

CITY OF ENCINITAS

**CLAIM FOR DAMAGES
TO PERSON OR PROPERTY**

INSTRUCTIONS:

1. Claims for death, injury to person or personal property must be filed no later than 6 months after the occurrence. (Gov. Code S911.2)
 2. Claims for damaged to real property must be filed not later than 1 year after the occurrence. (Gov. Code S911-2)
 3. Read the entire claim form before filing.
 4. This claim form must be signed at bottom.
 5. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.
 6. **Claim must be filed with City Clerk** (Gov. Code S915a) via email at CityClerk@encinitasca.gov; U.S. mail, or in person at 505 S. Vulcan Avenue, Encinitas CA 92024, Attn: City Clerk
-

The undersigned hereby presents the following claim to the City of Encinitas, in accordance with the laws of the State of California.

1. Name of Claimant: ROBERT NICHOLS, DOE 51-30
2. Home Address of Claimant: See Attached

Home Telephone Number of Claimant: _____

Claimant's Date of Birth _____ Social Security No _____

1 CURRAN & CURRAN LAW
Michael D. Curran, Esq./ATP
2 State Bar Association No. 148006
Susan Curran, Esq.
3 State Bar Association No. 227886
Palomar Heights Corporate Center
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7 Attorneys for Plaintiff

8 CITY OF ENCINITAS GOVERNMENT TORT CLAIM

9
10 ROBERT NICHOLS, an individual, and)
Does 1-50,)
11 Plaintiffs,)
12)
13 v.)
14)
15 CITY OF ENCINITAS, a public)
entity, CATHERINE BLAKESPEAR,)
16 an individual, and DOES 1 through 50,)
inclusive,)
17 Defendants.)
18)

CITY OF ENCINITAS
GOVERNMENT TORT CLAIM

19 CLAIMANT, ROBERT NICHOLS, [“Mr. NICHOLS”/“Claimant”] HEREBY MAKES
20 CLAIMS FOR CIVIL RIGHTS VIOLATIONS (42 U.S.C. § 1983), SPECIFICALLY VIOLATIONS
21 OF THE US CONSTITUTION, 1st AMENDMENT, VIOLATIONS OF SECTION 2 AND 3
22 OF THE CALIFORNIA CONSTITUTION, BREACH OF CONTRACT, INTENTIONAL
23 INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT INFLICTION OF EMOTIONAL
24 DISTRESS AND SEEKS PRESENT AND FUTURE SPECIAL COMPENSATORY/GENERAL
25 DAMAGES AGAINST DEFENDANT CITY OF ENCINITAS AND CITY OF ENCINITAS
26 MAYOR CATHERINE BLAKESPEAR [“MAYOR BLAKESPEAR”], IN AN AMOUNT YET TO
27 BE ASCERTAINED, BUT NOT LESS THAN \$100,000.00 AND IN SUPPORT OF SAID CLAIMS
28 REPRESENTS AS FOLLOWS:

- 1 **1. NAME OF CLAIMANT:** ROBERT NICHOLS.
- 2 **2. ADDRESS OF CLAIMANT:** C/O Curran & Curran Law; Palomar Heights
3 Corporate Center, 5857 Owens Ave., Ste. 300,
4 Carlsbad, CA 92008.
5 760-634-1229
6 Claimant’s date of birth: Objection; privacy
- 7 **3. ADDRESS FOR ALL
8 COMMUNICATIONS
9 REGARDING THIS CLAIM:** Curran & Curran Law; Palomar Heights Corporate
10 Center, 5857 Owens Ave., Ste. 300, Carlsbad, CA
11 92008. Email; mdc@curranlawoffices.com
- 12 **4. PARTICULARS OF INJURY/DAMAGES:**

13 [F]rom ancient times,” the use of public spaces for “assembly, communicating thoughts
14 between citizens, and discussing public questions” has “been a part of the privileges, immunities,
15 rights, and liberties of citizens.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939). Such
16 spaces are critical to the development of public discourse and the functioning of democracy. Certain
17 places—including streets, parks, and sidewalks—have “immemorially been held in trust” for public
18 conversation, id., while others have been designated by the government for such use in more recent
19 times, see *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45–46 (1983); *Cornelius*
20 *v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985). Appeal: 17-2002 Doc: 39 Filed:
21 11/27/2017 Pg: 26 of 40.

22 Thus, for generations, physical spaces – like public squares and town halls – have
23 been critical forums for people to speak out on issues of public importance. But with the rise
24 of social media, the avenues for members of the public to speak with their elected officials
25 have expanded. Facebook/Instagram comments/photos and Twitter tweets/retweets are
26 replacing the public meeting. In fact, the past several years and increasing in modern times,
27 politicians and other government figures are exponentially increasingly using numerous
28 social media platforms to conduct government business, share information with the public,
29 and to allow members of the public to communicate with them about matters relating to
30 government, evoking US Constitution 1st Amendment and CA Constitutional protections.

31 In a recent case, the United States Supreme Court described social media platforms
32 as “the modern public square,” noting that these platforms afford users the opportunity to
33 “petition their elected representatives and otherwise engage with them in a direct manner.”

1 If a public official uses their account to carry out their role as an elected official, then their
2 page or account is subject to the First Amendment protections. That means they cannot
3 engage in most forms of censorship such as blocking someone or deleting someone's
4 comments just because of their subject/opinion. It is also generally unacceptable for the
5 official to ask the platform to delete comments for them. See *Packingham v. North Carolina*,
6 (2016) 368 N. C. 380, 777 S. E. 2d 738e No. 15-1194.

7 The legal issue in these cases, and particularly this case, is whether or not the
8 politician/government official, MAYOR CATHERINE BLAKESPEAR ("MAYOR
9 BLAKESPEAR") is using their social media account for Government/City business, or
10 exclusively for self-funded campaigning/personal business. Here, there can be no reasonable
11 factual/legal dispute in this case that MAYOR BLAKESPEAR is, in fact, in large part using
12 her Facebook/Instagram pages ("FB") to conduct/communicate City of Encinitas business.

13 Thus, Claimant NICHOLS and others, have the Constitutionally protected rights to
14 comment on these matters of broad public interest on MAYOR BLAKESPEAR'S FB page.
15 They have the Constitutionally protected right to speak, listen and comment, and then, after
16 reflection, speak, listen and comment some more. Unfortunately, and in violation of
17 Constitutional law, their rights are currently being infringed/suppressed by MAYOR
18 BLAKESPEAR's act of blocking their participation on her FB page.

19 Over the past several months, MAYOR BLAKESPEAR, or her staff, have
20 intentionally/illegally blocked, deleted, censored various concerned and active citizens from
21 participating in or commenting on her Face Book [FB] page, including but not limited to Claimant
22 NICHOLS. Claimant NICHOLS and MAYOR BLAKESPEAR have in the past crossed paths on
23 the Surfing Madonna Oceans project series of events and has often been the subject of
24 political/factual criticisms by Mr. NICHOLS and other concerned citizens. Unfortunately this
25 political/discriminatory, free speech/assembly censorship infringes on and violates both the United
26 States and the California Constitution's protections as interpreted by the cases that follow these
27 bodies of constitutional law.

28 Here, MAYOR BLAKESPEAR undeniably uses her "MAYOR CATHERINE

1 BLAKESPEAR, Public Figure” FB page for primarily Encinitas City Government
2 action/issues/events and also for campaigning for State Senate/private use. The page intro indicates
3 “Campaign page for Mayor Catherine Blakespear, Candidate for California State Senate District
4 38...”. However, the title of the page “MAYOR CATHERINE BLAKESPEAR... Public Figure”
5 standing alone, engages the protections of the California Constitution Article 1, Sections 2 and 3,
6 provision protections. See: <https://www.FB.com/catherineblakespear>

7 In addition, a cursory review of the content, posts and comments from MAYOR
8 BLAKESPEAR’s FB page reveals MAYOR BLAKESPEAR almost always appearing in photos
9 adorned with her official “MAYOR CATHERINE BLAKESPEAR” name badge, referring to herself
10 as “Mayor of Encinitas” and discussing City business/projects in one form or another. Her FB page
11 contains post after post of her representing the City of Encinitas and her constituents at various City
12 of Encinitas events: SANDAG, Ribbon Cuttings, Encinitas Street Fair, Infrastructure Bills,
13 Streetscape Project, Water District, Encinitas Rail Corridor, Vulcan Cycling Corridor and EDCO
14 Waste Facility.

15 There are several posts where she discusses certain upcoming agenda items before Encinitas
16 City Counsel and asking people to participate and speak in favor of certain items. For example, just
17 weeks after longtime resident Bruce Ehlers, Chairman of the City Planning Commission, announced
18 his candidacy for the District 4 seat on the Encinitas City Council, MAYOR BLAKESPEAR and her
19 political supporters on the City council, seemingly announced plans to remove him as Chairman of
20 the City’s Planning Commission at its April 13, 2022 meeting; and he was removed. Given Mr.
21 Ehlers’ good service and unblemished record, this action was politically motivated/retaliatory.

22 MAYOR BLAKESPEAR, who is also Chairman of SANDAG Board of Directors, has her
23 hands full of legal controversy with the SANDAG scandal of \$250,000.00 of taxpayer monies spent
24 by SANDAG officials, including herself on upscale, expensive local meals/entertainment, with 75%
25 of those expenses inexplicably occurring on weekend and holidays, outside of working hours.

26 On or about April 12, 2022, MAYOR BLAKESPEAR was sent a Cease and Desist letter
27 from Curran & Curran Law on behalf of Clamant NICHOLS and others alleging blocking of free
28 speech. The parties came to an agreement whereby one of the terms of settlement was as follows:

1 *“Ms. Blakespear will issue a public statement on her Mayor Catherine Blakespear FB*
2 *page/Instagram account apologizing for blocking/censoring certain individuals on social*
3 *media who have been blocked/censored/expressed opposing viewpoints to her own. A copy*
4 *of that post will be provided to the Curran firm within 5 days of the execution of this*
5 *agreement.”*

6 Instead of a public apology acknowledging her illegal suppression of free speech, and in an
7 attempt to make a bad story go away, she came up with a different story and tried to sell it to her
8 supporters. MAYOR BLAKESPEAR posted a defensive, victim post implying the people she
9 blocked had threatened her, harassed her, protested outside her home and even stated she had been
10 threatened with rape. She posted on 3:30 p.m. on Saturday, May 21, 2022 as follows:

11 *“Politics on social media have become an incubator for hate and vitriol that turns too many*
12 *civically engaged people away from the civic dialogue. As a woman serving in elected office, I have*
13 *been the target of threatening and harassing comments on my social media and in my daily life —*
14 *personal attacks, not simply ones disagreeing with my policy perspectives.*

15 *My social media experience is part of my larger life experience as a female public official,*
16 *including a direct rape threat texted to my personal cell phone number that addressed me by name,*
17 *a large number of protesters outside my home where I live with my husband and children taunting*
18 *me to come out, and being shouted at while going about my daily life, among other aggressions.*

19 *Threatening behavior has spilled over to my campaign social media accounts where people*
20 *have wished harm on me, smeared my campaign staff, doctored personal photos, posted the same*
21 *hateful comments dozens of times, and one person even sent a photo of male genitalia.*

22 *My campaign social media page is not an official city-sponsored or city-funded social media*
23 *page and no decisions are being made by the government on my social media pages.*

24 *Recently, an attorney sent me a cease-and-desist letter on behalf of certain individuals and*
25 *anonymous complainants who claimed they were not able to participate in my campaign FB page.*
26 *After consulting an attorney, I was informed that the subject of content moderation on social media*
27 *is an evolving area of law, and that the best path forward was to make sure nobody on my pages was*
28 *blocked or restricted from commenting in any way. I have since done that.*

1 *To be very clear, I am not suggesting that the complainants posted or asked others to post*
2 *any of the threatening, demeaning, or harassing content online that I detailed here. I am simply*
3 *describing the environment that surrounds my social media pages.*

4 *In the cease-and-desist letter, the complainants threatened to sue me if they did not receive*
5 *a public apology for their inability to participate. To that end, I publicly apologize to anyone who*
6 *did not have full access to my campaign FB page or other social media accounts. I always welcome*
7 *expressions of political and policy differences, including criticisms for my job performance as your*
8 *mayor, and I would never try to infringe on anyone's right to freedom of speech. As a former*
9 *journalist and attorney, I understand and deeply believe that the core of our democracy is every*
10 *citizen's right to express their opinion.*

11 *I know that my experience with social media is taking place in the context of our collective*
12 *struggle to balance first amendment rights on social media with managing the consequences of*
13 *disinformation, threats, propaganda, and harassment on these sites. Companies like Twitter are*
14 *creating "crisis misinformation policies" to stop the spread of potentially dangerous false posts.*
15 *It's clear that there's a larger conversation to be had about rights on social media, especially when*
16 *the right to free speech collides with other rights such as safety, privacy and protection of the*
17 *public's interests, like public health.*

18 *I want to remind and reassure everyone that there are many ways – including social media*
19 *– for the public to participate in policy discussions, including public comment at City Council*
20 *meetings where decisions are being made, direct emails and phone calls to me, my elected*
21 *colleagues or the city clerk, and talking with me directly at the many public events I attend*
22 *throughout the community.*

23 *May we all try to practice civility in our public discourse.”* **See Attached Ex. 1**

24 It is notable the post generated over 600 comments from the public, with the great majority
25 negative accusing MAYOR BLAKESPEAR of Constitutional misconduct, transparently laying
26 victim and offering no apology at all, consistent with the post of MR. NICHOLS. **See Ex. 2**

27 *///*

28 *///*

1 **5. WHEN DID DAMAGE OR INJURY OCCUR:**

2 Claimant is informed and believes and thereon alleges MAYOR BLAKESPEAR has been
3 blocking, deleting, censoring certain people in the community on her FB page for the past several
4 months if not years since at least January 2022, illegally blocking Constitutionally protected free
5 speech. MAYOR BLAKESPEAR also breached the Settlement Agreement between Claimant
6 NICHOLS and Does 1-12 on May 21, 2022, by failing to timely/properly issue the required public
7 apology and failing to pay the agreed Settlement amount.

8 **6. WHERE DID DAMAGE OR INJURY OCCUR:**

9 The damage and injuries Clamant NICHOLS and Does 1-12 sustained occurred on Social
10 Media Faceboom. Instagram and in and around the Encinitas/San Diego community.

11 **7. WHAT ACT OR OMISSION CAUSED DAMAGE OR INJURY:**

12 Over the past several weeks, MAYOR BLAKESPEAR, or her staff, have
13 intentionally/illegally blocked, deleted, censored various concerned and active citizens from
14 participating in or commenting on her public FB page, including but not limited to Claimant
15 NICHOLS. The title of the page “MAYOR CATHERINE BLAKESPEAR... Public Figure” standing
16 alone, engages the protections of the US Constitution 1st Amendment and California
17 Constitution Article 1, Sections 2 and 3, free speech provisions protections.

18 On or about April 12, 2022, MAYOR BLAKESPEAR was sent a Cease and Desist letter
19 from Curran & Curran Law on behalf of Clamant NICHOLS and others. On or about May 12, 2022,
20 the parties came to an agreement whereby one of the terms of settlement was as follows:

21 *“Ms. Blakespear will issue a public statement on her Mayor Catherine Blakespear FB*
22 *page/Instagram account apologizing for blocking/censoring certain individuals on social*
23 *media who have been blocked/censored/expressed opposing viewpoints to her own. A copy*
24 *of that post will be provided to the Curran firm within 5 days of the execution of this*
25 *agreement.”*

26 Instead of a public apology acknowledging her illegal suppression of free speech, in
27 an attempt to make a bad story go away, she came up with a different story and tried to sell
28 it to her supporters. MAYOR BLAKESPEAR posted a victim oriented, defensive post

1 implying the people she blocked had threatened her, harassed her, protested outside her home
2 and even stated she had been threatened with rape. She posted on 3:30 p.m. on Saturday.
3 May 21, 2022, well outside the time requirements of the Settlement Agreement and on a
4 weekend day, intentionally/in bad faith, calculated to have as little readership as possible.

5 **8. WHAT DAMAGE OR INJURY RESULTED:**

6 Clamant NICHOLS', and others, Constitutional right of free speech pursuant to protections
7 of the First Amendment to the US Constitution and California Constitution Article 1, Sections 2 and
8 3, provision protections were violated. In addition, Clamant NICHOLS', and others', Agreement
9 between Claimants and MAYOR BLAKESPEAR was breached entitling Claimants to their attorneys
10 fees and costs as authorized by 42 U.S.C. § 1988, Cal. Code Civ. Proc. § 1021.5, Fed. R. Civ. P. 54,
11 or any other applicable law. As a direct and proximate cause of the wrongful activities alleged
12 above, Claimants have suffered emotional distress directly associated with having to endure
13 retaliation and unfairness directed towards Claimants. By this complaint, Claimants do not waive
14 any privacy rights they may have under *Cal. Const.*, Art. I, § 1; *Evid. Code* §994; *Evid. Code*
15 §1014.

16 **9. WHAT AMOUNT IS CLAIMED AS DAMAGE:**

17 The value of this claim at this date is an amount that would place the claim within the
18 jurisdiction of the Superior Court. Claimants' evaluation of total damage is uncertain at this time
19 of the total amount of all past, present and future damages but is informed and believes the value of
20 his claim to be approximately \$100,000.00. Discovery is continuing.

21 **10. GIVE THE ESTIMATED AMOUNT CLAIMED ON EACH ITEM OF**
22 **PROSPECTIVE DAMAGE OR INJURY AS FAR AN KNOWN:**

23 Damage will be based on the amount of attorneys fees and costs as well as value of personal
24 injuries and emotional distress. Discovery is continuing.

25 **11. GIVE AMOUNTS OF INSURANCE PAYMENTS RECEIVED, IF ANY:**

26 Not applicable.

27 **12. LIST EXPENDITURES MADE ON ACCOUNT OF DAMAGE OR INJURY:**

28 Attorneys fees/Costs. Discovery is continuing.

1 **13. GIVE NAMES AND ADDRESSES OF WITNESSES:**


2 Witnesses would be everyone that follows, or reads MAYOR BLAKESPEAR's FB page.
3 Including, but not limited to the following individuals who Claimant is informed and believes were
4 blocked, deleted, censored on the MAYOR CATHERINE BLAKESPEAR FB page;

5 Steve Meiche, Rachel Hill, Matt Wheeler, Garvin Walsh, Stephen Golden, Jed Stuber, Janis
6 Smith, Bob Nichols, Megan McCarthy, Christie Dean, Natalie Setoon, Susan Turney, Andria
7 Oats Chandler (Disabled employee who was asking reasonable accommodation questions),
8 Ruben Florez, Jordan Marks, Tamara Daul, Catherine Albertini, David Meyer, Steve Cimilli,
9 Fred Lara, Brian Goldey, Arianne La Pittus-Gallucio, Kathy Stanton.

10 Claimant is uncertain of contact information for these individuals than is equally available
11 to all parties on FB.

12 CURRAN & CURRAN LAW

13
14
15 Dated: May 25, 2022

16 By: 
17 Michael D. Curran, Esq./ATP
18 Attorney for Claimant
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12



Mayor Catherine Blakespear

Public Figure · 3.1 mi · 1,603 followers



Campaign page for Mayor Catherine Blakespear, Candidate for California State Senate District 38

Message



Search Results for

mayor catherine blakespear

Filters

All

Posts

People

Photos

Videos

Marketplace

Pages

Places

Groups

Events



Mayor Catherine Blakespear

3d ·



Politics on social media have become an incubator for hate and vitriol that turns too many civically engaged people away from the civic dialogue. As a woman serving in elected office, I have been the target of threatening and harassing comments on my social media and in my daily life — personal attacks, not simply ones disagreeing with my policy perspectives.

My social media experience is part of my larger life experience as a female public official, including a direct rape threat texted to my personal cell phone number that addressed me by name, a large number of protesters outside my home where I live with my husband and children taunting me to come out, and being shouted at while going about my daily life, among other aggressions.

Threatening behavior has spilled over to my campaign social media accounts where people have wished harm on me, smeared my campaign staff, doctored personal photos, posted the same hateful comments dozens of times, and one person even sent a photo of male genitalia.

My campaign social media page is not an official city-sponsored or city-funded social media page and no decisions are being made by the government on my social media pages.

Recently, an attorney sent me a cease-and-desist letter on behalf of certain individuals and anonymous complainants who claimed they were not able to participate in my campaign Facebook page. After consulting an attorney, I was informed that the subject of content moderation on social media is an evolving area of law, and that the best path forward was to make sure nobody on my pages was blocked or restricted from commenting in any way. I have since done that.

To be very clear, I am not suggesting that the complainants posted or asked others to post any of the threatening, demeaning, or harassing content online that I detailed here. I am simply describing the environment that surrounds my social media pages.

In the cease-and-desist letter, the complainants threatened to sue me if they did not receive a public apology for their inability to participate. To that end, I publicly apologize to anyone who did not have full access to my campaign Facebook page or other social media accounts. I always welcome expressions of political and policy differences, including criticisms for my job performance as



Ex. 2/4



12



understand and deeply believe that the core of our democracy is every citizen's right to express their opinion.

I know that my experience with social media is taking place in the context of our collective struggle to balance first amendment rights on social media with managing the consequences of disinformation, threats, propaganda, and harassment on these sites. Companies like Twitter are creating "crisis misinformation policies" to stop the spread of potentially dangerous false posts.

It's clear that there's a larger conversation to be had about rights on social media, especially when the right to free speech collides with other rights such as safety, privacy and protection of the public's interests, like public health.

I want to remind and reassure everyone that there are many ways – including social media – for the public to participate in policy discussions, including public comment at City Council meetings where decisions are being made, direct emails and phone calls to me, my elected colleagues or the city clerk, and talking with me directly at the many public events I attend throughout the community.

May we all try to practice civility in our public discourse.

88

608 Comments 31 Shares

Like

Comment

Share



See all seen posts for 'mayor catherine blakespear'



Photos



By Mayor Catherine...



By Robert Nichols



By Mayor Catherine...



By Mayor Catherine...



By Mayor Catherine...



By Mayor Catherine...

See all



Groups



Albondigas of North SD County

Public group · 326 members · 2 posts a



12



Robert Nichols

That was a horrible apology Catherine Blakespear. You buried it in one sentence out of 11 paragraphs and insulted a lot of people. Fire fighters, teachers, government employees, people in the service industry, you insulted a lot of community members. Now you will be served a lawsuit for not making good on your settlement agreement.

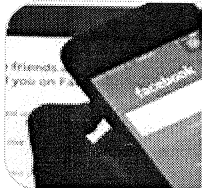
I intend to fight for the First Amendment Rights of residents of my great city.

You broke the law and your sworn oath of office. You also broke your oath as an attorney. You will be served and held accountable for your actions.

You have no business representing the people. The admirable thing to do would be to make a sincere apology and step down. This will follow you throughout the entire election.

You broke the law for several years and have now been caught doing so.

<https://www.aclu.org/.../court-rules-public-officials...>



ACLU.ORG

Court Rules Public Officials Can't Block Critics on Facebook

Like Reply 2d

View 1 more replv



Mayor Catherine Blakespear

May 22 at 2:22 PM · 🌐



I'm looking forward to us getting together on this big night!

