IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

GALE COOPER, *pro se*

Plaintiff-Appellant,

vs.

CT. Appeals No. 33,876

RICK VIRDEN, LINCOLN COUNTY SHERIFF
and CUSTODIAN OF THE RECORDS OF
THE LINCOLN COUNTY SHERIFF'S OFFICE;
and STEVEN M. SEDERWALL, FORMER
LINCOLN COUNTY DEPUTY SHERIFF

Defendants-Appellees.

APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT,
SANDOVAL COUNTY, NEW MEXICO
CAUSE NO. D-1329-CV-2007-01364
HON. GEORGE P. EICHWALD, PRESIDING

BRIEF IN CHIEF OF PLAINTIFF-APPELLANT GALE COOPER

WITH REQUEST FOR ORAL ARGUMENT

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NATURE OF CASE

OVERVIEW

Prevailing Plaintiff Gale Cooper's (**"Cooper"**) case presents total, brazen, and protracted violation of the Inspection of Public Records Act (NMSA 1978, §§ 14-2-1 to - 12) **("IPRA")**, and non-IPRA violations by contempt of court orders and evidence tampering by forgery. Appealed is the District Court's **("Court")** award of minimal IPRA damages for maximal IPRA violations by ignoring § 14-2-11's relevant statutory damages; and relying on irrelevant § 14-2-12(D) "actual damages" from *Faber v. King*, 2013-NMCA-080, 306 P.3d 519, cert. granted, 2013-NMCERT-007, 308 P.3d 134 **("*Faber v. King*")** (overruled by *Faber v. King*, 2015-NMSC-015, 348 P.3d 172) **("Opinion")**. That Opinion is also inapplicable by fatal flaws meriting overruling. Appealed too is wrongful reduction of IPRA's costs award. If Cooper's violators had complied, taxpayer funding would have totaled just postage. (**Tr. 12/18/13, 57**) At stake in this appeal is protecting IPRA's intended civil rights empowerment of all New Mexicans.

BACKGROUND

A. Law Enforcement Records in Question

1. "Case 2003-274 is a murder case, filed in 2003 in the Lincoln County Sheriff's Department by Sheriff Tom Sullivan … [**"Sullivan"**] and his commissioned Deputy Steve Sederwall … [**"Sederwall"**] to be solved by forensic

DNA acquisitions and matching, and accusing suspect Pat Garrett [**"Garrett"**] of murdering an innocent victim instead of Billy the Kid; with sub-investigation of Billy the Kid's double homicide of Deputies James Bell and Robert Olinger." (**RP 2278 FOF 5**)

B. <u>Cooper's Whistleblowing</u>

1. Cooper, a Billy the Kid (**"the Kid"**) author (**Tr. 1/21/11, 34, Plaintiffs Ex. 1**), knew Case 2003-274 was a DNA hoax and law enforcement fraud by its Probable Cause Statement (**RP 1213-1214; Tr. 11/20/09, 10**; **Tr. 1/21/11, Plaintiffs Ex. 10**) and its 2003 "Mayor's Report" (**Tr. 2/4/13, 60-62, Plaintiff Cooper Ex. 20**); since Garrett's killing of the Kid is certain, no valid reference DNA for the Kid exists, and the Kid's identity claimants are debunked. (**Tr. 1/21/11, 36-46, 49-55; Tr. 1/21/11, Defendants Ex. I; Tr. 12/18/13, 7-10**)

2. Cooper hired lawyers to block its exhumation petitions. (**RP 166-178, 1215-1217; Tr. 11/20/09, 14-17; Tr. 1/21/11, Plaintiffs Ex. 5; Tr. 12/18/13, 9**)

> "From 2003 to 2004, Case 2003-274's New Mexico exhumation attempts on Billy the Kid and his mother for matching DNA were legally blocked so no DNA was obtained." (**RP 2278 FOF 6**)

3. Case 2003-274 continued by claiming the Kid's DNA was obtained:

> "In 2004 Billy the Kid's DNA was allegedly obtained for Case 2003-274 by Dr. Henry Lee … [**"Lee"**] from an old carpenter's bench [**"bench"**] on which Billy the Kid laid after being shot. Lee's specimens were sent for DNA processing to Orchid Cellmark Lab … [**"Orchid Cellmark"**] in Texas.

> "In 2005 newly elected Lincoln County Sheriff Rick Virden [**"Virden"]** deputized Sullivan and Sederwall to continue Case 2003-274 [**collectively "lawmen"**] by exhuming Billy the Kid's identity claimants John Miller and "Brushy Bill" Roberts for DNA match with Lee's bench DNA to solve the Garrett murder.
>
> "On May 19, 2005, for Case 2003-274, John Miller and William Hudspeth were exhumed in Arizona [**"Arizona exhumations"**] and their bones were taken to Orchid Cellmark for DNA extractions and for DNA matching to the carpenter's bench DNA." (**RP 2278 FOF 7-9)**

4. From 2003 to 2006, Cooper's IPRA requests for Case 2003-274's DNA records were denied by § 14-2-1(A)(4)'s law enforcement exception. **(RP 183, 1234; Tr. 11/20/09, 18; Tr. 1/21/11, Plaintiffs Ex. 8; Tr. 2/4/13, 147; Tr. 12/18/13, 18, 56-57**)

5. Cooper obtained other Case 2003-274 documents:

(1) Virden's deputizing Sullivan and Sederwall with commissioned deputy cards (**RP 179, 183; Tr. 11/20/09, 17; Tr. 1/21/11, Plaintiffs Ex. 8**; **Tr. 12/18/12, Plaintiff Cooper Ex's. 6, 7**);

(2) Arizona exhumations' "Supplemental Report" (**RP 164-165; Tr. 11/20/09, 14; Tr. 12/18/12, 110-111, Co-Plaintiffs Ex. 9; Tr. 12/18/13, 24-25**); and

(3) Lee's confirming its DNA consultation. (**RP 54; Tr. 11/20/09, 11-12; Tr. 12/18/12, Plaintiff Cooper Ex. 8**)

6. Cooper published Case 2003-274 exposés: *MegaHoax* (**Tr. 1/21/11, 35, Plaintiffs Ex. 2**) and *Cracking the Billy the Kid Case Hoax.* (**Tr. 12/18/13, 8**)

SUMMARY OF RELEVANT PROCEEDINGS

IPRA REQUEST PHASE

A. Wrongful Denial by No Records and No Proper Denial Letter

1. In 2007, Cooper hired a lawyer to request Case 2003-274's DNA records. (**RP 6-7, 57-58; Tr. 1/18/11, 59-61, Plaintiffs Ex. 3; Tr. 12/18/13, 10, 27, 31, 46**):

> "From April 24, 2007 to June 26, 2007 Plaintiff Cooper made IPRA record requests from Sheriff Virden for Case 2003-274 through her then attorney Mickey Barnett … Requested records were for:
>
> A. Lee's DNA recoveries from the carpenter's bench;
> B. Orchid Cellmark's DNA extractions from Lee's specimens;
> C. Orchid Cellmark's DNA extractions for the two Arizona bodies; and
> D. Orchid Cellmark's DNA matchings for the carpenter's bench to the bodies.
>
> "In the request phase, no records were given and their denials were improper; without valid IPRA exceptions; with Sullivan and Sederwall after having resigned their deputyship on June 21, 2007 admitting to records possession, but calling them private hobby 'trade secrets;' with Virden denying having any Case 2003-274 records; and with Virden not attempting to recover records from Sullivan, Sederwall, Lee, or Orchid Cellmark." (**RP 2278-2279 FOF 10-11**)

2. Cooper got no proper denial letter, just irrelevant excuses mailed on: April 27th, May 11th, 14th, and June 22nd, 26th of 2007. (**RP 39-53; Tr. 2/4/13, 148-158; Plaintiff Cooper Ex. 22; Tr. 12/18/13, 22, 52, 67-70**)

> "Virden did not comply with Section 14-2-11(B)(1-3) NMSA 1978, "Procedure for Denied Requests: by providing 'the requester with a written explanation of the denial' listing: 'the records sought', 'each person responsible for the denial,' and 'mailed to the person requesting the records within fifteen days after the request.' " (**RP 2282 COL 8**)

3. Cooper got no requested records. (**Tr. 2/4/13, 146; Tr. 12/18/13, 53**) Virden falsely claimed having no records "whatsoever" (**RP 46; Tr. 1/21/11, 130-132; Plaintiffs Ex. 9**) by concealing his file **(BIC 6)**, while claiming Deputies Sederwall and Sullivan refused to return Case 2003-274's records. (**RP 25-26, 96-98**). Sederwall and Sullivan, hiding Sullivan's past use of IPRA's law enforcement exception (**BIC 3**), claimed "hobbyist" records. (**RP 20-37, 97, 104-105; 190-193; 216-219; Tr. 12/18/12, Co-Plaintiff Ex. 4 at 6-7**).

> "In their June 21, 2007 'Memorandum' to Virden, Sullivan and Sederwall admitted to having Case 2003-274 records, but called them private property, while at the same time resigning their public official positions as deputies." (**RP 2284 COL 16**)

IPRA ENFORCEMENT PHASE LITIGATION

A. Total IPRA Violations

1. OVERVIEW: Litigation against the lawmen began on October 15, 2007 (**RP 4-54**), with Co-Plaintiff *De Baca County News* (**"Co-Plaintiff"**) for: "Defendants' refusal to turn over requested DNA records of Case No. 2003-274, 'Billy the Kid Case.' " (**RP 2277 FOF 4**) In over six (6) years and twelve (12) hearings, no requested records were given (**BIC 4**) and no valid exceptions were used. Virden made no valid records requests, denied knowledge of records existence, alleged IPRA's responsibility entailed possession only, and claimed his deputies took the records. (**RP 2278-2280 FOF 11, 15, 20; RP 2283 COL 10; Tr. 11/20/09, 13, 21, 24-25, 29, 36; Tr. 3/9/10, 8; Tr. 9/9/10, 15; Tr. 1/21/11, 12,**

23-24, 26, 107-108, 129; Tr. 1/17/12, 20, 37; Tr. 5/31/12, 23, 32; Tr. 2/4/13, 127, Defendants Ex. B; Tr. 12/18/13, 17, 19-20) Sullivan and Sederwall admitted to having records, but feigned IPRA immunity as "hobbyists." (**RP 2279 FOF 13; RP 2284 COL 15, 16; Tr. 11/20/09, 20, 28; Tr. 9/9/10, 21-22; Tr. 1/21/11, 31-32, 165-166; Tr. 5/31/12, 23; Tr. 12/18/12, 134, Co-Plaintiff Exhibit 4 at 6-7; Tr. 12/18/13, 20-22, 59**) However, Virden confirmed their commissioned deputyships. (**Tr. 12/18/12, 92-93, 98; BIC 5**)

> "Without statutory justification, no requested records were produced by the Defendants" … "The requested records exist, and have been recoverable from the time of the request phase" … "Virden produced no requested records and gave no statutory justification for non-recovery, in violation of IPRA." "In both the request and enforcement phases, Virden's records recovery refusal[s] have been misplaced and ignored IPRA." (**RP 2282 COL 4, 5, 7, 9**)
>
> "[Sullivan and Sederwall had to give records] [a]s public officials … commissioned deputies … [and] an agent." (**RP 2283-2284 COL 13-15**)

2. Defendants defied court orders that the records were public, by public officials, and required turn-over. (**RP 299-300, 470-471, 750-751, 1368-1370**)

3. Plaintiffs' 2008 subpoena of Case 2003-274's one hundred ninety-three (193) page file demonstrated its Probable Cause Statement, DNA investigation; "Contact List" for getting DNA records (**RP 2279 FOF 14; Tr. 1/21/11, 133-135; Tr. 12/18/12, 100-101, 112, 144-161, Plaintiff Cooper Ex's. 2 (3A), Exhibit 3, Co-Plaintiff Ex. 5; Tr. 12/18/13, 15**); Virden's participation since 2003 (**RP 27**); and its Arizona exhumations and Texas exhumation attempt.

(**Tr. 12/18/12, 99-100, 147, Co-Plaintiff Ex. 9; Tr. 1/21/11, 105-106, Defendants Ex. G**).

4. Partial Summary Judgment of November 20, 2009 found for Plaintiffs. (**RP 2279 FOF 16; Tr. 11/20/09, 39**)

5. In August 18, 2008 depositions, Sullivan and Sederwall admitted knowing bench and Arizona exhumation DNA results were at Orchid Cellmark, and Sederwall's possessing requested records. (**RP 2279 FOF 13; RP 877, 879, 1239, 2049-2050; Tr. 9/9/10, 11-12**) In deposition of June 26, 2012, Sederwall admitted knowing Orchid Cellmark's client contact for records release was Calvin Ostler. (**RP 2281 FOF 26; RP 2050, 2068-2069; Tr. 1/21/11, 148, 168, 183; Tr. 2/2/13, 72; Tr. 12/18/13, 25-26**)

6. In 2010, Virden feigned records requests. (**RP 361-368, 674-682, 2049, 2071; Tr. 1/21/11, 111-114; Plaintiffs Ex's. 6, 7, Defendants Ex's D, J; Tr. 12/18/12, 174-181, Plaintiff Cooper Ex's 12-14**; **Tr. 12/18/13, 16**) :

> "On October 26, 2010 Virden first made records requests to Lee and Orchid Cellmark but never followed up to recover the records after Lee responded that he had one report, and Orchid Cellmark responded that it would send the records if released by their client.
>
> "In his June 27, 2012 deposition Virden admitted to: waiting three (3) years into litigation to write record requests to Lee and Orchid Cellmark; not requesting from Lee the report when Lee wrote back that he had one; and not trying to find out the client's name after Orchid Cellmark wrote back that it was required to send Virden the requested records.

> "At an Evidentiary Hearing conducted on December 21 [sic – 18], 2012 and February 4, 2013 Virden admitted: that the [Co-Plaintiff's] subpoenaed Orchid Cellmark DNA records were from Case 2003-274 but gave no valid explanation for waiting three (3) years to begin records recovery or for not following up on the resulting responses to get the records." (**RP 2279, 2281 FOF 18, 27, 29**)

7. In September of 2010, Virden offered Cooper's lawyer requested Lee and Orchid Cellmark records *if she dismissed him*; disproving Virden's past claims of records' inaccessibility. (**Tr. 1/17/12, 28-29, Plaintiffs Ex's. 3, 3A**)

8. On February 3, 2011, court-ordered Sederwall feigned an Orchid Cellmark request letter by omitting "Case 2003-274," citing a non-existent "event," and omitting the client's name. (**RP 668, 1116; Tr. 2/4/13, 28-30, Co-Plaintiff Ex. 20; Tr. 12/18/13, 60**)

9. From 2010 to 2012, Defendants feigned records turn-overs and "hobbyist" status by giving Plaintiffs and Court forged Lee reports concealing Case 2003-274's connection. (**RP 2281 FOF 26; RP 360, 814-874, 2049; Tr. 3/9/10, 8-9, 13; Tr. 9/9/10, 21; Tr. 1/21/11, 125, 146, 169-171, 183, Defendants Ex's. E, F; Tr. 5/31/12, 15-16; Tr. 12/18/12, Plaintiff Cooper Ex. 9-11; Tr. 2/4/13, 41-46, 50, 58, Plaintiff Cooper Ex's 17, 18, Co-Plaintiff Ex. 18; Tr. 12/18/13, 22-23)**; Hearings were held for non-IPRA sanctions for forgery and contempt. (**RP 2279-2281, FOF 17, 19, 20-23, 25-26, 29; RP 473-524; 576-582, 801-896; 1123-1239; 1275-1306, 2067; Tr. 1/17/12, 26, 33; Tr. 5/31/12, 14; Tr. 12/18/13, 14,18, 22, 35-36, 60**)

10. From 2010 to 2012, Sederwall's website sold Case 2003-274 records. (**RP 2284 COL 16; Tr. 9/9/10, 9; Tr. 9/9/10, 21; Tr. 1/21/11, 14; Tr. 12/18/12, Plaintiff Cooper Ex. 1; Tr. 12/18/13, 26, 60**)

11. On April 20, 2012, Co-Plaintiff's non-IPRA subpoena of Orchid Cellmark's Case 2003-274 records yielded one hundred thirty-three (133) pages, proving requested records' existence. (**RP 2280 FOF 24; RP 1262-1269; 2074-2078; Tr. 5/31/12, Co-Plaintiff Ex. 4; Tr. 12/18/12, 113-121, Co-Plaintiff Ex's 11-15; Tr. 12/18/13, 17, 32-33**). And Co-Plaintiff's 2012 affidavit from Lee reconfirmed Lee's DNA investigation was for Case 2003-274. (**RP 1080-1081**)

12. On March 26, 2013, plaintiffs' attorneys and Co-Plaintiff settled in court-ordered mediation. (**Tr. 9/21/12, 3**)

B. <u>Cooper's Arguments for IPRA Damages and Costs</u>

1. Cooper argued as *pro se* from November 14, 2012 (**RP 1401-1411, 1477-1482, 1830-1845, 1855-2027, 2074-2078, 2190-226, 2232-2259, 2287-2291, 2308-2352**); with a December 18, 2013 Hearing on IPRA damages and costs, and non-IPRA sanctions against Defendants. She argued, as a whistleblower (**Tr. 12/18/13, 13-14, 35**), for § 14-2-11's maximal statutory damages for maximal violations of improper denial letter and wrongful withholding (***Id.*, 6-7, 13, 27-34, 53-56, 58, 61, 70-72**) of all four (4), requested, DNA, records categories. (***Id.*, 10, 27, 31, 46**)

2. IPRA damages were argued as being nine hundred sixty-six thousand dollars ($966,000.00):

> "[DR. COOPER:] [This case] has to do with enforcement of statutory civil penalties on what's arguably the most extreme case of Inspection of Public Records Act … violation in the history of this state. In the six-year litigation … all of the records that I have requested have been willfully and wrongfully withheld. That was done in defiance of the IPRA statute, in defiance of orders and defiance of my fundamental right to inspect public records … No valid IPRA exception was used for my denials, and no IPRA deadline was met. (**Tr. 12/18/13, 6**)
>
> "IPRA sets up an award of statutory penalties for wrongful denial of my four records requests, and that's based on the legislature's intent to enforce transparency by setting strict timelines with penalties. There was no safe haven for my Defendants. (***Id.,* 27**)
>
> "Faber vs. King, of this year … stated that when IPRA damages are requested, it helps the higher courts … to say what the damages mean, are they compensatory? … Well, they are statutory damages, and IPRA gives enough information to know what they intend. Section 14-2-(8)(a) calls them penalties … Section 14-2-10 goes over remedies … 14-2-11 A, B, C made clear the specifics of the denial letter … It has to be produced in 15 days … I got no such letter … Anyway non-complying subjects the Defendants to per diem fines of up to $100 per day per records requests … Section 14-2-12(d) makes clear that this Court has the authority to act in this civil matter of IPRA enforcement. (***Id.,* 28-29**)
>
> "The per diem damages … are calculated based on the 2,415 days since my records request." (***Id.,* 30**) "That doesn't make the damages double up [for improper letter and improper records withholding]. It just reenforces that a Plaintiff can get enforcement under either impropriety or both." (***Id.,* 51**) "That brings my total of $100 a day from the first day of noncompliance to today, per request, to a total of $966,000. THE COURT: What was that amount again? DR. COOPER: $966,000. And those damages would be categorized as … statutory civil penalties of per diem damages as mandatory fines for noncompliance." (***Id.,* 34**)

3. Costs were argued (**RP 2171-2273, 2287-2291**) and presented: "[DR. COOPER] … "My ongoing costs … are $19,594.56." (**Tr. 12/18/13, 30**)

DECISION

A. IPRA Damages Award of May 15, 2014

1. IPRA's damages award used *Faber v. King*'s "actual damages":

> "Damages for enforcement of a denied request to inspect records are governed by Section 14-2-12(D) … *Faber v. King.*
> "Plaintiff Cooper has established that she has a right to recover but has not established that she is entitled to compensatory damages and is awarded one thousand dollars ($1000.00) as nominal defendants [sic - damages] against Defendants." (**RP 2285 COL 20, 24**)

B. IPRA Costs Award of June 4, 2014

1. *Judgment* renamed Cooper's costs "past attorney fees" of "ten thousand, nine hundred ninety-four dollars and twenty-eight cents ($10,994.28); reducing Cooper's costs to eight thousand, six hundred twenty-nine dollars and fifty six cents ($8,629.56)." (**RP 2306 Judgment 5, 6**)

ARGUMENT

STANDARD OF REVIEW: The meaning of the language in a statute is a question of law that the appellate court reviews *de novo. Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61.

SUMMARY

The Court erred in awarding Cooper minimal IPRA damages for maximal IPRA violations by ignoring § 14-2-11's statutory, graded, per day damages; and relying on irrelevant and fatally flawed *Faber v. King's* § 14-2-12(D)'s "actual damages." The Court also erroneously reduced Cooper's costs award.

POINT I:
COOPER MADE PROPER REQUESTS AND GOT IMPROPER DENIALS

A. Summary: Cooper, needing no requesting reason, like personal injury, was wrongfully denied by getting no requested records and no proper denial letter under § 14-2-11(A)(B). Prevailing in § 14-2-12(A)(2) enforcement, but getting no requested records, she argued for § 14-2-11(C)(1-4)'s maximal penalty-damages.

B. An Intended Records Requester

1. Under § 14-2-5 "Purpose of Act," Cooper belongs to "all persons … entitled to the greatest possible information regarding … official acts of public officers" (**RP 2281 COL 1**); and was exercising her "fundamental right":

> "A citizen has a fundamental right to have access to public records." *State of New Mexico ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 90 N.M. 790, 568 P.2d 1236.

2. Cooper was not burdened to state a requesting reason (**RP 2281 COL 2**):

> "No person requesting records shall be required to state the reason for inspecting." § 14-2-8(C), Procedure for Denied Requests.
>
> "Nowhere in *Newsome* does our Supreme Court place the burden on the party requesting documents." *City of Farmington v. The Daily Times*, 2009-NMCA-057, ¶ 13, 146 N.M. 349, 210 P.3D 246.

3. But saving New Mexico's Old West history and tourism from a hoax (**Tr. 1/20/09, 8, 22; Tr. 1/21/11, 36-37; Tr. 12/18/13, 13**) was "socially beneficial," as per *Rio Grande Sun vs. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091,¶ 9, 287 P.3d 318; and followed IPRA's whistleblower mandate:

> "… so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are *honestly … performing their function as public servants*." *Newsome*, 1977-NMSC-076, ¶ 16, 90 N.M. 790, 568 P.2d 1236. (emphasis added)
>
> "By giving enforcement power to any person whose written request has been denied, *IPRA's provisions create 'private attorneys general' for 'more effective enforcement' of IPRA* than … if only the attorney general … could enforce the statute. *San Juan*, 2011–NMSC–011, ¶ 12, 150 N.M. 64, 257 P.3d 884. (emphasis added)

C. <u>Request Phase Had Total Improper Denials (BIC 4, 6-8, 15)</u>

1. Violation was total by: (1) <u>No Requested Records</u>: § 14-2-11(A)'s "written request for inspection … [was not] permitted within fifteen days of receipt by the custodian;" i.e., Cooper got no requested records to inspect; and (2) <u>No Proper Denial Letter</u>: She got no "written explanation for denial" using § 14-2-1(A)(1-8)'s exception(s) or meeting § 14-2-11(B)'s mandate that "[t]he written denial *shall*:

> (1) describe the records sought;
> (2) set forth the names and titles or positions of each person responsible for the denial; and
> (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received."

D. <u>Standing for Litigation Was "Injury in Fact"</u>

1. With written records request "deemed denied" under §14-2-11(A), Cooper qualified for "remedies provided;" including §14-2-12(A)(2)'s "action to enforce."

2. Cooper's standing was "injury in fact" by wrongful IPRA denials (**BIC 4, 6-8, 15**):

> "[I]njury in fact," is "[a]n actual or imminent invasion of a legally protected interest … An injury in fact gives the victim standing to bring an action for damages." *Black's Law Dictionary* 801 (8th ed. 2004).

3. Cooper litigated as § 14-2-12(A)(2)'s "person whose written request has been denied" - as could any New Mexican. Personal injury was irrelevant:

> "Unlike a party seeking discovery in civil litigation, a party requesting public records under IPRA *need not assert any particular need for disclosure*." *Republican Party of N.M. v. New Mexico Tax. & Rev. Dep't*, 2012-NMSC-026, ¶ 49, 283 P.3d 853. (emphasis added)

POINT II:
THE COURT ERRED IN AWARDING MINIMAL IPRA DAMAGES FOR MAXIMAL IPRA VIOLATIONS

A. <u>Summary</u>: The Court erred in awarding minimal IPRA damages of one thousand dollars ($1,000.00), instead of justified IPRA damages of nine hundred sixty-six thousand dollars ($966,000.00), by ignoring statutory intent of requester empowerment and violator deterrent of per day, graded penalty-damages; relying on irrelevant and fallacious *Faber v. King's* "actual damages;" repeating *Faber v. King's* fatal errors; ignoring § 14-2-11(C)'s penalty-damages; misusing § 14-2-12(D); contradicting findings of maximal violations by minimal damages award; and evincing bias by shielding Defendants from maximal penalty-damages. The cumulative effect of the errors was Cooper's unjust IPRA damages award, meriting its reversal.

B. The Court Found Total IPRA Violation by Improper Written Denial and by No Requested Records Production

1. Virden was in total IPRA violation by giving no proper denial letter (**BIC 4**) and no requested records:

> "Virden's records recovery refusal … ignored IPRA by arguing that recovery pertains only to records in direct physical possession. Section 14-2-6(A) NMSA 1978 states enforcement custodial responsibility "regardless of whether the records are in that person's actual physical custody and control …*Toomey v. Truth or Consequences,* N.M. Ct. Ap. No. 30,795, P.4. (2012) clearly stated 'public agencies must produce all record[s], even those held by or created by a private entity 'on behalf of' the public agency.['] The DNA records of Lee and Orchid Cellmark were held on behalf of Lincoln Sheriff's Office …and are intrinsic to solving its Pat Garrett murder Case 2003-274.
>
> "Virden was obligated to recover records from it [sic- his] deputy agents. *Ronald A. Coco, Inc. v. St Paul's Methodist Church of Las Cruces, N.M., Inc.*, 78, N.M. 97, 99, 428 P.2d 636, 638 (1967).
>
> "Ignorance of records existence was argued by Virden to refuse recovery. Ignorance is not an IPRA exception under Section 14-2-1(A)(1-8) NMSA 1978." (**RP 2282-2283 COL 9-11**)
>
> "The burden is upon the custodian to justify why the records sought to be examined should not be furnished." *Newsome,* 1977-NMSC-076, ¶ 35, 90 N.M. 790, 568 P.2d 1236.

2. Sederwall and Sullivan were in total IPRA violation by giving no requested records:

> "As public officials, under Section 14-2-5 … [they had to provide records as] 'an integral part of the routine duties of public officers and employees.'
>
> "As commissioned deputies, under Section 13 [sic - 14]-2-11(B)(2) NMSA 1978, along with Virden, they were 'responsible for the denial of records.' As Virden's deputies, they were his agents …3 Am. Jur. 2d Agency Section 18, at 422 (2002), Section 4-41-9 NMSA 1978." (**RP 2283-2284 COL 13, 14**)

C. The Court Erred by Reliance on the Irrelevant *Faber v. King* Decision for Determining Cooper's IPRA Damages Award

1. Knowing whistleblower Cooper argued for statutory damages (**BIC 9-10**), the Court erred by using irrelevant "actual damages" from *Faber v. King* - where Plaintiff Daniel Faber himself claimed "compensatory damages." (*Motion for Rehearing of Petitioner-Respondent Daniel M. Faber* at page 9, *Faber v. King*, 2015-NMSC-015, 348 P.3d 172.)

2. Using *Faber v. King* violated *stare decisis,* a "doctrine of precedent … for a court to follow earlier judicial decisions *when the same points arise again in litigation*. *Black's Law Dictionary* 1443 (8th ed. 2004). (emphasis added). Personal injury precedent is inapplicable to whistleblower Cooper:

> "[F]or the principle of stare decisis to apply, the prior case must be binding precedent." *Moses v. Skandera*, 2015-NMCA-036, ¶ 21, 346 P.3d 396.

3. Ignored was that *Faber v. King* was "so unworkable as to be intolerable" *Trujillo v. City of Albuquerque,* 1998-NMSC- 031, ¶ 34, 125 N.M. 721, 965 P.2d 305, since it unjustly minimized Cooper's IPRA damages award; thus failing to:

> "… take care to avoid adoption of a construction that would 'render the statute's application absurd or unreasonable or 'lead to injustice or contradiction.' " *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182, 218 P.3d 868 (quoting *N.M. State Bd. of Educ. v. Bd. of Educ.*, 95 N.M. 588, 591, 624 P.2d 530, 533 (1981)).

4. Applying *Faber v. King* imposed a "harm suffered" requirement contrary to IPRA's shield from presenting reasons, violated Cooper's "fundamental right" of inspection, and discriminated for lack of personal injury. (**BIC 12-13**)

5. Applying *Faber v. King*, imposed irrelevant personal injury criteria of "nominal" and "compensatory" damages. (**BIC 11**)

6. And *Faber v. King's* Opinion *does uphold* § 14-2-11's statutory damages (**BIC 19, 27-29**), for which Cooper argued and qualified. (**BIC 9-10, 12-14**)

7. The Court further erred in formulating Cooper's IPRA damages award by replicating *Faber v. King's* fatal errors. (**BIC 22-35**)

D. <u>The Court Erred by Ignoring IPRA's Statute and Relevant Case Law</u>

1. The Court had to apply proper statutory interpretation:[1]

> "Courts are to give the words used in the statute their ordinary meaning unless the Legislature indicates a different intent." *State ex rel. Children, Youth & Families Dep't v. Carl C.*, 2012-NMCA-065, 281 P.3d 1242.

2. The Court erred by ignoring that IPRA's remedies are "for all":

> "IPRA's enforcement actions … serve to promote open government *for all, not just for individual litigants*, and are integral to the statute's purpose." *See* §§ 14–2–11, –12. *Edenburn v. New Mexico Dept. of Health*, 2013-NMCA-045, ¶ 36, 299 P.3d 424. (emphasis added)
>
> "IPRA includes remedies to encourage compliance and facilitate enforcement.... [b]y *giving enforcement power to any person whose written request has been denied*." *San Juan*, 2011–NMSC–011, ¶ 12, 257 P.3d 884. (emphasis added)

[1] More on statutory interpretation: **BIC 23-24**

3. The Court erred by ignoring the statute's language and intent of § 14-2-8(A)'s "penalty," § 14-2-11(C)(1-4)'s penalty-damages, and its precedent cases for "sought" "enforcement power" by graded penalties for egregiousness having "punitive intent" goad for the "wrong to be remedied":

> "In ascertaining legislative intent, we look not only to the language used in the statute, but also to *the object sought to be accomplished and the wrong to be remedied*." *Patterson v. Globe Am. Cas. Co.*, 1984-NMCA-076, ¶ 7, 101 N.M. 541, 685 P.2d 396. (emphasis added)
>
> "A plaintiff who prevails in an IPRA enforcement suit can obtain … damages … not to exceed one hundred dollars a day … and 'payable from the funds of the public body' … to encourage prompt compliance." *San Juan*, 2011–NMSC–011, ¶ 13, 257 P.3d 884.
>
> "*The legislature's punitive intent in imposing a cost for non-disclosure is evident*." *Board of Comm'rs of Doña Ana County v. Las Cruces Sun-News*, 2003- NMCA-102, ¶ 29, 134, N.M. 238, 76 P.3d 36. (emphasis added)[2]

E. The Court Erred by Ignoring That § 14-2-11(B)(C) Applies to Cooper's Damages Award for No Proper Denial Letter

1. The Court concluded correctly: "Virden did not comply with Section 14-2-11(B)(1-3) NMSA 1978 [for proper denial letter; so] 14-2-11(C) … subjects the custodian to monetary damages." (**RP 2282 COL 8; BIC 4**). But it ignored § 14-2-11(B)(C)(1-4)'s penalty-damages remedy: "Damages shall:

> (1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;
> (2) not to exceed one hundred dollars ($100) per day;
> (3) accrue from the day the public body is in noncompliance until a written denial is issued; and
> (4) be payable from the funds of the public body."

[2] Additional cases (**BIC 24-27**)

2. Instead, the Court misstated *Faber v. King* to claim § 14-2-12(D) - not § 14-2-11 - governs Cooper's IPRA damages:

> "Damages for enforcement of a denied request to inspect records are governed by Section 14-2-12(D) NMSA 1978, not Section 14-2-11(C) NMSA 1978." (**RP 2285 COL 20; BIC 11**)

3. In truth, *Faber v. King* alleges *only that no "standard" exists for § 14-2-12(D)'s damages* (**BIC 33**); not that § 14-2-11(C) has no "standard" for awarding.

4. In fact, the Opinion supports § 14-2-11's statutory, graded penalties for improper denial letters (**BIC 27-29**):

> "Statutory damages are those available to a litigant without proof of actual injury because both the existence and the amount of the damages are established by statute. See Marauder Corp. v. Beall, 301 S.W.3d 817, 822 (Tex. App. 2009) (noting that "proof of actual damages is not a prerequisite to recovery of the damages" authorized by statute). *Section 14-2-11 authorizes statutory damages of up to $100 per day. Section 14-2-11(C)(2)*; see Edenburn v. N.M. Dep't of Health, 2013-NMCA-045, ¶ 5, 299 P.3d 424." (**Opinion, ¶¶ 4-10**) (emphasis added)

5. So the Court's choosing *Faber v. King's* § 14-2-12(D) "actual damages" to derive Cooper's IPRA "nominal damages" of one thousand dollars ($1,000.00) (**RP 2285 COL 24**) lacked foundation for ignoring § 14-2-11 to claim:

> "The statutory maximum per day penalty section of 14-2-11(C) NMSA 1978 does not create any standard for the amount of damages under Section 14-2-12(D) NMSA 1978.
>
> "Section 14-2-12(D) provides for damages, "which we hold must be somehow specified as to their nature by the district court." *Faber v. King*, 2013-NMCA-080 {15}." (**RP 2285 COL 20, 21**).

6. Cooper's correct award for no proper denial letter is § 14-2-11(C)(1-4)'s maximal, per day, penalty damages, with accrual continued under § 14-2-11(C)(3)'s non-compliance: "Damages shall … accrue from the day the public body is in noncompliance until a written denial is issued." That means one hundred dollars ($100.00) for each of four (4), DNA, record categories (**BIC 4**), at two thousand four hundred fifteen (2,415) days from first day of non-compliance to Cooper's December 18, 2013 Hearing on said damages, totaling nine hundred sixty-six thousand dollars ($966,000.00). (**BIC 10**)

F. The Court Erred in Ignoring That §§ 14-2-10 and 14-2-11(A)(C) Apply to Cooper's Damages Award for Wrongful Denial of All Requested Records

1. Cooper's wrongful denial of all four (4) categories of DNA records (**BIC 4**) met § 14-2-10's "custodian does not permit records to be inspected" and § 14-2-11(A)'s "written request for inspection of public records [that has] not been permitted," since she got no requested records to inspect.

2. The Court even correctly cited § 14-2-11's "time-based damages":

> "To prevent stonewalling, IPRA has time based damages in NMSA Section 14-2-11. IPRA damage provisions are intended to encourage public entities' prompt compliance with records requests." (**RP 2283 COL 12**)

3. Since *Faber v. King's* Opinion is silent on damages for non-harm suffered requesters' wrongfully withheld records, its § 14-2-12(D) "actual damages" are irrelevant to determining Cooper's maximal statutory damages award.

4. The Court lacked justification to refuse award of nine hundred sixty-six thousand dollars ($966,000.00) based on two thousand four hundred fifteen (2,415) days of wrongful withholding of all four (4), requested, DNA, records categories (by Cooper's December 13, 2013 Hearing). (**BIC 10**) .

G. The Court Erred in Faulting Cooper For Not Arguing for Irrelevant "Compensatory Damages"

1. The Court also erred in its IPRA damages award of one thousand dollars ($1,000.00) by faulting non-harm suffered Cooper for not arguing for *Faber v. King's* irrelevant "compensatory damages" of § 14-2-12(D)'s "actual damages." (**RP 2285 COL 24; BIC 11**)

H. The Court Erred by Awarding Minimal IPRA Damages for Findings of Maximal IPRA Violations

1. The Court erred by contradicting its findings of maximal IPRA violations with its conclusion of minimal IPRA damages award to Cooper:

> "A conclusion of law must find support in the findings of fact." *House of Carpets, Inc. v. Mortgage Investment Co*., 1973-NMSC-095, ¶ 13, 85 N.M. 560, 514 P.2d 611 (1973) (citing *Goldie v. Yaker*, 1967-NMSC-242, 78 N.M. 485, 432 P.2d 841).
>
> "A judgment cannot stand if the conclusions upon which it rests are not supported by the findings of fact." *Gavin Maloof & Co. v. Sw. Distrib. Co.*, 1987-NMSC-103, ¶ 6, 106 N.M. 413, 744 P.2d 541 (citing *Watson Land Co. v. Lucero,* 85 N.M. 776, 517 P.2d 1302 (1974)).

2. IPRA's § 14-2-11(C) damages are mandatorily awarded in § 14-2-12(D): "The court shall award damages … to any [prevailing] person":

> "Section 14-2-11(C) … provides … the means to enforce the Act *if* the public body does not comply …[A] plaintiff is awarded mandatory costs, fees, and damages … if the plaintiff is successful in that action. *See* § 14-2-12(D)." *Derringer,* 2003-NMCA-073, ¶ 10, 133 N.M. 721.

3. Graded penalties exist in § 14-2-11(C)(1-4) to reflect maximal violations.

4. Nowhere in IPRA - or in *Faber v. King* - was the Court spared enforcing mandatory damages award of up to one hundred dollars ($100.00) per day.

I. The Court's Cumulative Errors Merit Reversal

1. The Court's cumulative errors (**BIC 16-22**) - with repeating the Opinion's errors (**BIC 22-35**) - denied Cooper a fair IPRA damages award, thus meriting that award's reversal:

> "Reversal may be required when the cumulative impact of errors during a trial is so prejudicial that a party was denied a fair trial." *Coates v. Wal-Mart Stores, Inc.,* 1999-NMSC-013, ¶ 57, 127 N.M. 47, 59, 976 P.2d 999 (citing *State v. Jett,* 111 N.M. 309, 315, 805 P.2d 78, 84 (1991)).

POINT III:
FABER V. KING'S OPINION CANNOT BE APPLIED TO COOPER'S IPRA DAMAGES AWARD BECAUSE IT IS FATALLY FLAWED

A. Summary: The Opinion is further inapplicable by Cooper's Court because its arguments for "actual damages" in § 14-2-12(D) and limited penalty-damages in § 14-2-11 are fatally flawed. It arose from appeals by undisputed IPRA violator Attorney General Gary King (**"King"**) to abolish, by his rewriting IPRA, his own penalty-damages for wrongful records withholding of about "one hundred thousand dollars ($100,000.00)." (**Opinion ¶ 34**). Its conclusions derive entirely

from invalid statutory interpretation by ignoring language, intent, and history; fallacious reasoning; strategic factual omissions; and fabrications. Its usurpation of legislative powers by inserting personal injury law reverses IPRA's stated and intended empowerment of all requesters, shields violators from full penalty-damages' goad, burdens requesters with proving harm suffered, and subjects requesters and taxpayers to stonewalling enforcement litigation. Overruling is merited and needed.

B. <u>Fatal Flaw of Violating Statutory Interpretation</u>

1. IPRA's language must be honored by the "plain meaning rule" as the voice of New Mexicans speaking through their elected legislators:

> "Our understanding of legislative intent is based primarily on the language of the statute, and we will first consider and apply the plain meaning of such language. This standard is sometimes called the 'plain meaning rule.' " *Cummings v. X-Ray Associates of New Mexico, P.C.*, 1996-NMSC-035, ¶ 44, 121 N.M. 821, 918 P.2d 1321 (internal citation omitted).
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> "In construing a statute, we first examine the plain language of the statute, giving the words their ordinary meaning." *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n,* 2007–NMSC–053, ¶ 20, 142 N.M. 533, 168 P.3d 105.
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> "To effect Legislative intent, one should examine the plain language of … the statute as well as the context in which it was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish." *Maes v. Audubon Indem. Ins. Group,* 2007–NMSC–046, ¶ 11, 142 N.M. 235, 164 P.3d 934.

2. For interpretation, IPRA must be read as a whole:

"Statutes are enacted as a whole and consequently each section or part should be construed in connection with every other part or section so as to produce a harmonious whole." *State v. Scarborough,* 1967-NMSC-152, ¶ 9, 78 N.M. 132, 429 P.2d 330.

"We should read the entire statute as a whole so that all the provisions will be considered in relation to one another." *New Mexico Pharm. Ass'n v. State,* 1987-NMSC-054, ¶ 8, 106 N.M. 73, 738 P.2d 1318.

"The court must … give effect to the intention of the Legislature in construing a statute. Legislative intent is to be determined primarily from the language used in the Act or statute as a whole." *Arnold v. State*, 1980-NMSC-030, ¶ 10, 94 N.M. 381, 610 P.2d 1210 (internal citation omitted).

3. Rewriting a statute by interpretation is limited:

"Courts will not read into a statute … language which is not there, particularly if it makes sense as written." *Burroughs v. Board of County Comm'rs,* 1975-NMSC-071, ¶ 14, 88 N.M. 303, 540 P.2d 233.

"A statute should be interpreted to mean what the Legislature intended it to mean, and to accomplish, the ends sought to be accomplished by it." *Newsome,* 1977-NMSC-076, ¶ 9, 90 N.M. 790, 568 P.2d 1236.

"A statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written." *Perea v. Baca,* 1980-NMSC-079, ¶ 22, 94 N.M. 624, 614 P.2d 541 (quoting *Burch v. Foy,* 62 N.M. 219, 223, 308 P.2d 199, 202 (1957)).

4. The Opinion violates principles of statutory interpretation by inserting "actual damages." (**BIC 22-36, 39-40**)

C. Penalty-Damages Intent of §§ 14-2-7(E)(5), 14-2-8(A), 14-2-10, 14-2-11(A)(B)(C), and 14-2-12(D) is for Violating § 14-2-5's Purpose

1. IPRA's one scheme - irrelevant to personal injury - guarantees § 14-2-5's access of "all persons" to public records by counteracting their wrongful withholding with remedies of litigation and penalty-damages, as follows:

"[§ 14-2-7(E)(5)'s custodial] responsibility … to make available public records for inspection."

"[§ 14-2-8(A)'s] penalty [for] failure to respond [to a written request by giving the records].

"[§ 14-2-10's] remedies … if the custodian does not permit the records to be inspected."

"[§ 14-2-11(A)(B)(1-3)(C)(1-4)'s per day, graded penalty-damages for] a written request for inspection of public records that has not been permitted" [by records refusal and no proper]."

"[14-2-12(A)(2)'s enforcement] for a person whose written request has been denied, [with penalty-damages mandatorily awarded in § 14-2-12(D)] *to any person* whose written request has been denied and is successful in a court action."(emphasis added)

2. Penalty-damages are IPRA's intended compliance goad:

"Sections … titled "Procedure for denied requests" and "Enforcement" … are necessary to achieve the legislative purpose of freely allowed, prompt compliance." *Derringer*, 2003-NMCA-073, ¶ 11, 133 N. M. 721.

"It is clear the legislature intended to enforce disclosure by imposing a cost … for non-disclosure." *Board of Comm'rs of Doña Ana County v. Las Cruces Sun-News*, 2003- NMCA-102, ¶ 37, 134, N.M. 238, 76 P.3d 36.

"IPRA includes remedies to encourage [public entities'] prompt compliance and facilitate enforcement." *San Juan,* 2011-NMSC-011, ¶ 12, 150 N.M. 64.

"Coercive measures are to stop a violator from violating the law." *Spear v. McDermott*, 1996-NMCA-048, ¶ 28, 121 N.M. 609.[3]

3. Statutory penalty-damages awards require no personal injury:

"Statutory penalty" is "[a] penalty imposed for a statutory violation; esp[ecially] a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms *without reference to any actual damages suffered*." *Black's Law Dictionary* 1168 (8th ed. 2004). (emphasis added)

"Liability" is "[t]he quality or state of being legally obligated or accountable … enforceable by civil remedy or criminal punishment." *Id.,* 932.

[3] Additional cases (**BIC 18**)

A statutory penalty example for forcing compliance is the one hundred dollars ($100) per day penalty award for violating the Ground Water Storage and Recovery Act. NMSA, 1978, 72-5A-1 to 17 (1999 as amended through 2003).

4. Time-sensitive penalties apply to open records law:

> "If a records custodian fails to respond to a records request … and the court concludes that the failure to respond was unreasonable, the court shall award the plaintiff damages… [under] Section 14-2-11(C)(1)-(2)." *San Juan*, 2011-NMSC-011, ¶ 12, 150 N.M. 64.
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> "[D]etermining the appropriate PDA [Public Disclosure Act] award is best described as requiring two steps: (1) determine the amount of days the party was denied access and (2) determine the appropriate per day penalty between $5 and $100 depending on the agency's actions…. The determination of the number of days is a question of fact … [D]etermination of the appropriate per day penalty is within the discretion of the trial court." *Yousoufian v. Office of Ron Sims*, 152 Wash.2d 421, 438-39 (2004).
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> "Plainly [§ 14-2-11(C) damages award] provides a citizen with means to enforce the Act *if* the public body does not comply." *Derringer*, 2003-NMCA-073, ¶ 10, 133 N. M. 721.
>
> "[The legislature intended to enforce disclosure by] imposing a cost for non-disclosure." *Board of Comm'rs of Doña Ana County v. Las Cruces Sun-News*, 2003- NMCA-102, 134, N.M. 238, 76 P.3d 36.

5. The Opinion itself cites *Marauder Corp. v. Beall* to confirm § 14-2-11's recovery of statutory damages needs no actual harm suffered. (**BIC 19**)

6. IPRA's penalty-damages are requesters' stated and intended statutory empowerment. (**BIC 18-22**) "Actual damages" are unmentioned and irrelevant.

D. <u>Fatal Flaw of Arguing That Penalty-Damages Equal Punitive Damages</u>

1. Stage-setting its arguing for "actual damages," the Opinion misstates IPRA's penalty-damages as "punitive damages": "Section 14-2-12 does not

authorize the award of punitive damages" (**Opinion ¶ 21**); and claims "punitive damages may not be awarded against a municipality." (**Opinion ¶ 24**). In truth, IPRA waived sovereign rights by taking § 14-2-11(C)(4)'s coercive penalty-damages "from the funds of the public body;" thereby intending taxpayer-funding.

2. In fact, IPRA's compliance goading is not a "punitive damage," but is a remedial statutory penalty:

> "This award serves as an incentive to private individuals to act on behalf of the public good by bringing the suit." *State of New Mexico ex rel. Foy v. Austin Capital Management, Ltd.*, ___-NMCA-___, ¶ 25, ___ P.3d ___ (quoting *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 769-70, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000)).
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> "Although a civil penalty may cause a degree of punishment for the defendant, such a subjective effect cannot override the legislation's primarily remedial purpose." *Id.* (quoting *White Chevy*, 2002-NMSC-014, ¶ 11 , 132 N.M. 187, 46 P.3d 94).

3. In fact, statutory penalties are not punitive damages:

> "Statutory penalty" is "[a] penalty imposed for a statutory violation; esp[ecially] a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms without reference to any actual damages suffered." *Black's Law Dictionary* 1168 (8th ed. 2004).

E. Fatal Flaw in Misrepresenting § 14-2-11's Statutory Damages As Just For Improper Denial Letter, Not For Records Withholding

1. Further Opinion stage-setting localizes statutory damages to § 14-2-11 to vacate § 14-2-12(D) for its alleged "actual damages" from improper records withholding. That requires § 14-2-11 to lack remedy for records withholding. *But that remedy is in § 14-2-11*! So the Opinion conceals that fatal obstacle.

2. The argument starts with assigning statutory damages to § 14-2-11: "[since] existence and amount are established by statute" (**Opinion ¶ 14**); but alleges, by selective quoting, that they are *only for a denial letter*: "[T]he custodian shall provide the requester with a written explanation of denial" (**Opinion ¶ 16**)

3. Strategically omitted is § 14-2-11(A)'s addressing records withholding as "a written request for inspection of public records that has not been permitted;" with a 14-2-11(C)(1-4) remedy - like for an improper denial letter - of time-sensitive graded penalty-damages. (**BIC 20-21**) In truth, both wrongful denials are linked, since withholding records must come with an explanatory letter.

4. Furthermore, it is ridiculous to propound that IPRA's legislators forgot to include any remedy for all requesters facing wrongful records withholding; thus, failing to empower their own § 14-2-5 civil rights purpose "that all persons are entitled to the greatest information regarding the affairs of government and the official acts of public officers."

5. To distract from its absurd and untrue reduction of § 14-2-11's wrongful denials to just a letter, the Opinion focuses on "promot[ing] prompt compliance by requiring the custodian of records to promptly respond … so that the requester is apprised of his or her request." (**Opinion ¶ 29**) In truth, IPRA's intent is not "appraisal;" it is *records production* for all requesters.

6. Further absurdity of limiting § 14-2-11 to a denial letter is that its damages are graded penalties of up to one hundred dollars ($100.00) per day to reflect degrees of egregiousness of records withholding. And § 14-2-11(C)(1)'s mandated damages for "failure to provide a timely explanation" are obviously for untimely records withholding lacking a proper explanatory letter.

7. Also, the Opinion forgets that limiting § 14-2-12(D) "damages" to withheld records, absurdly removes statutory location for awarding § 14-2-11(C)'s undisputed damages for that undisputed improper denial letter's remedy!

8. Confused by its own tangled illogic, the Opinion even states truthfully: "Section 14-2-11 ensures prompt compliance by allowing for statutory damages of up to $100 per day *if the public body fails to timely respond to a records request.*" (**Opinion ¶ 31**) (emphasis added) That means no proper letter, plus no records turn-over; that means only statutory penalty-damages - and no "actual damages!"

9. In truth, § 14-2-11 covers all damages. "Actual damages" are irrelevant.

F. <u>Fatal Flaw in Misrepresenting Damages in § 14-2-12(D) as Non-Statutory</u>

1. The Opinion errs in limiting § 14-2-12(D)'s "damages" to "actual damages," since their award is for "any person." Harm suffered is irrelevant.

> "[§ 14-2-12(A)(2)] *enforcement [is] for a person whose written request has been denied*."
>
> "[§ 14-2-12(D) provides damages award to] … *to any person whose written request has been denied*." (emphasis added)

2. The Opinion omits that § 14-2-12(D)'s "Enforcement" is simply where § 14-2-11(C)'s "damages" are awarded. (**BIC 17-18, 21-22, 25-26, 29-34**)

3. In truth, limiting § 14-2-12(D)'s "damages" to harm suffered requesters, contradicts IPRA's stated universal remedy. (**BIC 12-14, 24**)

G. <u>Fatally Flawed Argument for "Actual Damages" in § 14-2-12(D)</u>

1. The Opinion argues § 14-2-12(D)'s "damages" as being "compensatory or actual" (**Opinion ¶ 1**) by improper statutory interpretation, fabricated historical legislative intent, false premises, and reversed legislative purpose by shielding violators and disempowering requesters.

2. Avoiding reading the statute as a whole, the Opinion alleges the opposite: that "damages" in different Sections intend *different meanings*:

> "[D]amages for enforcement of denied [IPRA] requests are governed by Section 14-2-12(D), not Section 14-2-11(C) … (**Opinion ¶ 1**) [And] the term 'damages' under IPRA has not been construed or limited by our courts." (**Opinion ¶ 6**)

But claiming that not repeating *means different intent* is absurd. In truth, § 14-2-12(D) just enforces penalty-damages for compliance.

> "The sections at issue, Sections 14-2-11(C) and -12, are titled "Procedure for denied requests" and "Enforcement," both of which are necessary to achieve the legislative purpose of freely allowed, prompt compliance." *Derringer*, 2003-NMCA-073, ¶ 11, 133 N. M. 721.

3. For interpretative opportunity, the Opinion alleges "ambiguity" in § 14-2-12(D)'s "damages," though none exists:

> "[W]hen a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *United Rentals Nw., Inc. v. Yearout Mech. Inc.*, 2010–NMSC–030, ¶ 9, 148 N.M. 426, 237 P.3d 728 (internal quotation marks and citation omitted).
>
> "In statutory construction, if the statute is unambiguous, the court must follow the plain and ordinary meaning of the statute without applying other statutory rules of construction." *Robinson v. Fulliton*, 140 S.W.3d 312, 317 (Tenn. Ct. App. 2003) (citing *Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 749-(Tenn. 2001).
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> "Generally, in resolving statutory ambiguities, courts will favor a general provision over an exception." *Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers*, 1998-NMSC-020, ¶ 27, 125 N.M. 401, 962 P.2d 1236 (citing *State v. Christensen*, 18 Wash.2d 7, 137 P.2d 512, 518 (1943)). "*This is especially true when a statute promotes the public welfare*." *Id.* (citing *Wheeler v. Wheeler*, 134 Ill. 522, 25 N.E. 588, 590 (1890) ("It is familiar that if the words employed are susceptible of two meanings, that will be adopted which comports with the general public policy of the state, as manifested by its legislation, *rather than that which runs counter to such policy*.")). (emphasis added)

In fact, nowhere in IPRA's plain language is personal injury stated or implied. "Ambiguity" is further belied by statutory intent being solely for timely records turn-over to any requester. Personal injury is meaningless.

> "Our goal in interpreting a statute is to determine and give effect to legislative intent." *N.M. Bd. of Veterinary Med. v. Riegger*, 2007–NMSC–044, ¶ 11, 142 N.M. 248, 164 P.3d 947.
>
> "When interpreting statutes, our responsibility is to search for and give effect to the intent of the legislature. We endeavor to fulfill the statute's objectives." *Cummings v. X-Ray Associates of New Mexico, P.C.*, 1996-NMSC-035, ¶ 44, 121 N.M. 821, 918 P.2d 1321 (citing *State ex rel. Helman v. Gallegos*, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (1994)).
>
> "[T]he goal is to ascertain and give effect to the intent of the Legislature." *State v. Davis*, 2003–NMSC–022, ¶ 6, 134 N.M. 172, 74 P.3d 1064.
>
> "[Damages are] the means to enforce the Act *if* the public body does not comply." *Derringer*, 2003-NMCA-073, ¶ 10, 133, N.M. 721.

4. The Opinion fabricates legislative intent by misrepresenting IPRA's 1993 amendment (**"amendment"**) as "history" for two (2) types of "damages":

> "In 1993, the Legislature enacted two separate damages provisions through Sections 14-2-11 and 14-2-12 … By enacting these separate provisions in the same year, the Legislature intended that the separate damages provisions in Sections 14-2-11 and 14-2-12 address separate issues concerning the overarching policy behind IPRA." (**Opinion ¶ 29**)

In truth, that amendment, lacking notes, merely expanded IPRA's original four (4) Sections **(**NMSA 1978, § 14-4-1 (1981) (amended 1993); § 14-4-2 (1953) (repealed 1993); § 14-2-2.1 (1979); § 14-2-3 (1983) (repealed 1993)**)** to the current twelve (12). (1993 N.M. Laws, ch. 258, *Inspection of Public Records Act*) So reality contradicts the Opinion's claim that ["1993's] separate damages provisions … address separate issues concerning the overarching policy." (**Opinion ¶ 29**) Furthermore, that amendment *added more than two (2) damages provision Sections* - all as penalties: § 14-2-8(A)'s "penalty" for denying a written request, § 14-2-10's "remedies" for "not permit[ing] the records to be inspected," § 14-2-11's calculated penalty-damages for improper denial letter and records withholding, and § 14-2-12(A)(2)'s "enforcement" for "any person." Legislative intent of two (2) "damages" provisions is fabricated as follows:

> "Considering the structure of IPRA, its history, and its purpose, we conclude that the goal of prompt compliance is met by the damage provisions laid out in Section 14-2-11 while Section 14-2-12(D) ensures that IPRA requests are not wrongfully denied." (**Opinion ¶ 29**)

The Opinion also ignores reading the amended statute as a whole, which demonstrates solely penalty-damages. And if legislators intended adding personal injury damages, they would have so written:

> "[W]here several sections of a statute are involved, they must be read together so that all parts are given effect." *High Ridge Hinkle Joint Venture v. City of Albuquerque,* 1998–NMSC–050, ¶ 5, 126 N.M. 413, 970 P.2d 599.

5. Also, claiming "actual" in § 14-2-12(D)'s "damages," implies legislators absurdly added a new branch of law at their concluding "Enforcement" Section - especially an irrelevant branch - since "enforcement" means "[t]he act or process of compelling compliance with a law." *Black's Law Dictionary* 569 (8th ed. 2004).

6. Furthermore, the Opinion invents a limited class of "harm suffered" requesters, when IPRA is intended for all, irrespective of need (§ 14-2-8(C)); as corroborated by § 14-2-12(D)'s damages award being universally mandatory: "The court *shall award* damages … to any person." Conversely, excluding non-harm suffered requesters from awarding contradicts all-inclusiveness.

7. Arguing for "actual damages" uses only circular reasoning, starting with the false premise of two (2) different "damages" existing in IPRA, and concluding that the two (2) different "damages" are "statutory" and "actual." (**Opinion ¶ 19**)

a. From the primary false premise that two (2) separate Sections intend "separate" "damages" meanings (**Opinion ¶¶ 6, 19, 29**) (**BIC 31-32**), argued is need for a new "standard" for those "separate" "damages." (**Opinion ¶ 6**)

b. Next, whimsical, unsubstantiated free associations inflate "separate" to "separate mechanisms," then separate enforcement mechanisms:

> "IPRA allows a [denied] claimant to file an action to enforce … through separate mechanisms: Section 14-2-11, entitled 'Procedure for denied requests," and Section 14-2-12, entitled Enforcement.' " (**Opinion ¶ 11**)

In truth, IPRA has a single damages enforcement mechanism: after determining "denied request" damages in § 14-2-11, their award is enforced in § 14-2-12(D).

c. Next, purporting "separate mechanisms for enforcement," the Opinion invents: "Sections 14-2-11 and 14-2-12 "create separate remedies." (**Opinion ¶ 12**) In truth, IPRA's calculation of penalty-damages in § 14-2-11, with enforcing their payment in § 14-2-12(D), does not mean "separate remedies."

d. Next, omitting that § 14-2-11 already addresses penalty-damages for wrongful records refusal (**BIC 20-21, 27-29**), the Opinion misstates:

> [In] Section 14-2-11, the Legislature expressly provided for statutory damages. *Had the Legislature intended to make the same damages available in wrongful denial cases enforceable under Section 14-2-12, it could have easily done so."* (**Opinion ¶ 15**) (emphasis added)

In truth, § 14-2-11's plainly worded penalty-damages need no repeating for their enforcement as § 14-2-12(D)'s "damages."

e. Next, using only accumulated false premises, the Opinion claims:

> "We must now determine what type of damages the Legislature authorized for successful Section 14-2-12 claimant." (**Opinion ¶ 17**)

f. The *fait accompli*, circular conclusion is that § 14-2-12(D)'s "separate damages" are "damages designed to remedy an injury, i.e., compensatory or actual damages" … the measure of a loss" (**Opinion ¶ 19, 20**)

8. Inserting "actual damages" reverses IPRA's intent by burdening requesters with proof of personal injury and by freeing violators from full penalty.

9. To distract from outrageous removal of records withholding damages (except as personal injury), the Opinion paraphrases King: "[T]he fundamental purpose of IPRA is to provide access to the public of documents … *IPRA is not about recovering damages*." (**Opinion ¶ 27**) (emphasis added) In truth, IPRA *is about penalty-damages forcing turn-overs*; and "recovering damages" is irrelevant if responders comply.

10. Thus, unproven "actual damages" are improper as IPRA precedent.

H. Fatal Flaw of Claiming Attorney Fees Are IPRA'S "Punitive Damages"

1. The Opinion feigns attorney's fees award (**"fees"**) as compliance goads:

> "We find … attorneys' fees particularly important. In State ex rel. N.M. State Hwy. and Transp. Dep't v. Baca, 1995-NMSC-033, ¶¶ 21-22, 25, 120 N.M. 1, 896 P.2d 1148, this Court concluded that awarding attorneys' fees, which are *punitive* and compensatory, did not conflict with Torrance because a court's inherent authority to "control the parties and the litigation before it" outweighed the possible depletion of public revenues … We hold that *attorneys' fees, along with costs and actual damages, are sufficient incentives for New Mexico public officials to 'remain accountable to the people they serve*.' " *San Juan*, 2011-NMSC-011, ¶ 16. (**Opinion ¶ 32**) (emphasis added) [4]

[4] Note: *San Juan* cites accountability, not attorneys' fees as incentives.

But fees' intent is determined by context. In civil rights law - like IPRA - legislative intent for fees under 42 U.S.C. § 1988 is not punitive, but is to enable bringing enforcement actions against public officials to protect civil rights:

> "Section 1988 serves an important public purpose by making it possible for persons without means to bring suit to vindicate their civil rights." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 599, 130 S.Ct. 1662, 1676, 176 L.Ed.2d 494 (2010).
>
> "Purpose of the Civil Rights Attorney's Fees Awards Act (CRAFAA) is to ensure … access to judicial process for persons with civil rights claims, and to encourage litigation to enforce provisions of civil rights acts." *Hernandez v. Kalinowski*, 146 F.3d 196, 199 (3rd Cir. 1998).
>
> "Congress enacted 42 U.S.C. § 1988 to encourage private attorneys general to enforce fundamental constitutional rights." *Riddell v. Nat'l Democratic Party*, 624 F.2d 539, 543 (5th Cir. 1980).
>
> [The legislative intent underlying Section 1988] "is to stimulate enforcement of the civil rights laws by entitling those who vindicate their own civil rights to reimbursement for their legal expenses." *Lilly v. County of Orange*, 910 F. Supp. 945, 955 (S.D.N.Y. 1996)

2. Also, the Opinion relies on a case irrelevant to IPRA: *State ex rel New Mexico State Highway Dept. v. Baca*, 1995-NMSC-033 (**BIC 35**), where fees are punitive *sanctions* for a litigant's "frivolous" behavior. But IPRA damages arise solely from improper denials, not from violators' other bad behavior. [5]

3. Further refuting fees as "punishment," is that *pro se* IPRA litigants get no fees; so, absurdly, IPRA violators go "unpunished" with *pro se* plaintiffs!

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[5] That is why Cooper also argued for *non-IPRA sanctions* against her Defendants for contempt and evidence tampering by forgery. (**BIC 8**)

I. Fatal Flaw in Claiming Taxpayer Benefit of Removing IPRA'S Full Penalty-Damages

1. Left with glaring injustice of no universal penalty for records withholding, the Opinion rationalizes by saved taxpayer money:

> "[T]he express, built-in remedies of Section 14-2-12 achieve the overall purposes of IPRA *without punishing the taxpayers* ..." "We cannot conceive that the Legislature intended the taxpayers to burden such a cost where a public office wrongly denies public records." (**Opinion ¶¶ 33, 34**)

2. That false rationalization by "public good" parrots King's:

> "IPRA is not intended to enrich members of the public at the expense of public coffers. Nor is it intended to create a cottage industry of suing government agencies for large sums of money unconnected to any actual harm a litigant has suffered because of an agency's denial of his or her request." *Brief-in-Chief of Respondent-Petitioner Gary K. King* at page 15, *Faber v. King*, 2015-NMSC-015, 348 P.3d 172.

But vilifying requesters omits that taxpayer cost is zero (0) if records are turned over. And "actual harm" suffered is irrelevant to all requesters' right of inspection. Omitted also is that the real "cottage industry" now enriched from "public coffers" is defense lawyers abetting records concealment by stall-and-starve stonewalling litigation - like King's for his one thousand day (1,000) non-compliance (**Opinion ¶ 34**); or Cooper's Defendants' lawyers' collected fees of about one half million dollars ($500,000.00) (**RP 2259; Tr. 12/18/13, 34-35, 71**), plus other drain on public coffers. (**RP 582; Tr. 11/20/09, 11, 37; Tr. 12/18/13, 52, 56-57**) In fact, penalty damages thwart violators' "cottage industries."

3. Also, § 14-2-11 intends using "funds of the public body" for damages goads to prevent stonewalling and empower citizens' getting records. (**BIC 18, 27**)

4. In truth, the Opinion wastes taxpayers' money to support stonewalling litigation, unchecked by full penalty-damages goads.

J. <u>Fatal Flaw of False Rationalizations Instead of Legal Arguments</u>

1. The Opinion falsely rationalizes removing full penalty-damages:

a. <u>Claiming getting records is compensation</u>: "A successful litigant suing under Section 14-2-12(D) is adequately compensated by obtaining the documents … and is made whole." (**Opinion ¶ 31**) But records are not compensation; access to them is a fundamental right. And being "made whole" presupposes injury, not required by IPRA, which requires no reason. And omitted is that extreme violators give no requested records; so there never is "payment!"

b. <u>Claiming that getting mandatory awards is being "made whole"</u>: Using its false personal injury model, the Opinion states: "If the litigant is not made whole by the furnishment of the documents, he or she can seek actual damages, costs, and attorney's fees." (**Opinion ¶ 31**) In truth, the prevailing plaintiff is mandatorily awarded; being "made whole" is irrelevant.

c. <u>Claiming that without full penalty-damages there is still compliance incentive</u>: "We hold that attorneys' fees, along with costs and actual damages, are sufficient incentives for New Mexico public officials to remain accountable to the

people they serve." (**Opinion ¶ 32**) In truth, the legislature stated and intended penalty-damages as "compliance incentive" goads for records withholders. The Opinion's rationalization is irrelevant.

d. Claiming that plaintiffs have no "cost," so penalties are undeserved profit: "These damages ensure that the entire process is virtually costless to a successful litigant." (**Opinion ¶ 31**) In truth, "cost" and "profit" are irrelevant to penalty-damages as compliance goads. And the Opinion's unjustified removal of full penalty-damages will "cost" plaintiffs stonewalling litigation with unchecked violators and defense lawyers. (**BIC 37**) And there is "cost" to litigant requesters: chronic stress of "legal abuse syndrome," as defined by author Karin Huffer (not the Opinion's "actual damages" model of injury by records denial). And the Opinion adds plaintiff "cost" of proving personal injury. Furthermore, the Opinion callously implies that time and labor expended by *pro se* plaintiffs, for whom fees are unavailable, is "virtually costless."

K. Fatal Flaw of Unsupportable Conclusion

1. The Opinion's "Conclusion," based solely on its false contentions, is: "Section 14-2-12 does not permit … statutory damages … [And] [s]uch a regime neither chills IPRA enforcement litigation nor subverts the incentives IPRA provides … to comply." (**Opinion ¶¶ 31, 41**) In truth, proved only is that King avoided IPRA penalty-damages by both appellate courts' fatally flawed backing.

L. Fatal Flaw of *Ultra Vires* by Judiciary Overriding Legislative Intent

1. "Actual damages" are incompatible with IPRA's intended statutory penalty-damages. (**BIC 10, 16-35**)

2. Judicial power cannot override legislative power:

> "The court will not enquire into the wisdom, policy, or justness of the legislation … We cannot substitute our view … for that of the legislature." *Garcia v. Albuquerque Public Schools Board of Education*, 1980-NMCA-081, ¶ 4, 95 N.M. 391, 622 P.2d 699, *cert. quashed*, 95 N.M. 426, 622 P.2d 1046 (1981).
>
> "The plain meaning of the statute cannot be ignored … If the law is to be changed, it is a matter for the Legislature. It is fundamental that this Court does not sit to substitute its judgment for that of the Legislature. The courts must construe statutes as they exist." *Jiron v. Mahlab*, 1983-NMSC-022, ¶ 18, 99 N.M. 425, 659 P.2d 311.
>
> "As we have recognized, 'it is the particular domain of the legislature, as the voice of the people, to make public policy.' " *Cockrell v. Bd. of Regents of New Mexico State Univ.*, 2002-NMSC-009, ¶ 13, 132 N.M. 156, 45 P.3d 876 (quoting *Torres v. State*, 119 N.M. 609, 612, 894 P.2d 386, 389 (1995) (noting that "[t]he judiciary ... is not as directly and politically responsible to the people as are the legislative and executive branches of government")).

3. The Opinion committed *ultra vires* by abusing division of legislative and judicial powers to rewrite IPRA for restrictive "actual damages;" thereby reversing legislative intent by shielding violators from penalty-damages for wrongful records withholding, disempowering requesters' enforcement of records access, and contradicting the statute's purpose to "ensure" "an informed electorate" where "all persons are entitled to the greatest possible information" … as "an essential function of representative government."

M. Fatal Flaws Revealed by *Reductio Ad Absurdum*

1. The Opinion reduces to absurdity as: IPRA, intending public records access, has nothing to do with getting records or pressuring crooks hiding them; it being to guarantee: (1) a fast letter; (2) helping folks whose requesting felt like being in a car accident (Billboard: "Hurt? Call Bert. Win IPRA For Cert."); (3) treating violators like Kings; (4) gainfully employing defense lawyers; and (5) clarifying the ambiguous word "requester" to mean "troublemaker."

POINT IV:
THE COURT ERRED BY MISREPRESENTING COOPER'S COSTS AS ATTORNEY'S FEES

A. Cooper's Correct Costs Included Paid Attorneys' Costs

1. The Court erroneously renamed Cooper's out-of-pocket payments to her past attorneys *for their costs* as "unpaid" "attorney's *fees*," and subtracted them to reduce Cooper's costs from the correct nineteen thousand five hundred ninety-four dollars and fifty-six cents ($19,594.56) to eight thousand six hundred twenty-nine dollars and fifty six cents ($8,629.56) (**BIC 11**); though the Court knew that attorneys' fees were settled on March 26, 2013. (**Tr. 12/18/13, 30**)

2. Cooper was, thereby, absurdly ordered to double-pay her past attorneys' costs, while deprived of her mandatory reimbursement in violation of civil rights intent:

"The court shall award … costs … to any person whose written request has been denied and is successful in court action." § 14-2-12(D).

"Certainly an important purpose of [42 U.S.C. § 1988] is to encourage private enforcement and vindication of civil rights by providing recovery of *all costs*." *Witherspoon v. Sielaff*, 507 F. Supp. 667, 669 (N.D. Ill. 1981). (emphasis added)

POINT V:
THE COURT ABUSED DISCRETION BY BIAS

A. <u>Minimized IPRA Damage and Cost Awards Evince Abuse of Discretion</u>

1. The Court's wrongful, extreme, and otherwise inexplicable minimizing of Cooper's IPRA penalty-damages and costs evince abuse of judicial discretion:

"An abuse of discretion is defined … as a judicial action which is arbitrary, capricious, or whimsical." *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990) (citing *United States v. Wright*, 826 F.2d 938, 943 (10th Cir.1987)).

"An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Layne*, 2008-NMCA-103, ¶ 6, 144 N.M. 574, 189 P.3d 707 (quoting *State v. Rojo*, 1999–NMSC–001, ¶ 41, 126 N.M. 438, 971 P.2d 829) (internal quotation marks and citation omitted).

2. Bias is demonstrated by shielding Defendants from penalty-damages:

"Judicial bias" means "[a] judge's bias toward one or more of the parties to a case over which the judge presides." *Black's Law Dictionary* 171 (8th ed. 2004).

"[T]he test for resolving a claim that a judge is biased … is whether the conduct of the judge deprived the defendant [here plaintiff] of a fair trial." *State v. Fernandez*, 1994-NMCA-056, ¶ 6, 117 N.M. 673, 875 P.2d 1104 (quoting *State v. Muise*, 103 N.M. 382, 389, 707 P.2d 1192, 1199 (Ct.App.), cert. denied, 103 N.M. 287, 705 P.2d 1138 (1985)).

OTHER APPEALS

Defendants-Appellees' Court of Appeals cases are: No. 32,060, dismissed with prejudice on April 24, 2013; and pending, August 1, 2014, Joint Cross-Appeal to Cooper's Case No. 33,876.

CONCLUSION AND RELIEF SOUGHT

AT THE COURT OF APPEALS

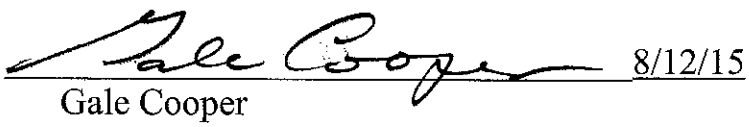
For the foregoing reasons, Cooper requests a decision reversing her Court's order minimizing her IPRA damages and costs awards; and remanding to that Court for maximal IPRA damages award of nine hundred sixty-six thousand dollars ($966,000.00) and full costs award of nineteen thousand five hundred ninety-four dollars and fifty-six cents ($19,594.56).

AT THE SUPREME COURT

Alternatively, if the Court of Appeals decides that *Faber v. King's* Opinion is in any way relevant or applicable, Cooper requests certification to the Supreme Court under Rule 12-606 NMRA and Section 34-5-14(C) NMSA 1978 on the grounds that her arguments refute that Opinion's § 14-2-12(D) "actual damages," which wrongly impacted her case; and that its overruling is of great public value for protecting civil rights, IPRA, and taxpayers.

REQUEST FOR ORAL ARGUMENT

Layman Cooper can add "emperor's new clothes" perspective (Anderson, Hans Christian. *The Emperor's New Clothes.* Copenhagen: C.A. Reitzel. 1837) on nakedly parading injustice of judicial decisions limiting IPRA's penalty-damages compliance and deterrence goads. In Billy the Kid's day, when the original, corrupt, Santa Fe Ring's might made right, IPRA would mean: "It's Politics Ruling Again." Cooper's case tests progress of democratic rights in New Mexico.



8/12/15

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CERTIFICATE OF SERVICE

I, Gale Cooper, hereby certify that an original plus five (5) copies of the foregoing document were hand delivered by me to the New Mexico Court of Appeals on August 12, 2015; and copies were sent by USPS mail to the following:

District Court Clerk
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Sent via Certified Mail No. 7015-0640-0001-1803-3429

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