

**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA**

TIMOTHY REILAND,)	
Plaintiff)	
)	
v.)	Case No. _____
)	
INDEPENDENT SCHOOL DISTRICT NO. 11)	
of TULSA COUNTY, aka OWASSO)	
PUBLIC SCHOOLS,)	
)	
and)	
)	
MARGARET COATES, <i>in her official</i>)	
<i>capacity as Superintendent,</i>)	
)	
Defendants)	

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, the Plaintiff, TIMOTHY REILAND (“Plaintiff”), and file this Petition for Declaratory and Injunctive Relief against Defendants INDEPENDENT SCHOOL DISTRICT NO. 11 OF TULSA COUNTY, aka OWASSO PUBLIC SCHOOLS, and SUPERINTENDENT MARGARET COATES, (jointly referred to as “Defendants”).

Simply stated, this action arises from Defendants’ use of its alleged statutory authority to ban Plaintiff from any Owasso Public School property and activity as a result of the Plaintiff’s verbal exchange with first a Tulsa World reporter and then with a School Board member in the parking lot of the Owasso Education Service Center after a public school board meeting. The ban prevents the Plaintiff from (1). dropping off and picking up his children at school such that he must drop off his children at some distance from the school, and (2). Carrying out the responsibilities of his part time job of delivering UberEATS to school grounds, a lucrative part of his financial needs. Defendants’ actions are unconstitutional, and a temporary restraining

order or preliminary injunction should be issued to prevent the continuation of Defendants' unsanctioned authority and unconstitutional penalization of Plaintiff. Accordingly, Plaintiff respectfully requests the Court to

- i declare that (a) Defendants do not have the authority under 70 OK Stat. §70-24-131 (2021) and Okla. Stat. tit. 21, §§1375-1376 (2021) to ban Plaintiff for alleged verbal harassment; (b) Defendants' charge of verbal harassment constitute regulation of speech contrary to article 2, §22 of the Oklahoma Constitution and First Amendment of the U.S. Constitution; and (c) Plaintiff's ban by Defendants was in retaliation for Plaintiff's speech dissenting against school board policy and his participation in school board meeting in violation of article 2, §22 of the Oklahoma Constitution, the First Amendment of the U.S. Constitution and the Oklahoma Citizens Participation Act;
- ii declare that Defendants' procedures for banning Plaintiff under Defendants' Policy 1.24 *Interference with the Peaceful Conduct of School District Activities* violate Plaintiff's due process under article 2, §7 of the Oklahoma Constitution and the Fifth Amendment of the U.S. Constitution;
- iii declare that Defendants violated 12 OK Stat § 12-1442 (2021) by slandering Plaintiff in Defendants' letter notifying Plaintiff of his being banned from school properties for a crime under Okla. Stat. tit. 21, §§1375-1376, which they used as the excuse to order him from school property without due process, thereby depriving him of the right to carry out his business when involving deliveries on school property; to enjoin Defendants from the continuation of Plaintiffs' unlawful ban from school property and school activities and from future interference of

Plaintiff's right of free speech and right to otherwise participate in government, including Owasso Public School Board meetings; and

- iv to award Plaintiff equitable relief in the form of a written apology to Plaintiff for Defendants' slander and Defendant Board Members' conduct to be read during a board meeting that will help remedy the chilling affect caused by Defendants' retaliation on the free expression of religious opinions by other parents and public participants. In support of its application, Petitioner would show the Court as follows:

I. PARTIES

1. Plaintiff, TIMOTHY REILAND, is a resident of the City of Owasso in Tulsa County, Oklahoma. He has two children who are students at Owasso Public Schools.

2. Defendant INDEPENDENT SCHOOL DISTRICT NO. 11 OF TULSA COUNTY, aka OWASSO PUBLIC SCHOOLS, is a duly organized school district of the State of Oklahoma and is a proper party pursuant to 70 OK Stat § 70-5-105.

3. Defendant MARGARET COATES is the current Superintendent of Defendant Owasso Public Schools and upon information and belief is a resident and domiciled in Tulsa County, Oklahoma.

II. JURISDICTION AND VENUE

4. This action arises under the authority vested in this Court by virtue of 12 O.S. § 2004(F) and affirmed by O.A.C. 210:10-1-7.

5. Venue is proper in this Court pursuant to 12 O.S. §§131, 133 and 1653 in that (a) this is an action against a public officer for acts performed by such public body, or failed to

perform, under color of the public office, and Plaintiffs' cause of action arose in Tulsa County, Oklahoma and (b) all Defendants are located or reside in Tulsa County, Oklahoma.

III. GENERAL ALLEGATIONS

6. Plaintiff is a parent of two children who attend the 7th and 10th grade at Owasso Public Schools.

7. The Defendant Board of Education ("Board") holds monthly meetings that are open to the public. 70 OK Stat § 70-5-118. Board meetings are subject to advance public notice under Oklahoma Open Meeting Act, 25 O.S. §25-303. Board meetings may be video-taped, which videos are posted on Defendant District's website and made available to the public. Public participation at a Board meeting is allowed pursuant to Defendants' Policy 1.40. Policy 1.40 states that organizations, groups and individuals may request to speak to the Board during the public comment segment scheduled for all board meetings. A copy of Policy 1.40 is incorporated and made a part hereof by reference.

8. Plaintiff's daughter, who is 14, had checked out from her Defendant's public school library a book, *Blankets*, which included pornographic graphic depictions of sex. (See Plaintiff Affidavit, p 1, attached hereto and incorporated and made a part hereof by reference). Plaintiff complained to the Defendant District.

9. About that same time, the Board prepared a proposed new policy, *School Library Book Selection Policy #1.86* and included it on the Agenda for the September 2022 Board meeting to do a first reading as a step to its adoption.

10. The Policy, however, did not address Plaintiff's complaint and other parents' shared concern regarding pornographic content in the school library book selections. Parents,

including Plaintiff and Plaintiff's friend, Ron Causby, asked and were permitted to speak on the new Policy and their concerns at the September Board meeting.

11. Plaintiff and Mr. Causby regularly post a video podcast on Facebook in which they discuss local concerns with the intent to both inform and entertain. Their postings around this time included Plaintiff's experience with his daughter regarding *Blanket* and criticizing the Board's proposed new policy.

12. A second reading of the proposed new policy was to be on the Agenda for the next Board meeting, October 10, 2022. The events that occurred associated with the October 10th meeting are set out in the Affidavits of Plaintiff and Mr. Causby attached hereto, incorporated and made a part hereof by reference.

13. Plaintiff attempted to lobby to persuade the Board to revise the proposed Policy and expected a revised version to be included in the October 10th Board meeting agenda. However, the proposed Policy was not changed. On the morning of the Board meeting, Plaintiff emailed Board members, asking why the Policy still did not address pornography being included in the school libraries and indicated he would be attending that evening's Board meeting to raise this question.

14. Plaintiff's spoke at the board meeting during which his presentation, tone, and conduct were not out of line, especially when considering the context of his comments was the concern for his daughter and other children who parents are entrusting to the Defendants' care. He complied with Defendants' rules for public participation.

15. During the meeting after the public comments, it became clear that the Board would be withdrawing the Policy from any public agenda and manage its approval process in a

special meeting that would not be opened to the public. Plaintiff left the meeting in frustration, joining his friend, Mr. Causby who had left earlier.

16. Plaintiff and Mr. Causby were talking near their cars, when Art Haddaway exited the Administration Building and walked toward his car parked near them. Mr. Causby had known Mr. Haddaway for some time and has admitted he has little respect for him as a reporter for the Tulsa World and manager of Owasso Reporter media page. See Causby's Affidavit, paragraphs 6-8.

17. Plaintiff's comments to Mr. Haddaway mostly addressed whether he would be writing a story about the Board meeting. The exchange that occurred lasted less than a minute. While Plaintiff did use profanity in reference to the goings on by the Defendants, Plaintiff never made any threatening moves or gestures toward Mr. Haddaway. Their exchange, including Mr. Causby's disparaging remark about Mr. Haddaway's biased reporting in favor of Defendants, is described by both Plaintiff and Mr. Causby in their respective Affidavits attached hereto.

18. Notwithstanding that no physical or verbal threats occurred between Plaintiff and Mr. Haddaway, only an exchange of questions and somewhat blunt answers, Mr. Haddaway was shook by the exchange as seen in his texts to his close friend, Jordan Korphage, who works for Defendants as Director of Communications. However those same texts would indicate that he was more upset by and focused on Mr. Causby and the history between the two of them. Mr. Haddaway did not even know Plaintiff's name. The texts clearly indicate a close relationship between the two which creates a context for the texts as Mr. Haddaway needs a friendly ear to vent his frustration to regarding Mr. Causby. Defendants provided Plaintiff screen shots of the texts as an attachment to the Defendants' Memorandum that specifies the charges against Plaintiff dated October 24, 2022 ("Charging Memorandum), believing it showed verbal

aggression by Plaintiff, without considering the historical context between Mr. Causby and Mr. Haddaway. The screenshots of texts attached hereto as Exhibit A, and the Charging Memorandum attached as Exhibit B, both incorporated and made a part hereof by reference. The texts clearly indicate a close relationship between the two which creates a context for the texts as Mr. Haddaway needs a friendly ear to vent his frustration to regarding Mr. Causby with whom he has a history. While his complaint about the exchange with Plaintiff differs from Plaintiff's and Mr. Causby's description in their Affidavits in that he makes himself out to be a victim and target of harsh language by Plaintiff's comments, he provides no evidence of any physical threat toward Mr. Haddaway. Even in the worse light, Plaintiff's comments to Mr. Haddaway were within his right of free speech in complaining about a political process in addressing a reporter.

19. it appears that Mr. Haddaway almost immediately texted a Board member, Jordan Korphage, after his exchange with Plaintiff.

20. However, the texts do not indicate any complaint by Mr. Haddaway other than for Plaintiff's speech regarding his reporting. The texts intimate a history of animus between the reporter and the amateur podcaster, Mr. Causby. He appears to track Mr. Causby and Plaintiff's videos, having watched their video that was posted the very next day. Mr. Haddaway and his friend, Defendants' Director of Communication, have a stake in crippling the public participation by Plaintiff and Mr. Causby in public school issues.

21. Following Mr. Haddaway's leaving the parking lot, Mr. Causby left to go home, leaving Plaintiff alone waiting for Board member, Mr. England so he could ask him questions about what might be happening behind the Board's closed doors.

22. Plaintiff's attached Affidavit describes his interaction with Mr. England. He admits that it was argumentative and tense, and that Mr. England was agitated during it. Present during the exchange was Paul Croft, Director of Safety and Security for Defendants, but who Plaintiff knows and have a friendly relationship. Plaintiff was sympathetic about how Mr. Croft was caught in the middle of an argument, especially when one of the parties is your employer, so he emailed the officer to apologize, attached hereto as Exhibit C, incorporated and made a part hereof by reference.. His email demonstrated that he owned his anger about the Board's political process that underlay his comments to an elected Board member and why he could not let Mr. England's arguments go unanswered.

23. However, at no time was his anger at the Board's actions directed toward any physical aggression against Mr. England. In fact, Mr. England had his own emotions working during the exchange. He put his hand on Plaintiff first, as evidenced by the video of the exchange captured by Defendants' parking lot cameras, which Defendants also provided in preparation of their prosecution of Plaintiff.

24. Defendants also provided a statement by Defendants' resource officer and Director of Safety and Security, Paul Croft, which Defendants had him prepare for purposes of Defendants' prosecution of Plaintiff. However, his statement only describes a heated discussion on both sides between a constituent and an elected official. His statement is attached hereto as Exhibit D, incorporated and made a part hereof by reference.

25. Contrary to Defendants' later allegations of Plaintiff's cussing and profanity in the Charging Memorandum, his most used phrase is "fucking bullshit" that he uses when referring to the political actions by the Board and their arguments supporting their liberal book

selection policy, as evidenced across the Affidavits. None of the evidentiary documents support an allegation that he called either Mr. Haddaway or Mr. England any profane name.

26. Two days after the Board meeting, October 12, 2022, Defendants sent a letter to Plaintiff informing him that he was banned from school property for six months. The letter is attached hereto as Exhibit E, incorporated and made a part hereof by reference.. He would not be allowed on any school campus for any reason, which clearly burdened his ability to participate in family life, such as taking and picking up his children from schools; meeting with his children's teachers regarding his children's education; supporting his children in school extracurricular activities. It also added a financial burden as Plaintiff's second job was with UberEATS as a delivery driver which often serves customers on school grounds.

27. The notice states that the ban is effective immediately and gives Plaintiff five days to request reconsideration of the ban by the Board, but at the same time, Defendants do not give Plaintiff any notice of the alleged conduct with which he is being charged. Meanwhile, the Defendants take almost two weeks from the date the alleged conduct occurred to put together their case against Plaintiff before Defendant Superintendent Coates provides him the Charging Memorandum that sets out the basis for her October 12, 2022 letter, wherein she issued a ban against Plaintiff.

28. Defendants' so-called appeal process does not protect Plaintiff's due process rights. Plaintiff is given only a week to prepare his defense. Further, the adjudication of these charges, which have serious impacts on Plaintiff's family and income, is very much a one-sided process and Defendants' final determination is supposedly non-appealable. The Board will be the fact finder; Board members and Defendants' employee will be witnesses; and the

Superintendent has already determined the threatening and imbalanced character of Plaintiff as she states in Defendants' Charging Memorandum:

What concerns me the most is the unpredictability of Mr. Reiland to control his emotions and his behaviors simply because others may disagree with a certain position he holds. If Mr. Reiland does not suffer a consequence for his actions on the night of October 10, what is going to keep it from occurring again: whether after another board meeting; when meeting with a teacher or other staff member; or attending an athletic event where he disagrees with a coach's decision or an official's call?

Finally, any evidence that could demonstrate a conflict of interest on the part of Defendants' witnesses and Defendants in pursuing the ban against Plaintiff is within the control of Defendants and not subject to any discovery rights of Plaintiffs.

**Count 1: Request for Declaratory Judgment of
Defendants' Misuse of Authority in Violation of Plaintiff's Rights to
Free Speech and Participation in Government**

A. Defendants Lacked Statutory Authority to Ban Plaintiff

29. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged in this paragraph.

30. The fundamental question before the Court is whether Defendants' actions in banning Plaintiff from school properties is a proper exercise of its authority to remove "a threat to the peaceful conduct of school business" (70 OK Stat § 70-24-131) or is a pretext to restrict Plaintiff's participation in School Board business and his criticism of Defendants' policies and actions.

31. Defendant Superintendent Coates cites 70 OK Stat § 70-24-131 and 21 OK Stat §21-1376 as her authority for the Plaintiff's ban. Section 70-24-131 provides:

The superintendent or principal of any secondary, middle or elementary school shall have the authority *to order* any person out of the school buildings and off the school property *when* it appears that *the presence of such person is a threat* to the peaceful conduct of

school business and school classes. This authority shall extend to the removal of any individual attending an official school activity or field trip where students are present, including an activity or field trip not on school property, when the superintendent or principal determines that a threat to the peaceful conduct of students exists.

The language of the statute requires a present, real-time assessment of a threat. Then and only then does the statute authorize the superintendent to “order” a person off the school property and then, the authority is limited to the immediate removal of the person in order to circumvent the threat being realized. If the person refuses to leave, then they can be fined or jailed. The directive and the fine for failing to comply with the directive all is tied to the present moment and there is no after effect, including any hearing to assess the facts. The statutory language demonstrates its practical purpose is to disperse a real-time threat. There is no ambiguous language that allows the superintendent discretion to ban a person who is no longer a threat or to evaluate a person’s action after the fact to determine whether that person could be a threat in the future and thus should be banned going forward.

32. On the other hand, Section 21-1376 requires more than a threat but requires an actual act and an actual interference with “school activities” before authoritative personnel can direct a person to leave the institution:

A. The chief administrative officer or anyone designated by the chief administrative officer or the governing board of the institution of learning to maintain order at an institution of learning shall have the authority and power to direct any person to leave the institution of learning who is not a student, officer or employee thereof, and who:

1. *Interferes with the peaceful conduct of activities at an institution of learning;*
2. *Commits an act which interferes with the peaceful conduct of activities at an institution of learning;*

(italics of present tense verbs added). Further, when the actual conduct and actual interference results in a directive that a person is to leave the educational institution, that directive is for an automatic term of six months, unless otherwise waived by the appropriate school authority.

33. Under the facts of this case, there was no present or real-time assessment that Plaintiff presented a threat that would interfere with the Board meeting being conducted inside the Administration building and neither did any alleged conduct by Plaintiff actually interfere with the school meeting. It is unclear if a School Board meeting even qualifies as an

“interfere[nce] with classes, study, student or faculty safety, housing or parking areas, or extracurricular activities; threatening or stalking any person; damaging or causing waste to any property belonging to another person or the institution of learning; or direct interference with administration, maintenance or security of property belonging to the institution of learning.

Okla. Stat. tit. 21, §21-1376(C).

34. Defendant Superintendent specifically noted in her Charging Memorandum (Exhibit B, p. 1) setting out the basis for Defendants’ ban of Plaintiff dated October 24, 2022:

To put any question to rest, the basis for my directive is solely related to Mr. Reiland's conduct that took place in the parking lot of the Education Service Center ("ESC") after the conclusion of the October 10, 2022 meeting of the District's Board of Education.

Defendants’ ban of Plaintiff violates the statutory authority granted Defendants when the conduct complained of by Defendants did not in any way interfere with the Board’s meeting or business being conducted during the meeting.

35. Even conceding that Section 70-24-131 applied, there was no indication that a present threat existed. Plaintiff did not threaten either Mr. Haddaway or Mr. England. Had he been a realistic threat, the resource office, Paul Croft, who witnessed the exchange between Plaintiff and Mr. England would have had the authority to intervene and act accordingly. Plaintiff’s Affidavit and Mr Croft’s statement that he provided to Defendants (Exhibit D)

indicate Mr. Croft was cautiously watching the temperament of the discussion but did not see the need for any aggressive intervention, as he did not take any. He understood that the argument was such that neither side was going to win, and so he suggested both men go home. However, the stakes in these school politics affecting Plaintiff's children were sufficiently high that neither party could not just agree to disagree, until they realized there was nothing else to do but go home, as suggested by Mr. Croft. Mr. Croft's statement (Exhibit D) testifies to this nature of the argument, evidencing nothing more.

36. Finally, the statutory language of both 70 OK Stat § 70-24-131 and 21 OK Stat §21-1376 does not in any way infer the right of the superintendent to assess the person as a future threat and to extend the real-time ordering of a person off the property under the statute into a long-term ban across all property based on only a "maybe." Defendants' Charging Memorandum (Exhibit B, p. 8) itself evidences that the Superintendent's assessment of Plaintiff as a continuing threat was both hypothetical and purely subjective, as reflected in the future subjective tense of her final statement:

What concerns me the most is the *unpredictability* of Mr. Reiland to control his emotions and his behaviors simply because others may disagree with a certain position he holds. If Mr. Reiland does not suffer a consequence for his actions on the night of October 10, *what is going to keep it from occurring again*: whether after another board meeting; when meeting with a teacher or other staff member; or attending an athletic event where he disagrees with a coach's decision or an official's call? It is for this reason that my directive also includes any District activity or field trip not conducted on school property—as any repeat of the same or similar behavior by Mr. Reiland *would threaten* the peaceful conduct of students.

OK Stat § 70-24-131, italics supplied.

37. Defendants' actions against Plaintiff cannot be supported by the authority granted to the Superintendent under either 70 OK Stat § 70-24-131 and 21 OK Stat §21-1376 and thus, is unlawful and must be overturned.

B. Defendants' Verbal Harassment Charge Is Impermissible Regulation of Speech

38. The Charging Memorandum makes it clear that the conduct for which Plaintiff is being charged and punished is verbal harassment. Defendants in their Charging Memorandum are attempting unlawfully to expand its authority under Section 70-24-131 and Section 21-1376 to include a duty to "any person who attends an event on the grounds of Owasso Public Schools, including a board meeting, [who] has the right to be free from harassment and to feel safe and secure. This includes the right not to have profanity directed at them when simply walking to their car to leave." Charging Memorandum, Exhibit B, p. 7. However, the regulation of verbal harassment, unless drawn very strictly, can constitute unconstitutional content regulation. Even the regulation of profanity in speech has been found unconstitutional.

39. In *Conchito v City of Tulsa*, 521 P.2d 1384 (1974), City of Tulsa enacted an ordinance providing that it "shall be an offense for any person to use or utter any profane or obscene language or proposal when any person hearing such is insulted or offended thereby, regardless to whom such is directed." The Court found that the ordinance punished speech alone, regardless of its offensiveness, and therefore was unconstitutional.

40. What is interesting regarding Plaintiff's use of the profanity complained of by Defendants that Plaintiff never name called or targeted his expletives at Mr. Haddaway or Mr. England or called them any profane names. As evidence in the attached Affidavits, Plaintiff's most used phrase is "fucking bullshit" to refer to the political actions taken by the Board in regards to pornographic material in the library. Critical speech aimed at policy, politics or government officials may constitute verbal harassment, but still cannot be regulated.

41. In *Ison v. Madison Local School District Board of Education*, US Court of Appeals For The Sixth Circuit, (July 7, 2021), <https://www.govinfo.gov/content/pkg/USCOURTS-ca6-20-04108/pdf/USCOURTS-ca6-20-04108-0.pdf>, the Sixth Circuit Court of Appeals ruled that the plaintiffs could not be thrown out of a school board meeting simply because their comments made during the public comment period could be interpreted by the school board members as antagonizing or harshly critical of them and their policy. Comments that are regulated based on a governing entity's perspective were held as impermissible viewpoint discrimination.

42. Defendants' actions are discriminatory against Plaintiff's speech based on the viewpoint of its conflicted witnesses that align with Defendants' political agenda. Clearly, it is impermissible for Defendants to reshape its authority under 70 OK Stat § 70-24-131 and 21 OK Stat §21-1376 to cover verbal harassment just because political debate occurs on public school grounds outside any forum for conducting school business or educational activities. However, the rub here regarding Defendant's redefined authority to outlaw verbal harassment is when verbal harassment is defined in terms of disagreeable political speech. The charges cannot stand against Plaintiff's unconstitutional challenge.

(C) Defendants' Verbal Harassment Charge Is an Unlawful Pretext For Punishing Plaintiff's Exercise of His Constitutional Free Speech and Citizen Participation Rights

43. While the First Amendment of the U.S Constitution prohibits government from enacting laws that abridge the freedom of speech, article 2, section 22 of the Oklahoma Constitution frames the freedom of speech as follows:

Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

44. Plaintiff's verbal exchange with a reporter and then a Board member were all within the free speech rights guaranteed him under the U.S. and Oklahoma Constitutions. Defendants' alleged verbal harassment was based on the hearsay and reaction of two conflicted witnesses, one an elected school board member who matched Plaintiff's intensity in a policy debate, and the second, a journalist who was a close friend with a Board member and who has been the source of targeted criticism by Plaintiff and his friend, Mr. Causby for his biased reporting for some time, which Mr. Haddaway obviously resented. It is clear that at the center of the harassment complained of were strong political feelings on both sides. The risk of government overreach under these scenarios is exactly why the First Amendment was added to the U.S. Constitution and freedom of speech included in the Oklahoma Constitution.

45. Both Mr. Haddaway and Mr. England could have merely walked away to leave without saying a word. In fact, Mr. Haddaway's responses were curt, imparting little information as he prepared to drive away. However, the penalty for Plaintiff's inquiries about Mr. Haddaway's possible reporting of the Board meeting and for having a mutually intense argument about Board policy with Mr. England, is a six-month ban that burdens his parental relationship with his children when he cannot take them to school, attend their school activities or participate in teacher/parent meetings. Defendants' actions will have a chilling effect on the future speech of Plaintiff, Mr. Causby and other parents in Defendants' school community who must now be concerned about whether their political speech will constitute de facto verbal harassment subjecting their speech to punitive action by the Defendants. This is not free speech.

46. Oklahoma enacted the Citizen Participation Act for the express purpose to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at

the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.” 12 OK Stat § 12-1430 (2021). The result of Defendants’ unlawful ban of Plaintiff from school properties and school activities is his inability to participate in the governance of his children’s school for at least six months. He cannot help but reconsider his future participation and future speech in light of the high cost associated with Defendants’ ban. This is exactly the situation that the Citizen Participation Act was enacted to address. As the Tenth Circuit Court of Appeals held:

When public officials feel free to wield the powers of their office as weapons against those who question their decisions, they do damage not merely to the citizen in their sights, but also to the First Amendment liberties and the promise of equal treatment essential to the continuity of our democratic enterprise

Van Deelan v. Johnson, 497 F.3 1151, 1155 (10th Cir. 2007).

**Count 2: Request for Declaratory Judgement
Defendants’ Violation of Plaintiff’s Due Process**

47. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged in this paragraph.

48. Due process under the Fifth and Fourteenth Amendments of the U.S. Constitution and title 2 §7 of the Oklahoma Constitution, requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894). Courts have held that due process requires fair notice of what is punishable and what is not. *See Federal Communications Commission v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012): “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”

49. Defendants interpreted of 70 OK Stat. 70-24-131 and 21 OK Stat §21-1376 to include verbal harassment only after Plaintiff had engaged Mr. Haddaway and Mr. England. Plaintiff could not have inferred from the specific language of both of these statutes that it would include verbal harassment as broadly as Defendants is attempting to apply it to Plaintiff.

50. Further, her actions in charging Plaintiff with verbal harassment indicates incredible discretion is determining what conduct constitutes verbal harassment, which makes the reinterpreted statutes subject to arbitrary enforcement. Both the de factor interpretation and the potential arbitrary enforcement of the reinterpreted statutes in the future violates the fair notice doctrine of due process.

51. The need for fair notice of unlawful conduct arises in void-for-vagueness cases. The Supreme Court has applied the void-for-vagueness doctrine with extreme strictness where First Amendment freedoms are concerned. Since at the heart of verbal harassment regulations is the regulation of free speech, verbal harassment must be drawn very specifically to narrow its potential application. Defendants pulling verbal harassment effectively out of the air in order to justify their bar of Plaintiff from school property and school activities clearly violates Plaintiff's due process rights.

52. Courts have generally required some procedural step which can be less than an evidentiary hearing before a person can be deprived of property or liberty. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Only where summary action is necessary to prevent imminent harm to the public can government take action to deprive a person of property or liberty with no notice and no opportunity to defend, subject to a later full hearing. Defendants imposed an immediate ban of Plaintiff without any notice at all, depriving him of the liberty to participate in his children's lives that relate to their education and school activities and earnings as a driver for UberEATS,

DoorDash and GrubHub, which means he often needs to drive on school campuses to deliver to customers..

53. Defendant Superintendent's October 12th letter imposed an immediate ban on Plaintiff without any allegation of his specific conduct justifying his immediate ban from school properties and activities. It merely provided the citation of the statutes that she claimed authorized her to take such immediate action. The only procedural right noted in the October 12th letter is the right of Plaintiff to request reconsideration of the ban but without knowing of what he was being accused, Plaintiff could not frame any basis for reconsideration. Defendants took almost two more weeks before it provided notice to Plaintiff of their specific allegations that support their ban their October 24. At the time of filing this Petition, a special Board meeting is scheduled to hear Plaintiff's appeal on October 31, 2022. Meanwhile, Plaintiff would have been deprived of income for three weeks without due process.

54. Finally, due process requirements include a hearing before an impartial decisionmaker. *Tumey v. Ohio*, 273 U.S. 510, 522 (1927), "no matter what the evidence was against him, he had the right to have an impartial judge;" *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970), "The decisionmaker must be impartial, and, although prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as decisionmaker, he should not have participated in making the determination under review." The appeal of Defendants' bar of Plaintiff from school grounds and activities is scheduled at a special Board meeting at which the Board shall vote on Plaintiff's appeal and which decision will be is said to be final and unappealable, though it is unclear if the School Board can deny Plaintiff of his due process rights to an appeal.

55. However, the Board members hearing Plaintiff's appeal are not impartial. One Board member, Mr. England, freely participated in the verbal exchange with Plaintiff that Defendants now classified as verbal harassment. Mr. Haddaway, who was involved in the other verbal exchange that Defendants alleges verbal harassment, has been reporting on Defendants' news events for a long time and is a close friend of a Defendants' employee, the Director of Communication, so close that Mr. Haddaway immediately texted his friend after the exchange to gain sympathy and offer sympathy to him for having to put up with Plaintiff's political speech: "You all could cure cancer and they would claim you all didn't do it right." See Exhibit A.

56. Finally, the content of the speech that Defendants now defines as verbal harassment was critical of Defendants' policy that would allow selection of books and materials that included pornographic content in school libraries accessible to children, such as Plaintiff's children. The Board's impartiality is highly suspect when their policy was the subject matter of the verbal exchange with the two witnesses.

57. Finally, a Board hearing is not a proper forum for determining Plaintiff's constitutional claims against Defendants. Defendants could not be an impartial tribunal to determine whether Defendants had violated the U.S. Constitution and the Oklahoma Constitution, as well as other Oklahoma laws. In *State of Washington v Green*, Court of Appeals of Washington, Division 1, No. 63001-6-1 (September 27, 2010, <https://caselaw.findlaw.com/wa-court-of-appeals/1539676.html>), a school district issued two notices of trespass to a student's mother notifying her that she was restricted from entering her son's school except under specific conditions. The notices did not address a process for appealing or challenging the notice. More significantly, the school district did not provide the mother any reasons for the notices of trespassing. At court, the school district argued that the

mother had waived her right to challenge the notices when she did not challenge the notice earlier. However, the court held that the question of whether the order was lawful was an issue of law that must be decided by the court.

58. For all of these reasons -- lack of fair notice, the vagueness of verbal harassment, the potential for arbitrary enforcement by the Superintendent who could use enforcement to discriminate against those dissenting against the Administration's policies, the punitive deprivation of Plaintiff's rights before Plaintiff has even been notified of the allegations of the specified conduct for which he is being punished, and finally the partiality of the decision-makers reconsidering the charges against Plaintiff – Defendants' charges and ban of the Plaintiff should be overturned and further action against Plaintiff arising in relation to the events at issue in this case should be enjoined.

**Count 3: Request for Declaratory Judgment
Defendants' Slander of Plaintiffs' Alleged Criminal Behavior**

59. Plaintiffs realleges and incorporates by reference all preceding paragraphs as if fully alleged in this paragraph.

60. Defendant Superintendent's October 12, 2022 letter claims that Plaintiff is being banned from school properties and activities for his violation under Okla. Stat. tit. 21, §§1375-1376, which is a criminal statute. The refusal of a person to leave the educational institution when ordered is guilty of a misdemeanor.

61. A person who communicates to anyone a report of a slanderous nature is guilty of a misdemeanor. 21 OK Stat § 21-781. Slander includes a false and unprivileged publication that charges any person with crime. 12 OK Stat § 12-1442. Defendant Superintendent could not in good faith rely on this criminal statute to justify Plaintiff's ban. As a school official responsible for enforcing Section 21-781, she should have known or at least be aware of the

limitations on her authority under the statute and that charging Plaintiff for violation of this statute in her communications regarding her ban could constitute a false charge. Her post hoc interpretation of the statute to claim it covers verbal harassment cannot excuse her false allegation at the time.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court enter such order that:

1. declares the Defendants' did not have the authority under 70 OK Stat. §70-24-131 (2021) and 21 OK Stat. §§21-1375 -1376 to ban Plaintiff for six (6) months from school property for his alleged verbal harassment in violation of Plaintiff's constitutional rights of free speech under article 3, §2-7 of the Oklahoma Constitution, the First Amendment of the U.S. Constitution and the Oklahoma Citizens' Participation Act, 12 OK Stat § 12-1431 (2021).
2. declares that Defendants denied Plaintiff's his right to due process under article 2, §7 of the Oklahoma Constitution and the 5th and 14th Amendments of the U.S. Constitution;
3. declares that Defendants violated 12 OK Stat § 12-1442 (2021) by slandering Plaintiff in Defendants' letter that in bad faith charged Plaintiff for actions constituting a crime under Okla. Stat. tit. 21, §§1375-1376;
4. declares that Defendants' unlawful ban is overturned and enjoins Defendants' from pursuing further charges against Plaintiff for any actions occurring on October 10, 2022 in association with the Board meeting.;
5. awards damages in the amount of \$,000 for Plaintiff's lost income, \$500 for Defendant's slanderous charge against Plaintiff, and equitable relief in the form of a written

apology to Plaintiff for Defendants' unconstitutional actions against Plaintiff and a revision of its Policy consistent with the findings of this Court; and

6. awards Plaintiff nominal damages and such other equitable relief as needed to redress the constitutional injury to Plaintiff; and

7. awards Plaintiffs' their reasonable attorneys' fees, costs of litigation, and other appropriate costs, damages and relief allowed by law and deemed by this Court as just and proper in this action.

Respectfully submitted,



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