

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

GALE COOPER, *pro se*

Plaintiff-Appellant Petitioner

vs.

No. S-1-SC-35844

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 Respondents.

ON APPEAL
FROM THIRTEENTH JUDICIAL DISTRICT COURT,
SANDOVAL COUNTY, NEW MEXICO
NO. D-1329-CV-2007-01364
HON. GEORGE P. EICHWALD, PRESIDING
AND
FROM COURT OF APPEALS NO. 33,876

**PLAINTIFF-APPELLANT GALE COOPER'S
MOTION FOR RECONSIDERATION
AND REHEARING**

SUPREME COURT OF NEW MEXICO
FILED

JUL - 5 2016



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OTHER AUTHORITIES

Cooper, Gale. *Cracking the Billy the Kid Case Hoax: The Strange Plot to
Exhume Billy the Kid, Convict Sheriff Pat Garrett of Murder, and
Become President of the United States*. Albuquerque, New Mexico:
Galcour Books. 2012. 6

Pursuant to Rule 12-404(A), *pro se* Plaintiff-Appellant Gale Cooper (“Cooper”) requests reconsideration of her June 22, 2016 denied “Petition for Writ of Certiorari” (“Petition”); and presents additional and “overlooked” issues.

BACKGROUND

Cooper’s appeal, as impacting all New Mexicans’ empowerment to access public records under the Inspection of Public Records Act (“IPRA”)¹, is the ideal test case showing unjust and destructive impact of this Court’s 2015 *Faber v. King*² decision removing IPRA’s penalty-damages to violators. And Cooper’s March 23, 2016 Court of Appeals’ denial furthered *Faber v. King*’s destruction by holding that even fraudulent denial letters, if timely, met IPRA’s requirement. Cooper endured outrageous injustices - each sustained by this Court’s denial - as follows:

1) though Cooper prevailed in District Court, with “Findings of Fact and Conclusions of Law” of maximal violations of improper denial letter and all public records wrongfully withheld, her Defendants’ penalty-damages of \$966,000.00 were blocked by *Faber v. King*, freeing them of deserved penalty;

2) though whistleblower Cooper exposed law enforcement fraud with illegal

¹ New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013).

² *Faber v. King*, 2013-NMCA-080, 306 P.3d 519, *overruled by Faber v. King*, 2015-NMSC-015, 348 P.3d 172.

exhumations, District Court penalized her for lacking *Faber v. King's* “personal injury” requirement; thus, awarding her absurd \$1,000.00 “nominal damages;”

3) though District Court awarded a punitive non-IPRA sanction of \$100,000.00 for Defendants’ records forgery defrauding the judge, the Court of Appeals wrongly voided it as an IPRA award, leaving their forgery unsanctioned;

4) though District Court awarded Cooper’s out-of-pocket expenses, the Court of Appeals reduced them by \$10,994.28; thus, burdening Cooper financially, contrary to IPRA’s intent to spare prevailing plaintiffs financial burden; and

5) though Cooper’s violators’ were undisputedly “egregious,” they were rewarded by a half-million tax-dollars for attorneys’ fees to fund their stonewalling litigation; while the records were available at request phase for cost of postage.

**POINT I:
THIS COURT CAN OVERRULE ITS ERRONEOUS DECISION**

In the past, this “Court has not hesitated to overrule even recent precedent” which is “so unworkable as to be intolerable,” if that “past decision is wrong”:

The factors considered by the Supreme Court before overruling a prior decision are: “1) whether the precedent is so unworkable as to be intolerable ... and 4) whether the facts have changed in the interval from the old rule to reconsideration so as to have robbed the old rule of justification.” *State v. Riley*, 2010–NMSC–005, ¶ 34, 147 N.M. 557, 226 P.3d 656 (quoting *State v. Pieri*, 2009–NMSC–019, ¶ 21, 146 N.M. 155, 207 P.3d 1132). “[W]hen one of the aforementioned circumstances convincingly demonstrates that a past decision is wrong, the Court has not hesitated to overrule even recent precedent.” *Pieri*, 2009–NMSC–019, ¶ 21, 146 N.M. 155, 207 P.3d 1132 (internal quotation marks and citations omitted).

In *Central Adjustment Bureau, Inc. v. Thevenet*, 1984-NMSC-083, 101 N.M. 612, 686 P.2d 954, this Court admitted its own oversight in a case, and held: “[i]t cannot be questioned that, upon the Court's own motion or upon motion of any of the parties, the Court may recall its mandate [in order] to correct or clarify a matter inadvertently overlooked.” *Id.* ¶ 10. Thus, “[if the Court] overlooked or misapprehended points of law or fact ... [the Court] must not allow procedural considerations to diminish *the obligation to hasten a case toward a conclusion based on substantial justice.*” *Boudar v. E.G. & G., Inc.*, 1987-NMSC-077, ¶ 11, 106 N.M. 279, 742 P.2d 491 (internal quotations omitted). (emphasis added)

POINT II: JUDICIAL ETHICS

OVERVIEW: Cooper’s “Petition” presenting an ideal test case demonstrating *Faber v. King* as unworkable and intolerable for all New Mexicans, and correctly arguing for its overruling, ethically merited full consideration, not denial; since it has:

- 1) maximally egregious violators spared penalty because its whistleblower requester had no personal injury;
- 2) full preservation in its record proper, transcripts, and Exhibits; and
- 3) Court of Appeals’ briefing correctly arguing for overruling *Faber v. King* based on its improper statutory interpretation, fallacious logic, fabrications, and judicial usurpation of legislative power to write a statute.

Cooper followed IPRA's whistleblower mandate:

“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 Agric. Water Users v. KNME-TV*, 2011-NMSC-011, ¶ 12, 150 N.M. 64, 257 P.3d 884. (emphasis added)

“... [giving] opportunity [for any citizen] to determine whether those who have been entrusted with the affairs of government are *honestly ... performing their function as public servants.*” *State of New Mexico ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 16, 90 N.M. 790, 568 P.2d 1236. (emphasis added)

Though Cooper's case shows *Faber v. King's* thwarting of IPRA's whistleblower mandate by ablating penalty goads, this Court rejected that opportunity to restore New Mexicans' main tool for exposing public corruption:

“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.

Though Cooper's case demonstrated extreme fiscal and judicial resource drain by maliciously stonewalling Defendants, this Court rejected it. Though Cooper's case merited full hearing and opinion, her denial merely silenced it.

Thus, the remaining issue, heretofore unaddressed, is ethical. So Cooper evokes the layman's principle: “The Emperor's New Clothes” (**BIC 44**); and states that the naked truth - parading through *Faber v. King* and her appellate denials - is willful shielding of corrupt public officials from penalty, and willful empowering of them to conduct stall and starve litigation to frustrate their own exposure.

But there exists a “Code of Judicial Conduct,” which mandates:

“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” Rule 21-102 NMRA.

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Rule 21-103 NMRA.

“A judge shall perform the duties of judicial office impartially, competently, and diligently.” Rule 21-200 NMRA.

So Cooper adds to her Petition’s “Questions Raised”: Whether this Court will give Cooper a full hearing despite the following realities:

1) the sitting justices (save one subsequently added) unanimously concurred with *Faber v. King*; and all denied Cooper’s “Petition;”

2) one of the sitting justices drafted *Faber v. King* by violating statutory interpretation, by fabrications, by fallacious logic, and by abuse of judicial powers;

3) the sitting Chief Justice was appointed by Governor Bill Richardson, who perpetrated the Billy the Kid Case hoax and bribed at least one of Cooper’s lawman Defendants, as attested to by them all in a “Memorandum” to Cooper:

On September 1, 2003, the Governor, behind the scenes, supported the investigation, by instructing Billy Sparks to hand Sheriff Sullivan three checks, from private backers, totaling \$6,500.00. [Its Footnote 2 states: “Three checks handed to Sheriff Sullivan in Governor’s office by Billy Sparks”] Standing at the threshold of the Governor’s office, Sparks said, “*The governor wants to insure this investigation goes forward*”... The Governor also asked investigators to contact Ft. Sumner and get them *on board.*” [the lawmen’s italics] (RP 25-26, 97, 104-105; 190-193; 216-219; TR. 12/18/12, Co-Plaintiff Exhibit 4).

4) the attorney wife of the sitting Chief Justice participated with Richardson in the Billy the Kid Case hoax³; and

5) by denying Cooper's "Petition," all sitting justices:

a) affirmed by their concurrence *Faber v. King's* unjust and absurd stance that results in violators not being penalized, and requesters being burdened or stymied by having to prove irrelevant personal injury for full empowerment to exercise their fundamental right to access public records; and

b) affirmed by their concurrence the Court of Appeals' unjust and absurd addition that fraudulent but timely denial letters are proper under IPRA.

So Cooper now requests reconsideration and rehearing of her "Petition" by evoking this Court's "Code of Judicial Conduct," which guarantees promoting of public confidence and welfare by the integrity and wisdom of its decisions. The alternative - repeated denial of Cooper's "Petition," which can rescue IPRA from *Faber v. King* - will seal IPRA's destruction for all citizens and bolster the culture of public corruption and malignant cronyism which has plagued New Mexicans since the Santa Fe Ring days of Billy the Kid.

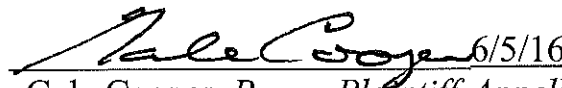
³ Cooper, Gale. *Cracking the Billy the Kid Case Hoax*. Albuquerque, New Mexico: Gelcour Books. 2012. Pages 493-501, 504-507, 511-514, 517, 701, 712. (Tr. 12/18/13, pp. 5-6, courtesy copy to Court)

CONCLUSION

WHEREFORE, Cooper –

having correctly argued in her “Petition for Writ of Certiorari” and her Court of Appeals’ briefs for maintaining IPRA’s penalty-damages and for refuting *Faber v. King*, having an ideal test case impacting all New Mexicans’ public records access by demonstrating *Faber v. King’s* fatal flaws, and having evoked the Judicial Code of Ethics to stimulate a just decision –

requests that her “Petition of Writ of Certiorari” be reconsidered and granted, and for any denial to be suspended until full consideration and opinion by this Court.


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CERTIFICATE OF SERVICE

I, Gale Cooper, hereby certify that the original foregoing document with six (6) copies was hand-delivered by me on June 5, 2016 to the New Mexico Supreme Court; and copies will be mailed to the following:

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