularly scheduled Board meetings  
28 includes scheduled agenda items such as the Consent Calendar, Discussion

1 Calendar, and Public Hearings, as well as time for non-agenda items, which are  
2 addressed during Public Comments. RULE 23. Board members also have an  
3 opportunity to comment during “Board Comments,” which is scheduled after  
4 “Public Comments.” *Id.*

5 16. All regular meetings of the Board are open to the public and the  
6 public is provided the opportunity to participate in the meeting on items that are  
7 either on the agenda or not. RULE 43.

8 17. “Members of the public who wish to discuss a consent, discussion, or  
9 public hearing item should complete a speaker request form and deposit it with the  
10 Clerk prior to the Clerk’s reading of the agenda item. The Clerk will then advise  
11 the Board of such request prior to the vote approving the item.” RULE 44. “Any  
12 individual member of the public may pull an item from the consent calendar for  
13 discussion and separate vote, and may speak to each item for no longer than three  
14 minutes prior to the vote on the item.” *Id.*

15 18. “Under the Public Comments portion of the meeting, members of the  
16 public [are] allowed to address the Board regarding any off-agenda item within the  
17 subject matter jurisdiction of the Board. No action may be taken on off-agenda  
18 items unless authorized by law. Comments under the Public Comments portion of  
19 the meeting shall be limited to three (3) minutes per speaker, and twenty (20)  
20 minutes for all comments, unless different time limits are set by the Chair.” RULE  
21 45.

22 19. Rule 46 of the Orange County Board of Supervisor’s Rules of  
23 Procedure, entitled “Addressing the Board,” states in relevant part:

24 Each person who addresses the Board shall refrain from making  
25 personal, impertinent, slanderous or profane remarks to any member  
26 of the Board, staff or the general public. Any person who makes such  
27 remarks, or who utters loud, threatening, personal or abusive  
28 language, or engages in any other disorderly conduct which disrupts,

1 disturbs or otherwise impedes the orderly conduct of any Board  
2 meeting shall, at the discretion of the Chair, or a majority of the  
3 members, be barred from further addressing the Board at the meeting.

4 If such conduct thereafter continues so as to disrupt the orderly  
5 conduct of the public's business, the Chair shall order the person  
6 removed from the meeting room. Aggravated cases may be  
7 prosecuted on appropriate complaint signed by the Chair, a member  
8 of the Board or any other County representative.

9 20. Orange County Board of Supervisors Speaker Guidelines state in  
10 pertinent part: "Each person who address the Board shall refrain from making  
11 personal, impertinent, slanderous or profane remarks to any member of the Board,  
12 staff or the general public."

13 21. The Orange County Sheriff's Department, or a representative  
14 designated by the Sheriff, serves as the Board's Sergeant-at-Arms at Board  
15 meetings and is required to carry out all orders given by the Chair for the purpose  
16 of maintaining order and decorum at Board meetings. RULE 41.

17 **B. July 27, 2010 Regular Meeting of the OCBOS.**

18 22. On July 27, 2010, during the Public Comments portion of regularly  
19 scheduled OCBOS meeting, the Board restricted Mr. Fitzgerald's right to speak  
20 for his allotted three minutes because the Board disagreed with the content and/or  
21 viewpoint of Mr. Fitzgerald's speech.

22 23. After approaching the podium, Mr. Fitzgerald, frustrated over the  
23 property tax decisions of the County Appeals Board, criticized the Clerk of the  
24 OCBOS who operates the Appeals Board for mismanagement, which he believed  
25 resulted in unjust taxes to homeowners. Mr. Fitzgerald also criticized then-Chair  
26 Defendant Nguyen for her then-recent statements that the Clerk was doing a  
27 wonderful job running the Appeals Board. Less than two minutes into his  
28 prepared statement, Mr. Fitzgerald then stated "it is apparent that [the Clerk of the

1 Board] is like the commander of a concentration camp. She is just following the  
2 orders of her bosses.” At that point, Defendant Nguyen and Defendant Moorlach  
3 interrupted Mr. Fitzgerald and prevented him from completing his statement.

4 24. Defendants did not notify Mr. Fitzgerald that the Board may interrupt  
5 public comments or for what reasons, nor did they inform him that any attempts to  
6 continue his statement over their interruption would be considered disruptive.

7 Accordingly, Mr. Fitzgerald attempted to continue his speech. When Mr.  
8 Fitzgerald asserted his right to finish his statement, Defendant Moorlach scolded  
9 Mr. Fitzgerald for not being polite, informed him that they were “in a position of  
10 authority” over him, and signaled to Defendant Pena, who considered Mr.  
11 Fitzgerald’s speech to be disruptive. In response to Defendant Moorlach’s signal,  
12 Defendant Pena approached Mr. Fitzgerald with the intent of silencing him or  
13 removing him if he refused to be silent. Fearful of arrest and realizing that  
14 continuing his prepared speech would not be tolerated, Mr. Fitzgerald left the  
15 podium, with Defendant Pena following close behind to ensure he would not  
16 return.

17 25. After silencing Mr. Fitzgerald, Defendant Moorlach went on to  
18 criticize Mr. Fitzgerald, stating that he has no credibility and that, although he  
19 believes in freedom of speech, he does not think that Mr. Fitzgerald’s freedom of  
20 speech allows Mr. Fitzgerald to “attack certain individuals.” Defendant Moorlach  
21 also expressed that “the five longest years of [his mother’s life] were the five years  
22 she spent in Nazi-occupied Netherlands” and that he believed Mr. Fitzgerald’s  
23 comments were inappropriate.

24 **C. August 23, 2011 Regular Meeting of the OCBOS.**

25 26. On August 23, 2011, during the OCBOS public hearing on an Agenda  
26 Item regarding redistricting, when speakers are supposed to be permitted to speak  
27 for three minutes each, OCBOS refused to allow Mr. Fitzgerald to express his  
28 opinions because of the content and/or viewpoint of his speech. After



1 approaching the podium, Mr. Fitzgerald attempted to express his opinion that the  
2 County's redistricting plan would unfairly benefit the Vietnamese community and  
3 dilute the voting power of Latinos in Orange County. Approximately two minutes  
4 into his prepared statement, Mr. Fitzgerald highlighted Latino veterans and  
5 criticized the County for what he believed to be a disrespect for the Latino  
6 population. Mr. Fitzgerald also criticized some members of the Vietnamese  
7 community, who spoke uninterrupted at that hearing, calling some "cowardly".

8 27. Defendant Campbell abruptly interrupted Mr. Fitzgerald before his  
9 allotted three minutes had expired to unilaterally give the floor to Defendant  
10 Nguyen, who proceeded to berate him purely for the content and/or viewpoint of  
11 his speech, calling it "appalling" and "wrong" and indicating that Mr. Fitzgerald  
12 was not allowed to criticize "members of any communities coming to this country,  
13 this great country, for their freedom and democracy." Defendant Nguyen  
14 repeatedly reminded Mr. Fitzgerald that the purpose of her interruption was not to  
15 ask him a question, indicating that she had no interest in political dialogue with  
16 him. Defendant Pena ordered Mr. Fitzgerald to "stand down". Defendants did not  
17 notify Mr. Fitzgerald that the Board may interrupt public comments or for what  
18 reasons, nor did they inform him that any attempts to continue his statement over  
19 their interruption would be considered disruptive.

20 28. Later in the meeting, after Mr. Fitzgerald was silenced, told what  
21 type of speech was not permitted, and escorted out, Defendant Nguyen stated that  
22 divisive comments would not be tolerated by the OCBOS.

23 **D. September 6, 2011 - Special Meeting of OCBOS.**

24 29. Shortly after the August 23, 2011 meeting, the Board called for a  
25 special meeting to conduct a second public hearing on redistricting to be held on  
26 September 6, 2011 at 10:00 a.m. Members of the public were allowed to attend  
27 and participate in this special meeting by speaking for up to three minutes.

28 30. Mr. Fitzgerald desired to participate in this special meeting, as well as

1 subsequent open and public OCBOS meetings, but because of the Board's rules  
2 and procedures, as well as their past treatment of him, he fears being silenced  
3 again and possibly punished for expressing himself.

4 **CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

6 [Against Each and Every Defendant]

7 (42 U.S.C. § 1983 - U.S. Const. Amend. I)

8 31. Plaintiff alleges and repleads all the allegations of the preceding  
9 paragraphs of this Complaint and incorporates them here by reference.

10 32. Defendants have deprived Mr. Fitzgerald of his rights guaranteed by  
11 the First Amendment and Fourteenth Amendment of the United States  
12 Constitution.

13 33. At all times, Defendants have been, are presently, and will be, acting  
14 under the color and authority of the laws of the United States and State of  
15 California.

16 34. Orange County Rule of Procedure 46 ("Rule 46") and the Orange  
17 County Board of Supervisor Speaker Guidelines ("Speaker Guideline")<sup>2</sup>, which  
18 prohibits "[e]ach person who addresses the Board" from "making personal,  
19 impertinent, slanderous or profane remarks to any member of the Board, staff or  
20 the general public," prohibit and regulates pure speech and other expressive  
21 activity in open and public Orange County Board of Supervisor meetings.

22 35. Rule 46 and the Speaker Guideline discriminate among speech and  
23 other expressive activity on the basis of content and/or viewpoint, prohibiting and  
24 prescribing penalties for speech of particular content or viewpoint while speech of  
25 different content or viewpoint, even if expressed in the same time, place, and  
26 manner, is not proscribed or regulated.

27 \_\_\_\_\_  
28 <sup>2</sup> There are various speaker guidelines, Plaintiff only challenges the  
guideline that proscribes certain remarks.

1           36. Defendants lack either a compelling or substantial legitimate  
2 government interest in regulating speech and expression in the manner  
3 accomplished by Rule 46 and the Speaker Guideline and by the related actions  
4 carried out against Mr. Fitzgerald at the July 27, 2010 and August 23, 2011  
5 meetings.

6           37. Rule 46 and the Speaker Guideline are not sufficiently narrowly  
7 tailored to serve any appropriate government interest, or are otherwise  
8 unreasonable.

9           38. Rule 46 and the Speaker Guideline are unduly vague and ambiguous.  
10 Neither provides adequate notice since they both fail to define key terms that  
11 would indicate what speech may be permitted.

12           39. Defendants discriminated against Mr. Fitzgerald and arbitrarily and  
13 unreasonably restricted his speech at open and public Orange County Board of  
14 Supervisors meetings because of the content and/or viewpoint of his speech.

15           40. Defendants' actions in interrupting Mr. Fitzgerald's speech to scold  
16 him for the viewpoint he expressed chills the future speech of Mr. Fitzgerald and  
17 others who wish to speak at OCBOS meetings.

18           41. By leaving in place, enforcing, and/or threatening to enforce Rule 46  
19 and the Speaker Guideline, Defendants deprive Mr. Fitzgerald and others of rights  
20 guaranteed by the First and Fourteenth Amendment of the United States  
21 Constitution.

22           42. Defendants continue to chill the constitutional rights of Mr.  
23 Fitzgerald, as well as other people who wish to speak out and criticize the actions  
24 of public officials in Orange County, by enforcing or threatening to enforce a  
25 vague, content-based, and/or viewpoint discriminatory rule and speaker guideline  
26 that restrict protected expression at open and public Orange County Board of  
27 Supervisor meetings.

28           43. All acts to restrict speech based on the viewpoint expressed or to chill

1 or discourage speech that Rule 46 and the Speaker Guideline prohibit therefore  
2 should be enjoined, and their previous unconstitutional enforcement remedied and  
3 nullified.

4 SECOND CLAIM FOR RELIEF

5 [Against Each and Every Defendant]

6 (Free Speech Under Cal. Const. art. I § 2)

7 44. Plaintiff realleges and repleads all the allegations of the preceding  
8 paragraphs of this Complaint and incorporates them here by reference.

9 45. Defendants' rules, policies, and action, as alleged in this Complaint,  
10 deprive Mr. Fitzgerald, and the general public desiring to speak at Orange County  
11 Board of Supervisor meetings, of the right to free speech as guaranteed by Article  
12 I, section 2 of the California Constitution.

13 THIRD CLAIM FOR RELIEF

14 [Against Each and Every Defendant]

15 (42 U.S.C. § 1983 - Procedural Due Process Under U.S. Const. Amend. XIV)

16 46. Plaintiff realleges and repleads all the allegations of the preceding  
17 paragraphs of this Complaint and incorporates them here by reference.

18 47. Defendants' actions deprived Mr. Fitzgerald of his constitutionally  
19 protected liberty interest in speaking at OCBOS meetings and in petitioning the  
20 government for redress of his grievances without due process of law.

21 48. By arbitrarily silencing Mr. Fitzgerald and barring him further  
22 audience before the Board at an open and public meeting without first having  
23 given Mr. Fitzgerald notice of his allegedly disruptive conduct and a meaningful  
24 opportunity to be heard, Defendants denied Mr. Fitzgerald due process of law in  
25 violation of the Fourteenth Amendment to the United States Constitution.

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FOURTH CLAIM FOR RELIEF

[Against Each and Every Defendant]

(Due Process Under Cal. Const. art. I § 7)

49. Plaintiff realleges and repleads all the allegations of the preceding paragraphs of this Complaint and incorporates them here by reference.

50. Defendants' actions deprived Mr. Fitzgerald of his constitutionally protected liberty interest in speaking at OCBOS meetings and in petitioning the government for redress of his grievances without due process of law.

51. By arbitrarily silencing Mr. Fitzgerald and barring him further audience before the Board at an open and public meeting without first having given Mr. Fitzgerald notice of his allegedly disruptive conduct and a meaningful opportunity to be heard, Defendants denied Mr. Fitzgerald due process of law in violation of the Fourteenth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

1. Because of the actions alleged above, Mr. Fitzgerald seeks judgment against Defendants as follows:

A. That Defendants be enjoined in perpetuity from enforcing Rule 46 and the Speaker Guidelines or from undertaking other acts to discourage the speech the rule and guidelines unlawfully prohibit;

B. That Rule 46 and the Speaker Guideline and any attempts to discourage the protected speech that the rule and guideline unlawfully prohibit be declared null and void as unconstitutional in violation of the First and Fourteenth Amendment of the United States Constitution and the California Constitution;

C. A declaration that Rule 46 and the Speaker Guideline is unconstitutional as written and as enforced against Plaintiff, as well as a declaration that Defendants' actions to suppress and discourage Plaintiff's speech is unconstitutional;

D. Nominal damages be awarded;

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- E. For the costs of suit;
- F. For an award of reasonable attorney fees to counsel for Plaintiff;
- G. For any other such relief that the Court considers just and proper.

Dated: March 12, 2012.

ACLU FOUNDATION  
OF SOUTHERN CALIFORNIA

By:   
Bardis Vakili

Attorneys for Plaintiff  
William D. Fitzgerald