

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

SANDRA HERNDEN,

an individual,

Plaintiff,

v.

CHIPPEWA VALLEY SCHOOLS BOARD
OF EDUCATION, a government body,
FRANK BEDNARD, in his official capacity as
President of Chippewa Valley Schools and in
his individual capacity, and ELIZABETH
PYDEN, in her official capacity of Secretary of
Chippewa Valley Schools and in her individual
capacity.

Defendants.

Case No.: 2:22-cv-12313-MAG-DRG

PLAINTIFF'S MOTION FOR SUMMARY
DISPOSITION

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV.
PRO. 56 AND BRIEF IN SUPPORT**

Statement Regarding Concurrence: The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief, and opposing counsel expressly denied concurrence.

Respectfully Submitted,

/s/ Stephen Delie
Stephen Delie (P80209)
Attorney for Plaintiff
Mackinac Center for Public Policy

October 17, 2023

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STATEMENT OF MATERIAL FACTS

The parties.

1. Plaintiff, Sandra Hernden, is the mother of a child within the Chippewa Valley School District. Pl.'s Dep. Tr. p. 4 (attached as Ex. A).
2. Defendant Chippewa Valley School Board is a seven-member legislative body elected by residents of the Chippewa Valley School District. Dec. 14, 2020 Minutes of the Chippewa Valley Sch. Bd. (attached as Ex. B).
3. Defendant Chippewa Valley School Board has policymaking authority over the operations of schools within the Chippewa Valley School District. PageID.66.
4. Defendant Bednard is the former president of the Chippewa Valley School Board. Compare PageID.2 with PageID.11.
5. Defendant Pyden is the former secretary of the Chippewa Valley School Board. *Id.*

The nature of the dispute.

6. During the COVID-19 pandemic, Plaintiff regularly contacted the Board and its individual members. See, e.g., PageID.18-22, 24.
7. These communications generally related to the Board's policy responses to COVID-19, and its management of public meetings. *Id.*
8. One such communication occurred on December 10, 2020. On that date, Plaintiff electronically sent the Board an editorial published by the Chicago Tribune which questioned the wisdom of remote learning. PageID.20.
9. Plaintiff's communication prompted a response by Defendant Pyden. A series of messages between Plaintiff and Defendant Pyden occurred, and the conversation was heated. Page ID.18-20.

10. On December 11, 2020, Defendant Pyden forwarded her emails with Plaintiff to Plaintiff's then-boss, Police Chief Vince Smith. PageID.17.
11. Chief Smith then forwarded Defendant Pyden's email to Deputy Chief Ted Stager for an investigation. PageID.16.
12. An investigation was conducted, and Plaintiff's supervisors concluded that she had not violated any departmental rules. PageID.16.
13. Plaintiff was not disciplined for her correspondence with Defendant Bednard. Ex. A, p.10.
14. Plaintiff's communications with the Board and its members continued after Defendant Pyden's complaint. PageID.24.
15. On October 4, 2021, Plaintiff forwarded the entire Board a case decided by the Sixth Circuit Court of Appeals. That case related to parents protesting against a different school board suppressing opposition to pro-gun views, as well as limiting the scope of their First Amendment rights during public comment periods. *Id.*
16. Plaintiff's communication stated in part: "Once again, law on parents side. Maybe a lil more due care and caution at the next meeting Frank. You know, when you let your hatred you have for me take hold and you interrupt me. 1st 2 were free..." PageID.24 (errors original).
17. In response, Defendant Bednard reported Plaintiff to the United States Department of Justice ("DOJ"). PageID.24, 26.
18. That message was submitted through an online portal on the DOJ's website. Def.s' Answer to Pl.'s First Interrog. and Plf.'s Req. for Produc. of Doc.s, RFP 1. (attached as Ex. C).
19. The complaint submitted via the DOJ's website was the same complaint reproduced in Defendant Bednard's October 5, 2021 e-mail. *Id.*, see also PageID.26.

20. In part, Defendant Bednard’s complaint stated: “Anything that could be done to curb this behavior by these people would be greatly appreciated by our board, administration, and our community.” PageID.26.
21. Defendant Bednard’s complaint also repeatedly used first-person plural pronouns to refer to the author of the e-mail, including phrases such as “our board,” “our district,” “we understand,” “our meetings,” “our school district,” and “our board, administration, and our community.” PageID.26, 28.
22. Defendant Bednard’s complaint was filed on October 5, 2021, one day after Attorney General Merrick Garland released a memo instructing the Federal Bureau of Investigation to assist governmental leaders in assessing and reporting threats against school officials. PageID.28.
23. It is unclear whether the DOJ acted on Defendant’s complaint, but Plaintiff has not been informed of an ongoing investigation based on Defendant Bednard’s complaint. Ex. A, p. 29.
24. Plaintiff has not alleged economic damages beyond nominal damages for what she believes to be a violation of her First Amendment rights. Pl.’s Resp. to Def.s’ Req. for Admis. paragraphs 3-4 (attached as Ex. D).
25. Plaintiff has not alleged non-economic damages. *Id.*
26. Plaintiff has requested attorney’s fees in the event she prevails in this matter. PageID.11.

STANDARD OF REVIEW

Summary judgement is appropriate under Fed. R. Civ. Pro. 56 if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” All reasonable inferences of fact must be made in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is undisputed when the record “taken as a whole could not lead

a rational trier of fact to find for the non-moving party.’ *Matsushita Elec. Indus., Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In deciding a Rule 56 motion, the Court must evaluate whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 447 U.S. at 251-52.

ARGUMENT

The material facts of this case are not in dispute, and they demonstrate that Defendants retaliated against Plaintiff for exercising her First Amendment rights. Defendant Pyden’s complaint to Plaintiff’s supervisor was based solely on Plaintiff’s First Amendment activity, and despite not resulting in adverse employment action, constitutes unlawful retaliation. Similarly, Defendant Bednard’s complaint to the Department of Justice (“DOJ”) was, as a matter of law, a retaliatory act. Defendant Board is also liable for Bednard’s retaliation, as Board expressly delegated Defendant Bednard the authority to speak on its behalf through its bylaws. Having delegated that authority, Defendant Board cannot escape liability.¹

I. Defendant Pyden retaliated against Plaintiff for exercising her First Amendment rights.

Defendant Pyden’s complaint to Plaintiff’s supervisor was clear retaliation against Plaintiff, and it was motivated by Plaintiff’s protected conduct. As such, Defendant Pyden should be held individually liable for that retaliation as a matter of law.

On December 10, 2020, Plaintiff sent Defendant Board an editorial suggesting that coronavirus policies in schools were damaging to children’s education. PageID.20. This e-mail triggered a response from Defendant Pyden, using her official Chippewa Valley Schools e-mail address. PageID 19-20. Defendant Pyden’s communication expressed appreciation for Plaintiff’s

¹ This Court previously dismissed the portion of Plaintiff’s claim against the Defendant Board predicated upon Defendant Pyden’s conduct. PageID.219. As such, Plaintiff limits her argument regarding the Defendant Board’s liability to its culpability for Defendant Bednard’s actions.

viewpoint, but reiterated the need to maintain policies that would guarantee student safety. *Id.* Plaintiff responded by challenging Defendant Pyden's qualifications to make medical decisions, arguing that the Defendant Board was setting policy based on political considerations, challenging the efficacy of the Board's policy, and suggesting the Board had restricted public comment at its meetings to pre-screened, pro-Board speakers. Page ID.19. Defendant Pyden viewed Plaintiff's communication as disrespectful, and she indicated she would refuse to engage with Plaintiff further due to her hostility. PageID.18. Plaintiff retorted by arguing the Board had not earned the respect of the community, and challenged the argument that she had engaged in personal attacks. *Id.* Plaintiff specifically stated: "So I fail to see how using spoken word is a personal attack, especially when it speaks to a matters of public opinion." (sic). *Id.* Plaintiff closed her e-mail by reminding Defendant Pyden that the Board was answerable to the community. *Id.*

Defendant Pyden did not respond to Plaintiff's final message of the exchange. Instead, Defendant Pyden forwarded the e-mail chain to her personal e-mail address from her Chippewa Valley Schools e-mail address. She then sent the e-mail chain to Plaintiff's supervisor at the time, Chief Vance Smith. Defendant Pyden's message was as follows:

Dear Chief Smith:

I am writing with a concern regarding how one of your officers conducts herself in her own community. As you know, return to school has been a hotly contested issue, however, we must do what is best for the community at large. I have noticed that in fact your city hall has closed indefinitely to assist in stopping the community spread. As an elected official, I do expect criticism. I also expect people to disagree with me. However, I do not expect the level of disrespect, even after being asked to stop, that has been shown by one of your public safety officers, Sandra Hernden. As a public servant, more is expected. I do not believe that you would like anyone expressing this level of anger, disrespect and veiled racism in your community. I have attached the exchange below. There have also been calls into our meeting, although I do believe there may have been some connection issues. I am disappointed that this type of behavior has been repeatedly rewarded with service awards. While I do not expect you to take any adverse action, I do believe it is important for you to know how one of your officers is conducting herself within the community and perhaps offer some guidance.

Thank you again for your attention to this matter. May you and your family have a blessed holiday season.

Elizabeth Pyden.

PageID.17.

Plaintiff was not disciplined due to Defendant Pyden's complaint, although her employer did conduct an investigation to determine whether she violated any departmental rules. PageID.16; Ex. A, p.10.

A First Amendment retaliation claim has three elements. First, the plaintiff's conduct which triggered the allegedly retaliatory act must be protected by the First Amendment. *Thaddeus-X v. Blatter*, 175 F.3d 378, 394-95 (6th Cir. 1999). As a result of that activity, the defendant must have taken some action which would deter a person of ordinary firmness from continuing to engage in the protected activity. *Id.*, citing *Crawford-El v. Britton*, 93 F.3d 813, 826 (D.C. Cir. 1996). Finally, there must be a causal connection between the adverse action and the plaintiff's conduct. *Thaddeus-X*, 175 F.3d at 399. Defendant Pyden's complaint satisfies all three elements.

1. Plaintiff's communications with Defendant Pyden were constitutionally protected.

"Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value to the public." *Lane v. Franks*, 573 U.S. 228, 241 (2014) (internal quotations and citation omitted).

Plaintiff's communications, while occasionally heated, were clearly protected conduct. Plaintiff was communicating with Defendant Pyden and the Defendant Board specifically in reference to school policies relating to COVID-19. Plaintiff's complaints were that the Board was making incorrect decisions based on political considerations, rather than sound scientific and medical reasoning, and that the Board's policies were failing students. See, e.g., PageID.20-21.

Regardless of whether Plaintiff's position was correct, she was nevertheless engaging Defendant Pyden on an issue of public interest and importance. Further, she engaged Defendant Pyden via her official Chippewa Valley School's e-mail account, and repeatedly criticized the Board's policy decisions. See, e.g., PageID.19-20. In short, Plaintiff's speech was directly aimed at influencing the Defendant Board and its individual members, including Defendant Pyden, which is clearly a matter of "concern to the community." *Lane*, 573 at 241.

There can be no reasonable dispute that a school's response to the coronavirus pandemic was a matter of significant concern to the public. Countless articles were written about how Michigan's schools were handling COVID-19, arguing both in favor of, and against, school closures and remote learning.² A significant number of parents removed their children from the traditional public school system, at least in part to escape restrictive policies.³ Parents, frustrated with how COVID-19 school policies were affecting students, formed groups like Moms for Liberty, which grew from a single entity in Florida to an organization now counting over 100,000 members in 37 states.⁴ The issue to which Plaintiff was speaking--school policies related to COVID-19--was one of the most high-profile and important issues being debated in public policy during the pandemic. "Freedom of expression upon public questions is secured by the First

² See, e.g., Ron French, *Whitmer Closes Michigan Classrooms for School Year Due to Coronavirus*, BRIDGE MAGAZINE, Apr. 2, 2020 (available at: <https://www.bridgemi.com/talent-education/whitmer-closes-michigan-classrooms-school-year-due-coronavirus>), last accessed Oct. 10, 2023; Madeline Holcombe, *'Kids Very Rarely do Better than Their Parents are Doing.'* *Here's What to Do.*, CNN, Jan. 18, 2022 (available at: <https://www.cnn.com/2022/01/18/health/children-impact-school-closing-coronavirus-wellness/index.html>), last accessed Oct. 10, 2023.

³ Mike Wilkinson, *Michigan Public School Enrollment Stabilizing After Pandemic Exodus*, BRIDGE MAGAZINE, Feb. 10, 2023 (available at: <https://www.bridgemi.com/talent-education/michigan-public-school-enrollment-stabilizing-after-pandemic-exodus>), last accessed Oct. 10, 2023.

⁴ Tyler Kingkade, *Moms for Liberty's Conservative Activists are Planning their Next Move: Taking Over School Boards*, NBC NEWS, July 17, 2022 (available at: <https://www.nbcnews.com/politics/politics-news/moms-liberty-conservative-activists-school-boards-rcna37594>), last accessed Oct. 10, 2023.

Amendment,” and Plaintiff was exercising that freedom when communicating with Defendant Pyden and the Board. *Glasson v. City of Louisville*, 518 F.2d 899, 904 (6th Cir. 1975); see also *Paige v. Coyner*, 614 F.3d 273, 280 (6th Cir. 2010) (holding that a citizen was engaging in protected activity when voicing her opinion on a public project).

Defendants have jointly denied that Plaintiff was engaged in constitutionally protected conduct. In response to Plaintiff’s First Requests for Admission, Defendants stated the following:

3. For all Defendants, please admit:

- a. Chippewa Valley Board of Educations’ (sic) policies relating to responding to the COVID-19 pandemic were matters of public policy.

ANSWER: Denied in the manner alleged. This response is too broad and too vague to be admitted as true. The Board Policies that are adopted are on the District’s webpage, and constitute the official Policies of the District pursuant to the Revised School Code. Defendants are uncertain what Plaintiff means by “public policy.”

- b. Citizens who speak during the public comment period of a meeting of the Chippewa Valley Board of Education on matters of Board policy are engaged in activity protected by the First Amendment.

ANSWER: Denied because untrue. Some speech is protected. Some speech is not.

- c. Citizens who correspond with members of the Chippewa Valley Board of Education on matters of Board policy are engaged in activity protected by the First Amendment

ANSWER: Denied because untrue. Some speech is protected. Some speech is not.

Exhibit D.

Defendants might disagree that Plaintiff’s speech is protected, but their position has already been foreclosed by the Sixth Circuit. Plaintiff’s speech, while discourteous at times, nevertheless was related to a matter of public policy. In *Fritz v. Charter Township of Comstock*, 463 F.App’x 493, 497 (6th Cir. 2012) (hereinafter *Comstock*), the Sixth Circuit explicitly rejected the idea that intemperate speech was subject to lesser First Amendment protections:

Defendants contend, however, that Plaintiff's "personally and inappropriate conduct are not constitutionally protected ... and that one cannot shield their offensive personality or conduct by engaging in protected speech at the same time." We find that such a narrow distinction by Defendants is unwarranted and does not affect the disposition of this case. Some of the speech at issue in this appeal was made in the context of public Township meetings, which as stated above triggered protection under the First Amendment.

Id. (internal citation omitted).

Plaintiff's speech occurred both at a public meetings of the Defendant Board, and via e-mails to the Board and its individual members. That includes her speech to Defendant Pyden individually at her Board-provided e-mail address. PageID.17-22. Whether addressed to the Board or its members, Plaintiff's speech was clearly aimed at causing the Board to adopt policies which Plaintiff believed represented a better response to the COVID-19 pandemic. Plaintiff's conduct is protected by the First Amendment.

2. Defendant Pyden's complaint would have deterred a person of ordinary firmness from continuing to engage in protected conduct.

As a matter of law, Defendant Pyden's complaint to Plaintiff's supervisor would have deterred a person of ordinary firmness from continuing to speak out against the Board and its policies. Even accepting Defendant Pyden's statement that she did not intend for Plaintiff to face any adverse action as true, her mere submission of the complaint is sufficient to give rise to liability.

Retaliation by a government official violates the First Amendment when the retaliatory act "would chill or silence a 'person of ordinary firmness' from future First Amendment activities." *Thaddeus-X*, 175 F.3d at 397 (citation omitted). While "petty slights and minor annoyances" are not sufficient to give rise to a retaliation claim, an injury "need not be great because there is no justification for harassing people for exercise of their constitutional rights...." *Mattox v. City of Forest Park*, 183 F.3d 515, 521 (6th. Cir. 1999) (citation omitted).

The Sixth Circuit has already recognized that complaints to a citizen's employer are sufficient to deter a person of ordinary firmness from exercising their First Amendment rights. In *Paige v. Coyner*, the Court was asked to evaluate whether an official's false statements to a citizen's employer, which resulted in her being terminated, constituted retaliation under the First Amendment. 614 F.3d. 273, 281 (6th Cir. 2010). The Court noted:

Losing one's job and accompanying benefits is certainly severe enough to deter a person of ordinary firmness from speaking at public meetings. *See Harris v. Bornhorst*, 513 F.3d. 503, 519 (6th Cir. 2008) (holding that the adverse action element was met because the state official "actually prevented [the § 1983 plaintiff] from securing the career he wants," and that "[a] more effective deterrent is difficult to imagine").

Id.

The Sixth Circuit reached a similar conclusion in *Fritz v Charter Township of Comstock*, 592 F.3d 718, 728 (6th Cir. 2010) (hereinafter *Fritz*). In *Fritz*, an insurance agent brought a § 1983 action against a township and its supervisor, claiming they had retaliated against her for exercising her First Amendment rights at township meetings. *Id.* at 718. There, the plaintiff alleged that the township supervisor had contacted her employer with the intent to threaten her economic livelihood should she continue to speak during the township's public comment period. *Id.* at 725. The Court concluded that such a threat was likely to deter a person of ordinary firmness from continuing to engage in protected activities:

Negative comments made by Defendant Hudson, especially about the possible damage to Farm Bureau's business, are sufficient to rise to the level of "a threat to take action tangibly affecting employment status." After the conversations, Plaintiff's employer requested that she change her behavior in the community, and ultimately Farm Bureau terminated its contract with Plaintiff. While these allegations are not directly relevant to whether Comstock officials took actions that are cognizable as an adverse action, these facts do support Plaintiff's theory that Defendant Hudson's statements were designed to threaten her economic livelihood. Since few aspects of one's life are more important than gainful employment, it is likely that a person of ordinary firmness would be deterred by this conduct.

Id. at 728. Plaintiff, like the plaintiffs in *Fritz* and *Paige*, faced a threat to her economic livelihood. That threat, was not, however, merely abstract. At the time of Defendant Pyden’s complaint, the potential impact of complaining to a citizen’s employer was particularly concrete.

On December 18 of 2020, a mere week after Defendant Pyden submitted her complaint, another parent in the nearby Rochester Schools school district was fired after the district’s deputy superintendent contacted her employer regarding her advocacy against the district’s COVID-19 policies.⁵ That parent’s story was heavily covered by both state and national media, and any reasonable person would be concerned that a complaint to their employer could trigger a similar reaction.⁶ As the Sixth Circuit has noted, a person of ordinary firmness would be chilled from continuing to exercise their First Amendment rights if their livelihood would be jeopardized by that activity. *Paige*, 614 F.3d at 281; *Fritz*, 592 F.3d at 728.

⁵ Hannah Grossman, *Michigan Mom Who Advocated Against Lockdowns, Speaks on How District Allegedly Bit Back: ‘It Hit my Family’*, FOX NEWS, Aug. 15, 2022 (available at: <https://www.foxnews.com/media/michigan-mom-advocated-against-lockdowns-speaks-speaks-district-allegedly-bit-back>), last accessed Oct. 10, 2023.

⁶ See, e.g., Jennifer Chambers, *Rochester School Parent Sues, Alleges District got her Fired for Speaking Out*, THE DETROIT NEWS, May 3, 2021 (available at: <https://www.detroitnews.com/story/news/education/2021/05/03/rochester-school-parent-sues-alleges-district-got-her-fired-speaking-out/4928309001/>), last accessed Oct. 10, 2023); Fox 2 Staff, *Rochester Schools Settles Case with Mom who said District Got Her Fired for Covid Complaints*, FOX 2 DETROIT, Mar. 1, 2022 (available at: <https://www.fox2detroit.com/news/rochester-schools-settles-case-with-mom-who-said-district-got-her-fired-for-covid-complaints>), last accessed Oct. 10, 2023; Mara MacDonald, *Rochester School District Accused of Targeting Parents who Criticized the District and Board*, CLICKONDETROIT, May 6, 2021 (available at: <https://www.clickondetroit.com/news/local/2021/05/07/rochester-school-district-accused-of-targeting-parents-fighting-for-in-person-learning/>) last accessed Oct. 10, 2023; Caroline Downey, *Parent Sues School District, Claims Board President Got Her Fired Over Reopening Push*, NATIONAL REVIEW, May 3, 2021 (available at: <https://www.nationalreview.com/news/rochester-parent-sues-school-district-claims-board-president-got-her-fired-for-exercising-free-speech/>), last accessed Oct. 10, 2023.

Here, Plaintiff did not lose her job, nor was she disciplined. She was, however, subjected to an investigation by her supervisor at a time when other parents had been terminated for their activism against COVID-19 school policies. PageID.16. Plaintiff need not show that she actually was deterred, as “the Sixth Circuit has never required that an individual plaintiff actually be chilled in the exercise of his First Amendment rights to succeed on a retaliation claim.” *Hazel v. Quinn*, 933 F.Supp.2d 884, 891 (E.D. Mich. 2013), citing *Center for Bio-Ethical Reform Inc. v. City of Springboro*, 477 F.3d 807, 822 (6th Cir. 2007). Put plainly, the test is objective, rather than subjective, and a person of reasonable firmness in Plaintiff’s position would have considered abandoning her protected activity to avoid additional investigations and the potential consequences thereof.

3. Defendant Pyden’s complaint was triggered by Plaintiff’s protected First-Amendment activity.

In evaluating whether a retaliatory act was motivated by protected conduct, courts must determine whether there is a genuine issue of material fact relating to the connection between the plaintiff’s protected activity and the retaliation. *Matshushita Elec. Ind. Co.*, 475 U.S. at 585. Although all facts must be viewed in favor of the non-moving party, facts that are blatantly contradicted by record evidence are sufficient to overcome this assumption. *Scott v. Harris*, 550 U.S. 372, 378, 380-81 (2007). “The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there is no *genuine* issue of *material* fact.” *Anderson*, 477 U.S. at 247-48 (1986). If Plaintiff can demonstrate a lack of a genuine issue of material fact, it becomes Defendants’ burden to proffer “specific facts showing there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

Defendant Pyden’s complaint is directly linked to Plaintiff’s protected First Amendment activity. In that complaint, Defendant Pyden specifically attached Plaintiff’s communications as an exemplar of the activity she argued was inappropriate. She did so in the hopes that Chief Smith would be able to “offer some guidance,” about those communications. PageID.17. The only other activity referenced by Defendant Pyden’s complaint were “calls into our meeting,” which are also an example of Plaintiff’s First Amendment activity. *Fritz*, 592 F.3d 718. A deeper inquiry is not necessary, given that the complaint itself explicitly identifies the motivation behind it.

While Defendant Pyden’s complaint speaks for itself, there are also other independent indicia that it was triggered by Plaintiff’s First Amendment activity. Plaintiff’s final communication with Defendant Pyden in the relevant e-mail string occurred at 8:38 AM on December 11, 2020. PageID.17. Defendant Pyden’s complaint was sent less than two hours later, at 10:35 AM. *Id.* “Temporal proximity between the protected conduct and the adverse action by the state actor ‘alone may be significant enough to constitute indirect evidence ... to create an inference of retaliatory motive.’” *Paige*, 614 F.3d. at 283, citing *Muhammad v. Close*, 379 F.3d 413, 417-18 (6th Cir. 2004). Given that Defendant Pyden’s complaint occurred mere hours after Plaintiff’s final message, a strong inference can be drawn that said communication motivated that complaint.

Defendants appear to dispute Defendant Pyden’s clear motive by suggesting that Pyden’s complaint was triggered by harassment, threats, and a desire to “protect[] the safety and welfare of the District’s stakeholders.” See Defs.’ Answer to Plf.’s Req. for Admis. at 1(a) (attached as Ex. E). In denying Plaintiff’s request that Defendant Pyden admit her complaint was intended to cause adverse action, Defendant Pyden stated the following:

1. For Defendant Pyden only:

- a. In your December 11, 2020 e-mail to Chief Vince Smith, you stated that you did not expect him to take any adverse action against Plaintiff. Please admit that this e-mail was intended to lead to some action being taken to deter Plaintiff from continuing her conduct. If you deny this, please explain your reasoning for sending the e-mail.

ANSWER: Denied in the manner alleged and because it is untrue. Plaintiff (and/or her proxies) subjected Ms. Pyden to severe and pervasive harassment, which included (1) defamatory and threatening statements, (2) threats to “ruin” Ms. Pyden, (3) calling her obscene names, such as “special kind of stupid,” “libtard,” “bitter bitch,” and “Nazi”, (4) persons parking outside of her home, for the sole purpose of harassing and threatening Ms. Pyden. These actions were directed against Ms. Pyden outside of Board Meetings, as well as at board meetings. Ms. Pyden simply wanted the threatening behavior to stop, and had no intention of Plaintiff’s employer taking any adverse employment action. Defendants now know, however, that Plaintiff has previously been disciplined by her employer for imprudent social media usage. Additionally, law enforcement agencies are tasked with investigating potential threats and/or criminal harassment. Ms. Pyden wanted to make sure her concerns were reported, so that they could be looked into by appropriate authorities, should those authorities believe it appropriate to do so. School employees and officials are routinely criticized (and sometimes sued), for not reporting potential threatening behavior, so Ms. Pyden erred on the side of protecting the safety and welfare of the District’s stakeholders.

Id. (errors original). Plaintiff categorically denies that she engaged in any of this alleged activity, and further denies that she engaged “proxies” to do so in her place.⁷ Nevertheless, even accepting these allegations as true *arguendo*, the evidence demonstrates that these alleged acts were not what motivated Defendant Pyden’s complaint.

Nothing in Defendant Pyden’s complaint to Chief Smith mentions any of the allegations above. See PageID.17. Instead, that complaint focuses on Plaintiff’s e-mail messages to Defendant Pyden, arguing that they were disrespectful and inappropriate, particularly given Plaintiff’s status as a public servant. *Id.* Defendant Pyden attached the e-mails in question, demonstrating them to be the motivating factor behind the complaint. *Id.* The complaint does not mention any activity

⁷ It bears noting that Plaintiff, while a member of Moms for Liberty, is not an office holder within that organization, nor has she directed members to engage in any of the alleged activity.

relating to Defendant Pyden's personal residence, nor is there any reference to the specific epithets and insults referenced in Defendants' Answer to Plaintiff's Request for Admissions. *Id.*; see also Ex. E at 1(a). The only matters Defendant Pyden put before Chief Smith for his consideration were Plaintiff's e-mails, and it was those e-mails that motivated her to file that complaint. PageID.17. The evidence demonstrates that it was this conduct, and not the other alleged conduct of "Plaintiff and/or her proxies" that motivated Defendant Pyden's retaliatory act.

4. Conclusion as to Defendant Pyden

The evidence demonstrates that Defendant Pyden complained to Plaintiff's supervisor to retaliate against her for engaging in clearly protected conduct. Plaintiff's speech related to matters that were clearly important matters of public debate, and Plaintiff had the right to express her opinions. While Defendant Pyden was under no obligation to change her positions due to Plaintiff's speech, she was obligated to not retaliate against Plaintiff for that speech. By complaining to Plaintiff's supervisor, Defendant Pyden jeopardized Plaintiff's livelihood due to Plaintiff's First Amendment activity. This Court should find Defendant Pyden liable in her individual capacity for this act of retaliation.

II. Defendant Bednard's referral to the Department of Justice was clear First Amendment retaliation.

Defendant Bednard's decision to refer Plaintiff to the DOJ fails no better. Plaintiff's communications with the Board as a whole related to matters of school policy, and were clearly protected by the First Amendment. By referring Plaintiff to the DOJ, Defendant Bednard exposed Plaintiff to a potential criminal investigation by federal law enforcement, which the Sixth Circuit has already recognized to be a retaliatory act. There can also be no genuine question of motive, given Defendant Bednard's clear request that the DOJ act to curb Plaintiff's speech.

1. Plaintiff's correspondence with the Board was protected by the First Amendment.

On October 4, 2021, Plaintiff sent the following message to the Defendant Board:

<https://mtsu.edu/first%E2%80%90amendment/post/1985/6th%E2%80%90circuit%E2%80%90says%E2%80%90school%E2%80%90board%E2%80%90s%E2%80%90public%E2%80%90comment%E2%80%90rules%E2%80%90violate%E2%80%90first%E2%80%90amendment?fbclid=IwAR1v2uq0ZfYKyVdLi8v3denR3ZibJ4pNmipeYkAfJupj4jt14kmAzZMscqM>.

Once again, law on the parents side. Maybe a lil more due care and caution at the next meeting Frank. You know, when you let your hatred you have for me take hold and you interrupt me.

1st 2 were free...

PageID.24 (errors original). The hyperlink sent by Plaintiff was an article describing a lawsuit in which parents had prevailed against a school board for violating their First Amendment rights by restricting certain viewpoints during the public comment portion of that board's meetings. See *Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887 (6th Cir. 2021). The link, when coupled with Plaintiff's subsequent statement, demonstrates that Plaintiff's intent was to imply that Defendant Bednard had violated her rights by interrupting her when she was speaking during the Defendant Board's meetings, and that she was contemplating legal action. Plaintiff's position on the Board's treatment of public commentors, and its perceived selective application of rules based on viewpoint, were matters of public interest.

Plaintiff's hyperlink to *Ison* supports the conclusion that she was implying a potential lawsuit should the Board not heed that precedent. In *Ison*, four citizens who attended school board meetings claimed their First Amendment rights were violated based on a facially discriminatory school board public comment policy that prohibited "abusive," "personally directed" and "antagonistic" statements. *Id.* at 893. The Sixth Circuit found these restrictions violated the plaintiffs' First Amendment rights. *Id.* at 895.

The implication of Plaintiff's citation to this case in her communication with the Defendant Board is obvious. That implication is made more explicit, however, by Plaintiff's reference to the fact that Defendant Bednard was "interrupt[ing]" her. PageID.24. Plaintiff's message, taken as a whole, clearly indicates that she believed the Board was violating her First Amendment rights by interfering with her right to speak on matters of public interest at the Board's meetings, and expressed her intent to vigorously defend her rights. Such communication is protected by the First Amendment.

2. Defendant Bednard's referral of Plaintiff to the Department of Justice would deter a person of ordinary firmness from exercising their First Amendment rights.

Bednard's referral of Plaintiff to the DOJ would have clearly deterred a person of ordinary firmness from continuing to exercise their First Amendment rights. Defendant Bednard's complaint expressly asked the DOJ to "curb" Plaintiff's conduct, and further requested that she be investigated. PageID.26. This Court has repeatedly held that criminal investigations will deter a person of ordinary firmness from continuing to engage in protected First Amendment Activity. *Fritz*, 592 F.3d at 724; *Raboczka v. City of Taylor*, No. 19-10255, 2019 WL 6254870 at *4 (E.D. Mich. Nov. 22, 2019) (attached as Ex. F); *Haggart v. City of Detroit*, No. 2:19-CV-13394, 2021 WL 5040293, at *4 (E.D. Mich. Oct. 27, 2021) (attached as Ex. G). The same is true of a threatened criminal investigation. *Fritz*, 592 F.3d at 728. Even investigations falling outside the criminal process can deter a person of ordinary firmness if they have "powerfully dissuasive" consequences that would chill protected activity. *Wenk v. O'Reilly*, 783 F. 3d 585, 595 (6th Cir. 2015) (finding a report of child abuse to be sufficient deterrence to engaging in protected activity).

Here, Bednard's referral exposed Plaintiff to a potential criminal investigation in response to her outspoken opposition Board policy. Even if the DOJ never investigated Plaintiff, the mere fact she might be subject to one is sufficiently chilling. Faced with a potential loss of liberty, a

person of ordinary firmness could very reasonably conclude that ceasing protected activity is preferable to continuing that activity and risking fines or incarceration.

3. Defendant Bednard's referral was motivated by Plaintiff's protected activity.

As with Defendant Pyden, there is little doubt that Defendant Bednard's referral was motivated by Plaintiff's protected activity.

The clear intent of Defendant Bednard's email was a request that DOJ take steps to "curb this behavior," namely, Plaintiff's protected First Amendment activity:

Hello, DOJ.

I appreciate your looking into these groups of people who bring such threats to anybody that stands in their way. The email I included below is from Sandra Hernden. This woman, Sandra Hernden, comes to our every meeting to harass our board, administration, and community who oppose her views. She is over dramatic, and refuses to listen to any direction I may give her about her inappropriate and threatening comments. Last week, she compared the tattoos Nazi Germany gave Jewish people to identify them in WW2 to Masking mandate of today. We understand that Sandra has no children in our schools,⁸ is not a resident of our district, and goes around to school board meetings throughout the tri county area to promote her agenda in any way she can including threats and intimidation. She is part of a group called, "Mothers of Liberty" that attend our meetings. This group of people attend every meeting, and because their threats and demeanor are so intimidating, no community members who oppose their message will come to the meeting to speak because they are afraid of what this group would do to them for standing up to them.

Our school district has over 15,000 students. We know that they have not gained any traction as it is the same 10-15 people that show up at every meeting to intimidate, threaten, and harass. *Anything that could be done to curb this behavior by these people would be greatly appreciated by our board, administration, and our community.*

PageID.26 (emphasis added) (errors original).

Defendant's characterizations of Plaintiff's activity as designed to "intimidate, threaten, and harass" parallels Attorney General Garland's memo of the day prior, which indicated the

⁸ Plaintiff notes that this statement was factually incorrect, both at the time it was made and at present. See Ex. A, p. 4.

DOJ’s willingness to investigate “threats of violence or efforts to intimidate individuals based on their views.” PageID.28. That memo continues, recognizing the DOJ “is committed to using its authority and resources to discourage these threats, identify them when they occur, and *prosecute them when appropriate.*” *Id.* (emphasis added).

In his referral, Defendant Bednard specifically cited to Plaintiff “com[ing] to every meeting to harass our board, administration, and community who oppose her views.” PageID.26. He further cites her refusal to follow directions, the specific testimony she offered regarding mask mandates, and her attendance at school board meetings throughout the area “to promote her agenda.” *Id.* The referral then requests the DOJ “curb this behavior,” and indicates that doing so would be met with admiration by the “board, administration, and our community.” *Id.* The referral also appears to have contained a copy of Plaintiff’s message. *Id.*

Each of the examples cited by Defendant Bednard are protected by the First Amendment. Plaintiff has the clear right to speak to a school board regarding school board policies. She also has the right to dispute what she perceived as disparate treatment during the Defendant Board’s public comment period. See generally *Ison*, 3 F.4th 887 (6th Cir. 2021). The connection between Plaintiff’s First Amendment activity and Defendant Bednard’s referral is evident from the referral itself, as it specifically described the activity Defendant Bednard wanted the DOJ to address. There can be no meaningful dispute that Defendant Bednard’s retaliatory referral was motivated by Plaintiff’s protected activity.

4. Conclusion as to Defendant Bednard

Defendant Bednard reported Plaintiff to the DOJ because she expressed her opinions on matters of significant public interest at Board meetings and via e-mail. He did so using his official title and Board e-mail, and specifically cited Plaintiff’s conduct as the motive behind the complaint. Defendant Bednard then concluded his complaint by specifically requesting the DOJ

“curb” Plaintiff’s behavior. There can be no genuine dispute that, by doing so, Defendant Bednard retaliated against Plaintiff for the exercise of her First Amendment rights. He should be held liable for doing so in his personal capacity.

III. Defendant Board is liable for Defendant Bednard’s complaint.

As noted by this Court in its Order of June 22, 2023, there is substantial evidence that Defendant Bednard’s referral was an act undertaken on behalf of Defendant Board. Page.ID 213-14. In that referral, Defendant Bednard stated “*We* understand that Sandra has no children in our schools....” (emphasis added).⁹ PageID.26. He further described Plaintiff as attending “our” meetings. *Id.* Subsequently, he describes how “[w]e know [Mothers of Liberty]¹⁰ has not gained any traction,” and closes with the statement that “[a]nything that could be done to curb this behavior by these people would be greatly *appreciated by our Board*, administration, and community.” *Id.* (emphasis added).

These statements each suggest that Defendant Bednard was speaking on behalf of the Board in his official capacity. As this Court has noted, “the critical question is whether...Bednard’s act of emailing the DOJ constituted official policy made by local officials who have final policymaking authority such that the Board made a deliberate choice to follow a course of action.” PageID.212 (internal quotations and citations omitted). Defendant Bednard’s e-mail clearly suggests that his message was undertaken on behalf of the Board, particularly in light of his use of the first-person plural pronouns, the fact Plaintiff’s initial e-mail was sent to the entire Board, Bednard’s use of his title as Board president, and the fact he later shared the e-mail with the entire Board.

⁹ Again, this statement was factually incorrect. See *supra* note 8.

¹⁰ Presumably a reference to “Moms for Liberty.”

This is only further reinforced by the Defendant Board’s bylaws, which explicitly delegate the power to speak on behalf of the Board to its president. Under Bylaw 0143.1, “The Board President functions as the official spokesperson for the Board.” (attached as Ex. H).¹¹ That Bylaw further indicates that “Board members should, when writing or speaking on school matters to the media, legislators, and other officials, make it clear that their views do not necessarily reflect the views of the Board or of their colleagues on the Board.” *Id.* Bednard’s referral did not contain any such disclosure. Page.ID 24. Given the absence of the required disclaimer, it is clear that Defendant Bednard was acting in his official capacity as the spokesperson for the Board, rather than in an individual capacity. This remains true regardless of whether any other Board members were aware of Defendant Bednard’s actions.¹² As such, the Board is liable for Bednard’s referral, as he was acting pursuant to explicitly delegated authority.

RELIEF REQUESTED

For the reasons stated above, this Court grant Plaintiff’s motion for summary judgment against Defendants Pyden and Bednard in their individual capacities. It should also grant Plaintiff’s motion with respect to the Defendant Board, which is liable for the acts undertaken by Defendant Bednard pursuant to expressly delegated authority as the Board’s spokesperson.

Respectfully Submitted,

/s/ Stephen Delie
Stephen Delie (P80209)
Attorney for Plaintiff
Mackinac Center for Public Policy

October 17, 2023

¹¹ Available at <https://go.boarddocs.com/mi/chip/Board.nsf/Public?open&id=policies#>, last accessed Oct. 10, 2023.

¹² The members of the Board who are not named Defendants have indicated there were not aware of Defendant Bednard’s intent to refer Plaintiff to the DOJ prior to that referral being made. See. Exhibit C, paragraph 3(b).

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

SANDRA HERNDEN,

an individual,

Plaintiff,

Case No.: 2:22-cv-12313-MAG-DRG

v.

CHIPPEWA VALLEY SCHOOLS BOARD OF EDUCATION, a government body, FRANK BEDNARD, in his official capacity as President of Chippewa Valley Schools and in his individual capacity, and ELIZABETH PYDEN, in her official capacity of Secretary of Chippewa Valley Schools and in her individual capacity.

PLAINTIFF’S MOTION FOR SUMMARY DISPOSITION

Defendants.

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Plaintiff’s Deposition Transcript
B	December 14, 2020 Minutes of the Chippewa Valley School Board
C	Defendants’ Answer to Plaintiff’s First Interrogatories and Plaintiff’s Request for Production of Documents
D	Plaintiff’s Response to Defendants’ Requests for Admission
E	Defendants’ Answer to Plaintiff’s Requests for Admission
F	<i>Raboczkay v. City of Taylor</i> , No. 19-10255, 2019 WL 6254870 (E.D. Mich. Nov. 22, 2019).

- G *Haggart v. City of Detroit*, No. 2:19-CV-13394, 2021 WL 5040293
(E.D. Mich. Oct. 27, 2021)
- H Chippewa Valley Board of Education Bylaw 0143.1

Exhibit A

In The Matter Of:
SANDRA HERNDEN v.
CHIPPEWA VALLEY SCHOOLS, ET AL

SANDRA HERNDEN
August 18, 2023

Catka Court Reporting, LLC
33260 Spoonbill Avenue
Brownstown, Michigan 48173
313.282.8112
catkacourtreporting@gmail.com

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 SANDRA HERNDEN,
5 Plaintiff,
6 vs
7 CHIPPEWA VALLEY SCHOOLS,
8 FRANK BEDNARD and
9 ELIZABETH PYDEN
10 Defendants.

11 DEPOSITION OF SANDRA HERNDEN
12 taken on Friday, August 18, 2023, at Giarmarco
Mullins & Horton, PC., 101 West Big Beaver, Tenth
Floor, Troy, Michigan at 12:21 p.m.

13 For the Plaintiff Mackinac Center for Public Policy
Stephen A. Delie P80209
14 140 West Main Street
Midland, Michigan 48640
15 989.631.0900

16 For the Defendants Giarmarco Mullins & Horton, PC
17 Timothy J. Mullins P28021
101 West Big Beaver Road
Tenth Floor
18 Troy, Michigan 48084
248.457.7020

19 Also Present: Ronald Roberts.
20 REPORTER: Julie A. Catka, CSR-6530, CER-6530.
21
22
23
24
25

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1 I N D E X
2 WITNESS: SANDRA HERNDEN
3 Examination by Mr. Mullins
4 Examination by Mr. Delie
5 Re-Examination by Mr. Mullins
6 - - -
7 E X H I B I T S
8 Deposition
9 Exhibit Description Page
10 None marked.
11 - - -
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Page 3

1 Troy, Michigan
2 Friday, August 18, 2023
3 About 12:21 p.m.
4 - - -
5 COURT REPORTER: Do you solemnly swear
6 or affirm to tell the truth, the whole truth and
7 nothing but the truth?
8 THE WITNESS: I do.
9 SANDRA HERNDEN,
10 after having been first duly sworn, was examined and
11 testified as follows:
12 MR. MULLINS: Let the record reflect
13 this is the deposition of Sandra Hernden, the
14 Plaintiff, in the Eastern District United States
15 Federal Court case of Hernden versus Chippewa Valley
16 Schools, et al., being taken for all purposes under
17 the Federal Rules of Civil Procedure.
18 E X A M I N A T I O N
19 BY MR. MULLINS:
20 Q. Ms. Hernden, my name is Tim Mullins. As you know, I
21 represent the school and some of their board members.
22 I'm going to ask you some questions. If at any time
23 you don't understand the question or a word that I
24 use, please feel free to say so and I'll try to
25 repeat it or rephrase it, because she is taking down

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1 everything that we say and you, of course, want what
2 you say to be recorded accurately.
3 If at any time you're tired or you
4 need to use the restroom or whatever, just let us
5 know. We can take a break and we can do that. I
6 only ask that if I have a question posed, that we
7 answer the question before we take a break. Okay?
8 A. Okay.
9 Q. All right. Could you state your name for the record,
10 please?
11 A. Sandra Hernden.
12 Q. And what's your address?
13 A. 23190 Inwood Drive, Macomb, Michigan 48042.
14 Q. How long have you lived there?
15 A. About nine years.
16 Q. Is your home address within the Chippewa Valley
17 School District, or do I understand it to be outside?
18 A. It is outside. My children were school of choice
19 when they went to the district.
20 Q. We'll cover this. At some point in time they went to
21 L'Anse Creuse and then they came to Chippewa Valley?
22 A. No. They started in Chippewa Valley, and after all
23 of this with the exception of my oldest son, the two
24 younger ones were removed and put into the L'Anse
25 Creuse School District.

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1 Q. When you say removed, you mean you decided not to
2 have them be a student at Chippewa Valley and decided
3 to have them be in your home school district of
4 L'Anse Creuse?
5 A. That is correct.
6 Q. Where are you currently employed?
7 A. I am a police officer, Macomb County, Michigan.
8 Q. Okay. And do I understand that's within the
9 Municipality of Harper Woods?
10 A. It is not.
11 Q. Help me out there.
12 A. Harper Woods is in Wayne County.
13 Q. So, you're a police officer with which organization?
14 A. The Warren Police Department.
15 Q. Excuse me. And you've been employed with them for
16 how long?
17 A. Approximately two-and-a-half years.
18 Q. Who is your supervisor there?
19 A. Which supervisor in particular are you looking for?
20 Q. At Warren. Do you have a particular supervisor?
21 A. I have many supervisors.
22 Q. Okay. Well, let me back up. So how long in general,
23 how long have you been a police officer?
24 A. Twenty-five years.
25 Q. And where were you a police officer prior to Warren?

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1 A. The City of Harper Woods.
2 Q. Okay. How was it that you came to leave the Harper
3 Woods Police Department and go to the Warren Police
4 Department? What motivated you to do so?
5 A. Well, part of it was what had happened and why we're
6 here today. The other is for pay and benefits.
7 Q. Okay. So, by your answer, is it fair for me to
8 assume that by going to the Warren Police Department
9 you got better pay and better benefits than you would
10 have had at Harper Woods?
11 A. Yes.
12 Q. You then went onto indicate that part of your
13 motivation was the dispute that's reflected in your
14 lawsuit at Chippewa Valley that motivated you to
15 move?
16 A. Yes.
17 Q. And if I'm -- let me ask you a couple of general, if
18 you will, orientation questions. The reason we're
19 here today, the lawsuit that you have filed is based
20 on your expression of beliefs as to how education
21 should or should not be rendered at Chippewa Valley
22 Schools while you were a police officer at Harper
23 Woods?
24 A. No.
25 Q. Okay. Well, to particularize it more, we're here

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1 today because you expressed your opinion as it
2 related to how COVID affected education, that being
3 masking or remote learning as opposed to non masking
4 and children being in school. That you expressed
5 your beliefs that masking was a bad idea or remote
6 learning was a bad idea and you wanted people to be
7 in school and other people --
8 A. I guess I'm not understanding how you're trying to
9 tie this question to my employment.
10 Q. Well, I'm backing off the employment right now and
11 I'm getting to the dispute, if you will, that you
12 have with some members of the school district. And
13 if that is very much of a generalization of what
14 brings us here today, if that's a fair
15 characterization or not?
16 A. Well, I believe the reason why we're here today is
17 that my First Amendment Rights were violated and I
18 was retaliated against.
19 Q. So, you left -- do you recall when your last day of
20 work at Harper Woods Police Department was?
21 A. March of 2021 I believe.
22 Q. And did you -- when did you, I presume that you
23 applied for employment at Warren Police Department?
24 A. Yes.
25 Q. And what was your first day of work at the Warren

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1 Police Department?
2 A. I believe it was April 5th of 2021.
3 Q. Had you been informed of and/or that you were getting
4 or accepted the job at Warren Police Department
5 before you resigned from your employment at Harper
6 Woods Police Department?
7 A. Yes.
8 Q. Were you, what was your position at the Warren Woods
9 Police Department when you left?
10 A. I was a detective in our auto theft unit and major
11 crimes.
12 Q. How long had you been at the detective level?
13 A. About eight years.
14 Q. Okay. Was it in that same area or same department?
15 A. I was assigned to a task force.
16 Q. When you say a task force, I guess to my
17 understanding of municipalities, that means you
18 worked with other police departments?
19 A. That's correct.
20 Q. That was a unit in and of itself?
21 A. Yes.
22 Q. In other words, different detectives from different
23 departments worked together to deal with that
24 specific type of crime problem?
25 A. Yes.

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1 Q. During that eight years, did you suffer any reduction
2 in your pay and benefits?
3 A. No.
4 Q. Were you subject to any disciplinary actions?
5 A. Yes.
6 Q. And what disciplinary action or actions were you
7 subjected to?
8 A. Why we're here today.
9 Q. But why don't you tell me specifically what
10 discipline Warren Woods --
11 A. You mean Harper Woods?
12 Q. Harper Woods. I'm sorry, subjected you to.
13 A. I was subjected to investigation.
14 Q. Okay. And who conducted that investigation?
15 A. I believe Chief Vince Smith and Deputy Chief Ted
16 Stager.
17 Q. And Ted --
18 A. Stager, S-t-a-g-e-r.
19 Q. And what was the nature of the investigation?
20 A. It was due to an email that was sent by Liz Pyden.
21 Q. And your general understanding of that email is what?
22 A. She did not like how I was addressing her, the
23 things that I was saying. She said that I was a
24 failed racist and demanded that my awards and
25 accolades be stripped of me that I worked hard for.

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1 And that she take place or be able to participate in
2 further educating me and disciplining me.
3 Q. So, the nature of the investigation was they informed
4 you they had received that email from Beth Pyden and
5 having received it, what was the nature or extent of
6 the investigation?
7 A. The investigation was brief. And I was made aware of
8 it after I was told I didn't violate any department
9 policy.
10 Q. So that was the end of the investigation?
11 A. Yes.
12 Q. Am I to understand from what you're saying, you were
13 called into a meeting on one particular day, they
14 advised you that they had received this and said they
15 didn't find anything wrong with it?
16 A. That's correct.
17 Q. So no loss cost sanction either in position, pay,
18 benefits or otherwise --
19 A. No.
20 Q. -- resulted from it.
21 Q. Do you recall when that meeting took place as best as
22 you can, month, year?
23 A. I believe it was in December of 2020 to the best that
24 I can recall.
25 Q. Okay. Were there any writings or memorandums, or did

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1 you receive any communication from the department of
2 any kind?
3 A. No.
4 Q. It was just you were verbally called into a meeting,
5 advised that they had received it, and that they
6 didn't think anything of it?
7 A. Correct.
8 Q. Prior to that meeting, had you inquired with or
9 applied for employment with the Warren Police
10 Department?
11 A. No.
12 Q. When did you first seek employment with the Warren
13 Police Department?
14 A. I want to say probably, maybe January or February of
15 '21.
16 Q. Okay. And what position did you attain at the Warren
17 Police Department?
18 A. Police officer.
19 Q. And the job that you had as a police officer, I think
20 you indicated when you started there paid higher
21 salary and benefits than what you had been getting at
22 Harper Woods?
23 A. Correct.
24 Q. And that was a motivating factor in you applying to
25 Warren?

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1 A. One of them, yes.
2 Q. What would any other of the motivating factors be?
3 A. Can I answer this?
4 MR. DELIE: Yeah.
5 A. Okay. Yeah. So I don't know how familiar you are
6 with the job that I do.
7 BY MR. MULLINS:
8 Q. As a police officer?
9 A. Yes.
10 Q. We represent probably about 12 cities here, so I've
11 worked a lot with police officers, but specifically I
12 don't know your job.
13 A. Once you plant an evil seed on failed racism, do you
14 not think that my bosses, my chief, my peers that I
15 worked with every day, once it got around a small
16 department, don't you believe that they looked at me
17 in a different way?
18 Q. Well --
19 A. Regardless of how long they had known me, because I
20 had been there almost 14 years.
21 Q. Well, I'm not here to answer questions, but I would
22 say no. I would say it depends.
23 A. No. Once you plant an evil seed, it can flourish.
24 Q. Okay. So did anything negative ever happen while you
25 were at Warren Woods?

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1 A. Harper Woods?
2 Q. I'm sorry. I should know better because of having
3 grown up right in that area. But did anything
4 negative occur? You indicated there was the meeting.
5 They didn't take any action or for that matter saw
6 that you had done anything wrong and apparently
7 didn't care about it. What other than that did they
8 indicate to you that it would negatively affect you
9 if you stayed at Harper Woods?
10 A. I could tell how I was being treated by my peers and
11 my supervisors.
12 Q. Okay. And?
13 A. Their attitudes towards me had changed.
14 Q. Can you specify that at all?
15 A. What would have been, what I consider as being a very
16 happy-go-lucky person and how they treated me in
17 kind, their communication with me became very short
18 and very distant.
19 Q. Could you indicate to me which of your superiors
20 became short and distant to you?
21 A. For one, the Chief of Police.
22 Q. Okay. That is?
23 A. Vince Smith.
24 Q. Mr. Smith?
25 A. Yes.

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1 Q. Who else?
2 A. The people that I worked with, other officers.
3 Q. Okay. Which other officers?
4 A. All of them.
5 Q. As in every police officer in the Harper Woods?
6 A. The ones that I saw, yes. I wasn't always in the
7 Harper Woods' office. I had two offices at the time,
8 but when I was there you can feel how different
9 people look at you.
10 Q. They were short and distant with you?
11 A. Yes.
12 Q. Anything else?
13 A. No.
14 Q. Can you identify any, or to what extent can you list
15 any officer that was more short or distant or
16 expressed that they thought less of you after that?
17 A. I don't even know if the officers are there anymore.
18 Q. I'm only interested --
19 A. I don't know. You want me to recall every officer
20 that worked there?
21 Q. No. I want you to recall any officer that would have
22 done or said anything to you that would indicate to
23 you that they thought less of you because of the
24 report that the chief had previously said to you, the
25 report that the chief had received and had indicated

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1 to you that he didn't think it mattered or amounted
2 to anything?
3 A. So you want specific names?
4 Q. Yeah.
5 A. I'm trying to think of who worked there at the time.
6 James Ruthenberg, Matt Claserto (ph), Glen Heeny
7 (ph), Robert Hill. I don't remember Charlene's last
8 name. Marva (ph) Miles.
9 I'm sorry. I can't remember everybody
10 that was there at the time.
11 Q. Okay. Just so we're clear for the record, I'm not
12 asking you to name everybody who you worked with at
13 that time, but I'm asking you to name everybody who
14 somehow would have expressed a reduced or lower
15 opinion of you than they had held before the email
16 was received that you met with the chief about.
17 A. Chief Smith for sure.
18 Q. Okay. You've identified him.
19 A. Uh-huh.
20 Q. And so the names that you just gave, are those people
21 that you're simply identifying as worked there, or
22 that you believe --
23 A. That I noticed a difference.
24 Q. And as to each of them, could you tell us what
25 specifically any of them said or did that led you to

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1 believe that they thought less of you than they had
2 before?
3 A. Conversations were different.
4 Q. Okay. Can you give me any specific example?
5 A. Very short, sweet, to the point.
6 Q. You're trying to tell me nobody wanted to talk to you
7 anymore?
8 A. Pretty much.
9 Q. Anything else?
10 A. No.
11 Q. That's the best you can specify any differential
12 difference in treatment that you thought indicated a
13 lack of respect on their part for you after this?
14 A. Yes.
15 Q. Okay. And you can't specify any other people?
16 A. No.
17 Q. And you couldn't repeat to me any specific
18 conversation?
19 A. No.
20 Q. Would there be any reflection in your file of this
21 meeting or conclusion on the part of the department?
22 A. I don't know.
23 Q. In the task force that you participated in, was the
24 Warren Police Department, were they part of that task
25 force?

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1 A. No, they were not.
2 Q. Okay. What led you to Warren, if you will, as to of
3 the many different police departments in the area to
4 apply there?
5 A. Because my husband works there.
6 Q. He's also a police officer there?
7 A. Yes, he is.
8 Q. Okay. You knew from the contract, if you will, or
9 the pay scale that he has -- is he a police officer
10 also?
11 A. Yes, he is.
12 Q. At what? Is he in an administration position or a
13 police officer?
14 A. No, he's a police officer.
15 Q. Okay. You knew from being married to him that the
16 pay and benefits were better at Warren?
17 A. And the environment.
18 Q. And you feel that the environment at Warren was
19 better?
20 A. Yes.
21 Q. In what way were you told or did you perceive the
22 environment at Warren to be better?
23 A. From what my husband had told me about how they treat
24 their officers. The officer camaraderie.
25 Q. During this period of time, were there any particular

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1 concerns or controversies at the Harper Woods City as
2 a whole or police department unrelated to any
3 interaction that you might have had with Chippewa
4 Valley Schools?
5 MR. DELIE: Objection relevance, but
6 you can answer the question.
7 A. I think prior to all of this happening we had an
8 in-custody death probably about six months before
9 this had happened.
10 BY MR. MULLINS:
11 Q. I'm sorry, a --
12 A. In custody death.
13 Q. That led to quite a bit of controversy and --
14 A. Protests.
15 Q. -- publicity and protests at the city hall and at the
16 police department --
17 A. Yes.
18 Q. -- and accusations being rendered against some
19 segments of the community, against the police
20 department?
21 A. Yes.
22 Q. Did it end in the change of any administrators in the
23 city or the police department?
24 A. Administrators in what aspect?
25 Q. Did anybody, was anybody dismissed or sanctioned or

Page 19

1 resigned from the department?
2 A. I do believe one, two, three. I believe three or
3 four people were put on administrative leave pending
4 investigation.
5 Q. To the extent you recall, the three or four people,
6 whom were they?
7 A. Avalon (ph) Owens, Maria Bell, Mike Pino (ph) and
8 John Borgage (ph). I'm not sure if there was anymore
9 or not.
10 Q. And the reason for them being put on leave to the
11 extent you have knowledge?
12 A. I don't have knowledge as to why.
13 Q. Was this controversy ongoing at the time you left the
14 department?
15 A. I believe so.
16 Q. Are you pleased with your current employment at
17 Warren as a police officer?
18 A. Yes.
19 Q. You've indicated increased pay and benefits. You're
20 happier to be at the Warren Police Department than
21 you were at the Harper Woods Police Department?
22 A. Yes. May I add something to the controversy that
23 also was surrounding that event for the in-custody
24 death?
25 Q. Yeah. You're talking about the death of a person in

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1 custody at Harper Woods at the police station?
2 A. Yes.
3 Q. Go ahead.
4 A. It was roughly two weeks after George Floyd, the
5 whole George Floyd incident.
6 Q. Okay.
7 A. So it was a perfect storm for what we went through as
8 a department, what we went through as police officers
9 as well in general from the public and from our
10 peers.
11 Q. Okay. Let's go back to Chippewa Valley. When was it
12 that you took your children out of Chippewa Valley
13 and returned them to L'Anse Creuse?
14 A. My oldest son graduated from Dakota in 2022.
15 Q. That's Chippewa Valley High School?
16 A. Dakota, yes. That's in Chippewa Valley School
17 District. I want to say roughly around 2021. I want
18 to say 2021, maybe 2020 from the best of my
19 knowledge. My two older ones did stay in the
20 district. Connor stayed until eighth grade. Our at
21 the time six-year-old, once we had heard they were
22 going to do virtual, we pulled him from the district
23 immediately and put him into L'Anse Creuse.
24 Q. Okay. If I understand the differentiation there,
25 Chippewa Valley was doing virtual, meaning, if you

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1 will, at home schooling with computers, and L'Anse
2 Creuse was attending in-person school?
3 A. Yes.
4 Q. So your motivation for transferring him was that you
5 wanted him to be, have an in-school learning
6 experience as opposed to, if you will, a computer?
7 A. A six-year-old is not going to learn a lot from a
8 computer.
9 Q. I understand the differing opinions.
10 A. Yeah.
11 Q. I'm just trying to get down to the facts that either
12 you could be at Chippewa Valley and he would learn
13 via computer at home. By taking him out of there and
14 putting him in L'Anse Creuse, he would have in-school
15 learning. And that's what motivated you to take him
16 out of Chippewa Valley and him being in your home
17 school district?
18 A. Yes.
19 Q. Moving further back in time understanding that you
20 lived within the boundaries of the L'Anse Creuse
21 School District, why was it that you had initially
22 chosen to have your children attend Chippewa Valley
23 as opposed to your home district, L'Anse Creuse?
24 A. When we first moved into the area I did call both
25 districts because I have a child under an IEP and it

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1 was about what support services he would get.
2 Additionally athletics did play part
3 of that decision as well. And when it came down to
4 it, after speaking to people in Chippewa Valley
5 versus L'Anse Creuse, my son Connor would have
6 received more support services in Chippewa Valley.
7 Q. Since you took him out of L'Anse Creuse (sic), your
8 children have remained at L'Anse Creuse?
9 A. Since I have taken them out of Chippewa?
10 Q. Yes.
11 A. Yes.
12 Q. And you're satisfied with that decision and
13 placement?
14 A. Absolutely.
15 Q. You consider it to have been beneficial for them?
16 A. Yes.
17 Q. I'm trying to not take up an excess amount of time.
18 I understand your conclusion is it's your belief
19 about an infringement upon your First Amendment
20 Rights that brings us here today. I understand all
21 of that. I'm trying to get into, if you will, the
22 factual prelude to that. And if I understand this
23 factually, we start off with the fact that various
24 school districts including Chippewa Valley during the
25 COVID, if you will, crisis, if you will, were shut

Page 23

1 down and were having remote learning as opposed to
2 in-person learning. That was a concern on your part;
3 is that right?
4 A. Yes.
5 Q. And if I further understand that you attended and I,
6 you know, a lot of this is laid out in your Complaint
7 and I understand it, but you along with others had
8 attended board meetings indicating your opposition to
9 a policy decision to have remote learning as opposed
10 to in-person learning?
11 A. Yes.
12 Q. You spoke at a number of school district board
13 meetings on that subject; is that right?
14 A. I don't honestly recall all of what the subjects were
15 that I spoke on.
16 Q. Okay.
17 A. But I would say at least once about in person.
18 Q. Okay. What, I guess to the extent you spoke on other
19 subjects, what do you recall the other subjects
20 being?
21 A. Transparency.
22 Q. When you say transparency, you mean transparency
23 about how the decision to be remote as opposed to in
24 person was arrived at?
25 A. Yes.

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1 Q. Go ahead.
2 A. Without looking at the meetings, there were a variety
3 of different things that I would talk about --
4 Q. Okay.
5 A. -- that were related to the school district.
6 Q. Okay. Just so I'm trying to understand as to
7 anything I might be missing, other than issues as
8 they related to, if you will, the institutional
9 reaction of the school district to how to administer
10 education given the COVID problem, other than that,
11 what, if anything, do you recall speaking about? I
12 mean general subject matter, if any.
13 A. With regards to masking, school closures?
14 Q. Correct.
15 A. I mean --
16 Q. I do understand you have talked about masking, school
17 closures and you're right. Go ahead.
18 A. I believe the first meeting that I spoke about was
19 what Liz Pyden had done to me and asking that the
20 board take corrective action because I cared about my
21 children.
22 Q. When you say that Liz Pyden asked that the board take
23 corrective action, what --
24 A. To be censured.
25 Q. Were you censured?

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1 A. No. For her to be censured.
2 Q. You had asked that Liz Pyden be censured?
3 A. Yes.
4 Q. Because?
5 A. She went to my employer attacking me, calling me a
6 failed racist in an attempt to take away my
7 livelihood.
8 Q. By that you're talking about the specific email --
9 A. Yes.
10 Q. -- that you set forth in your Complaint. That email
11 was sent by her to your department chief; correct?
12 A. Yes.
13 Q. And that's in your Complaint and I understand that
14 and it's been set forth in Discovery. Is there any
15 other communication by her to the Harper Woods Police
16 Department that you're aware of, if you will,
17 complaining about?
18 A. Not that they have told me.
19 Q. And not that you're otherwise aware of?
20 A. Correct.
21 Q. Just limited to that email, you asked that she be
22 censured. Any other subjects that you brought to the
23 attention of the school board that you can recall?
24 A. Other than policy? And refuting attacks from other
25 board members that I don't have children in the

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1 district and the educational value? No.
2 Q. Okay. So again I understand I'm giving
3 generalizations here. I think we both understand
4 that the board meeting that you were at, we kind of
5 know that they were, they've been recorded. You have
6 the recordings. We have the recordings. I'm just
7 generally trying to get past if there's any other
8 issue that I'm missing out on other than concerns
9 about how education would be rendered with COVID.
10 Like you said, masking, in person, distancing, that
11 kind of thing. Are there any other issues that were
12 not related to how the school would deal with the
13 COVID situation that you spoke to?
14 A. Not that I can recall.
15 Q. Fair enough. I don't expect you to remember all of
16 the dates, but if I understand it, you were at or
17 spoke at school board meetings September 13th, 2021;
18 October 4th, 2021; and April the 18th of 2022. Does
19 that sound about right to you?
20 A. I do believe there was one in February of 2021.
21 Q. Okay. That would be the period of time we're talking
22 about?
23 A. Yes.
24 Q. And your concern about your First Amendment Violation
25 would be the extent to which two board members

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1 reacted to your expression to the school board at
2 those school board meetings?
3 A. I'm sorry. Can you repeat that?
4 Q. Your concern, if you will, that brings us here today
5 is the reaction as I understand it of two school
6 board members to your comments that were made to the
7 school board at those school board meetings that we
8 just talked about?
9 A. I believe it's not just me showing up in person to
10 address grievances, but also through the emails that
11 were received.
12 Q. Okay. The email that went to Harper Woods?
13 A. Yes.
14 Q. What other emails?
15 A. As well as emails through communication that I tried
16 to have with the school district and the school
17 board.
18 Q. You exchanged some emails with Elizabeth Pyden?
19 A. With the board.
20 Q. Oh. Did you address them individually to people or?
21 A. They were all listed in an email. It was a group
22 email. Not one person to the best of my knowledge
23 was singled out.
24 Q. And so, if I read your Complaint, your concern as we
25 just talked about with your, with the email that was

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1 sent by Elizabeth Pyden to the Harper Woods Police
2 Department, your chief; correct?
3 A. Yes.
4 Q. And you're also concerned about an email that was
5 directed to the Department of Justice?
6 A. Yes.
7 Q. And that was to my understanding from Frank Bednard
8 to the Department of Justice?
9 A. And to the rest of the Board of Education including
10 Mr. Roberts.
11 Q. He copied his email to them?
12 A. I don't know if he copied his email to him.
13 Q. Okay. I guess I'm a little confused. As I read it,
14 and we can get it out if you want, he directs it to
15 the Department of Justice. And then the email itself
16 shows it to be copied to the superintendent and the
17 other members of the board.
18 A. Without looking at that email I can't testify to how
19 it was sent or distributed and the order that it was.
20 Q. And how was that it that you became aware of it?
21 A. Through Monica Radico (ph).
22 Q. Who is whom?
23 A. She's a friend of mine.
24 Q. How did she tell you she had become aware of it?
25 A. She had told me she had submitted a FOIA request at

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1 some point, I don't know when, regarding any parents
 2 and I'm paraphrasing, that may have been referred to
 3 the Department of Justice.
 4 Q. And as far as you as an individual goes, what, if any
 5 communication or contact have you ever received from
 6 the Department of Justice in response to that email?
 7 A. None.
 8 Q. And what activity, if any, are you aware of that was
 9 undertaken by the Department of Justice as a result
 10 of that email?
 11 A. None.
 12 Q. And you haven't heard from anybody whatsoever that
 13 anything ever came of that email?
 14 A. Correct.
 15 Q. And what impact, if any, did that email have upon you
 16 individually?
 17 A. None.
 18 Q. As a police officer, you'd agree with me the concept
 19 that if you witness somebody commit a crime or engage
 20 in criminal activity, that you would have an
 21 obligation to report it. Is that fair?
 22 A. Yes.
 23 MR. DELIE: Objection relevance. You
 24 may answer.
 25 A. Yes.

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1 BY MR. MULLINS:
 2 Q. Are you familiar with the organization identified as
 3 Moms for Liberty?
 4 A. Yes.
 5 Q. Are you a participant in Moms for Liberty?
 6 A. Yes.
 7 Q. As I understand it representing a number of cities
 8 and schools, Moms for Liberty you were something of
 9 an advocacy group that would appear at school board
 10 meetings and advocate for non-masking and return to
 11 in-person education; is that right?
 12 A. Moms for Liberty is a group of mothers that have
 13 children in specific school districts. They will go
 14 and speak to a district that they have a vested
 15 interest in, whether it's L'Anse Creuse or the
 16 Chippewa Valley School District and advocate for
 17 their children.
 18 Q. And it's my understanding having attended many school
 19 board meetings, that a central point of their
 20 advocacy during this period of time that we're
 21 talking about was that there shouldn't be masking and
 22 that schools should be open or, if you will, in
 23 person?
 24 A. Yes.
 25 Q. And the athletic activities should again be

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1 undertaken?
 2 A. I don't know that we were part of the athletic
 3 movement, but for sure it was that our children were
 4 suffering and needed in-person learning.
 5 Q. Some of the school board meetings that you attended,
 6 the verbal exchanges become somewhat heated if you
 7 will?
 8 A. Yes.
 9 Q. Was profanity at all exchanged at these school board
 10 meetings?
 11 A. Not that I recall, no.
 12 Q. Okay. Had you ever directed descriptive comments to
 13 school board members that they might take as
 14 insulting or demeaning?
 15 MR. DELIE: Objection vague, calls for
 16 speculation. You may answer.
 17 A. No.
 18 BY MR. MULLINS:
 19 Q. Associating, if you will, for example, Liz Pyden,
 20 Frank Bednard or anybody on the Chippewa Valley
 21 School District accusing them of being Nazi or
 22 Gestapo like people in effectuating their policy, you
 23 wouldn't consider that to be demeaning or threatening
 24 or offensive?
 25 MR. DELIE: Objection compound. You

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1 can answer.
 2 A. Which part of that question would you like me to
 3 answer first?
 4 BY MR. MULLINS:
 5 Q. If any one of those words or descriptions directed at
 6 them would fairly be considered by them to be
 7 offensive or demeaning or threatening?
 8 MR. DELIE: Same objection. Also
 9 calls for speculation. Sorry. You can answer.
 10 A. I tried to tell a story about my family which I was
 11 cut off. Had Mr. Bednard let me finish, maybe he
 12 would have gotten the whole gist of it. If you are
 13 referring to calling them Nazi in public, I do not
 14 recall ever calling them Nazis. If you are referring
 15 to Gestapo, which was a political police force that
 16 was charged with securing the regime and protecting
 17 the regime from racial and political enemies --
 18 BY MR. MULLINS:
 19 Q. The Nazi regime?
 20 A. I said the Gestapo and I said the regime.
 21 Q. You don't associate them with the Nazi regime?
 22 A. I'm going by definitions, sir.
 23 Q. So am I. If you don't think the Gestapo has anything
 24 to do with Nazis, just say I don't associate the two.
 25 A. I don't associate the two.

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1 Q. Okay.
2 A. I associate it as a political police party. It was
3 around even before Nazi Germany.
4 Q. Just to help me out with my history, where was it
5 before Nazi, Germany?
6 A. I want to say it was before Hitler became a
7 Chancellor to Germany. I can't give you an absolute
8 year.
9 Q. Go ahead. You were indicating what you were trying
10 to explain to Mr. Bednard.
11 A. Had Mr. Bednard not interrupted me, I probably would
12 have been able to finish.
13 Q. Okay. What additionally would you have liked to have
14 informed Mr. Bednard of other than what was recorded?
15 A. I couldn't tell you that now. It was what, two,
16 three years later? I don't even remember what the
17 rest of it was.
18 Q. You at least do recall accusing the school district
19 of engaging in Gestapo tactics?
20 A. Yes.
21 Q. And that they had turned the school board into a
22 dictatorship?
23 A. Yes.
24 Q. And I'm sure you understand that the school board
25 consists of seven individual members of the

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1 community?
2 A. Yes.
3 Q. They're members that must live within the school
4 district; is that right?
5 A. As a school board member, yes, you do have to live in
6 the district.
7 Q. And that they are elected by the residents of the
8 district?
9 A. Yes.
10 Q. But nonetheless you described them as a dictatorship?
11 A. Yes.
12 Q. Although you understand that they're freely elected?
13 A. Yes.
14 Q. Out of curiosity you indicate as a taxpayer, "I pay
15 your salaries." You remember including that in your
16 email to the board; is that right?
17 A. Yes.
18 Q. Would I be incorrect in saying you weren't a taxpayer
19 in Chippewa Valley?
20 A. Yes.
21 Q. Yes, I would be incorrect?
22 A. Yes.
23 Q. I'm confused there.
24 A. My tax dollars, regardless of what district my child
25 is in, they receive from the State of Michigan,

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1 regardless if they are a student that resides in that
2 district or not. Count Day. Perfect example. The
3 more children you have in the seats, the more tax
4 dollars you get. So, yes, my tax dollars do go to
5 the district.
6 Q. So talking a bit about you communicated with the
7 school board and to the extent that I have looked at
8 it, the school board never took any action as a board
9 relating to you; is that right?
10 A. Can you please expand on what your intention of that
11 question is?
12 Q. Well, as I understand it, for a school board to act,
13 they have to make a resolution, pass a resolution,
14 vote on it and a majority of the school board on any
15 official action that they were going to take would
16 have to act in that, if you will, democratic
17 administrative fashion. And I don't understand the
18 board to ever have officially addressed to you as a
19 board, as a group with any type of majority action or
20 resolution. Would that be fair?
21 A. Frank Bednard sent an email to the Department of
22 Justice about me. I don't think that's a fair
23 representation --
24 Q. Okay.
25 A. -- as the board president.

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1 Q. Let's set that off and we'll get back to that. I'll
2 give you all of the chance you want to talk about
3 that.
4 Am I correct in saying that there was
5 never a resolution made and voted upon by the board
6 and passed by a majority of the board that would
7 address you and/or your situation, your individual
8 situation in any fashion?
9 A. Not that I'm aware of.
10 Q. Now, Frank Bednard, he's an individual person?
11 A. Are you asking a question?
12 Q. Yes.
13 A. He is. He's also --
14 Q. Okay.
15 A. I'm not finished.
16 Q. Go ahead.
17 A. He is also the board president. And if I remember
18 right in the by-laws, as the board president he
19 speaks for the board.
20 Q. Well, okay. We'll let the by-laws speak for
21 themselves. He has no more than one vote of the
22 seven votes, if you know? Each board member votes
23 individually?
24 A. Yes.
25 Q. Four votes or more --

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1 A. Yes.
2 Q. -- constitutes the majority, and that's board action?
3 A. Yes.
4 Q. Frank Bednard, as best as I have been able to learn,
5 and as I read your Complaint, Frank Bednard
6 individually sent an email to the Department of
7 Justice in response to a publication by Merrick
8 Garland, the Attorney General; is that right?
9 A. Yes.
10 Q. He did that as an individual. He never presented it
11 to the board for any board action as best as you
12 know?
13 A. I don't know what he did --
14 Q. Okay.
15 A. -- without seeing the email.
16 Q. You're saying without seeing the email?
17 A. Yes.
18 Q. Okay. You understand he sent an email --
19 A. I do.
20 Q. -- do you understand him to have done other than
21 sending the email as you indicated in your Complaint?
22 A. He sent it to the entire board including the
23 superintendent.
24 Q. We covered that and I agree with you. He directed it
25 to the Department of Justice and copied it to all

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1 members of the board. Are you aware of him doing
2 anything else as it would relate to that? Did he
3 ever bring it up at a board meeting or otherwise ask
4 the board, I'd like to pass a resolution or have the
5 board take any action?
6 A. Not that I'm aware of.
7 Q. Other than the other six board members receiving that
8 email that was copied to them, are you aware of them
9 having taken any other action other than receiving
10 the email either individually or as a group?
11 A. They didn't take any action to tell him he was wrong.
12 Q. And I take that statement to mean you're not aware of
13 them taking any action at all?
14 A. No.
15 Q. Either for or against. They just received it?
16 A. Correct.
17 Q. Does Frank Bednard have any First Amendment Rights?
18 A. Of course he does.
19 MR. DELIE: Objection, calls for a
20 legal conclusion.
21 MR. MULLINS: Noted.
22 MR. DELIE: Continue.
23 A. He does.
24 BY MR. MULLINS:
25 Q. You agree that he does?

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1 A. We all do.
2 Q. We all do. That would include all seven individual
3 members of the board?
4 A. Yes.
5 Q. And Elizabeth Pyden?
6 A. Yes.
7 Q. You're familiar with, I presume you've read the
8 Attorney General's October 4th, 2021 email where he
9 asked that the school board advise the Department of
10 Justice as to situations where they felt that they
11 were being threatened at meetings during this period
12 of time?
13 A. Are you referring to the Merrick Garland memo or the
14 Frank --
15 Q. I am.
16 A. And the question for the Merrick Garland memo that
17 you have?
18 Q. Did you understand that he had communicated to
19 various governmental entities in particular school
20 boards and school board members and school
21 administrators, that he literally asks them to report
22 to the Department of Justice situations where they
23 felt threatened by actions or discussions or
24 demonstrations that took place at school board
25 meetings?

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1 A. Yes.
2 Q. Do you understand that Frank Bednard wrote his
3 individual email to the Department of Justice in
4 response to that October 4th, 2021 communication by
5 the Attorney General Merrick Garland?
6 MR. DELIE: Objection calls for
7 speculation. You may answer.
8 A. Yes.
9 BY MR. MULLINS:
10 Q. In general as a police officer, would you agree that
11 any school board member, any school administrator or
12 any school staff faculty member, teacher, that
13 perceived that they or any student or person at the
14 school district was being threatened or subject to
15 being threatened or subject to the threat of harm,
16 that they should, and, in fact, would be obligated to
17 report that sense of threat to law enforcement?
18 A. If they are being threatened, they absolutely should.
19 Q. Okay. Would you agree that as to any individual
20 whether they feel they're being threatened is
21 somewhat of a subjective response?
22 A. What do you mean subjective?
23 Q. That for, instance, you as a police officer might not
24 be as afraid walking down the street and being
25 addressed in a hostile way by some person, but

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1 somebody else might be more threatened by the manner
2 in which people act, talk, appear to be agitated,
3 whatever?
4 A. I think --
5 Q. That's what I mean by subjective. Different people
6 respond differently.
7 A. I think you need to understand what an actual threat
8 is. A threat is a physical violence, harm. Not
9 perception of words.
10 Q. Okay. But --
11 A. We can extract anything we want and make anything we
12 want out of any sentence that someone makes.
13 Q. Right.
14 A. We can take it to a level that is not appropriate.
15 Q. So I'm sure though you understand as a police officer
16 that many times someone will call the police
17 department, call 911, call you as a department, call
18 your, whatever group that you're in, and report a
19 concern or a threat and then you respond to it and
20 determine whether indeed it is a threat that requires
21 action or it doesn't?
22 A. A threat is clearly defined in Michigan Compiled Law.
23 Q. And you wouldn't sanction people for expressing their
24 fears or asking that the police look into or protect
25 or investigate their fear of a threat?

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1 A. Many times when it comes to taking threat reports,
2 people will provide evidence on how they were
3 threatened.
4 Q. Okay. And there's nothing wrong with that?
5 A. No.
6 Q. We've covered some of this stuff. I just want to
7 refer to some of the pleadings. You recall that we
8 sent to your attorney, and I'm sure he went over with
9 you and you prepared responses to request to admit
10 certain facts. Do you recall that?
11 A. Yes.
12 Q. I want to confirm some of the responses. You had
13 indicated that, I'll quote here. "You admit that you
14 did not suffer any monetary penalty as a result of
15 the investigation triggered as a result of Defendant
16 Pyden's email of December 11th, 2020"; is that right?
17 A. Yes.
18 Q. And as I understand this lawsuit, you've indicated
19 otherwise in the Complaint itself and in some of the
20 responses, you haven't suffered any monetary or
21 economic damage or loss as a result of your exchange
22 or dispute with these two members of the school board
23 and yourself?
24 A. Correct.
25 Q. You indicated and you may not be able to answer this,

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1 but you indicate that you're not seeking any economic
2 damages beyond nominal damages. And I think in your
3 Complaint you indicate nominal damages to be \$3. I'm
4 just asking if you have an understanding claim or
5 different opinion as to what you understand your
6 claim of nominal damages to be?
7 A. I don't even understand your question.
8 Q. Okay. I'm going back to, you recall that we had
9 asked you for your tax returns?
10 A. You did?
11 Q. Yes.
12 A. Okay.
13 Q. And I'm assuming you're working with your attorney
14 and if you need to go off and consult with him and we
15 can take a break and that would be fine. But A, we
16 asked for your tax returns and B, we asked for your
17 medical records.
18 A. Yeah, I believe I remember something in your
19 response, yes.
20 Q. Your response to that would be that my tax returns
21 aren't relevant and I'm not going to produce them.
22 And my medical records are not relevant and I'm not
23 going to produce them because I'm not seeking any
24 economic damage. I didn't lose any money and I'm not
25 seeking any recompense for economic damage and I

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1 didn't suffer any medical or psychological damage and
2 I'm not seeking any money or recommendation for any
3 medical or psychiatric damage. Is that fair?
4 A. That's fair, yes.
5 Q. Then you do go onto indicate, you're not seeking
6 anything beyond nominal damages which your Complaint
7 said was \$3. And I just want to make sure, do you
8 mean or understand that to be anything different?
9 A. It isn't anything different.
10 Q. Have you appeared at all or spoken at any Chippewa
11 Valley School Board meetings other than the ones
12 outlined in your Complaint since the filing of your
13 Complaint?
14 A. No. I no longer have a vested interest in the
15 district.
16 Q. You, in one of your emails, you had various email
17 exchanges with Ms. Pyden and Mr. Bednard; is that
18 right?
19 A. It was all of the school board members including Mr.
20 Roberts, the Superintendent.
21 Q. But some of your exchanges were actually directed, I
22 understand about copying emails, but were directed
23 and were exchanges between those two in particular?
24 A. I don't believe I had an email exchange with Mr.
25 Bednard. I did have an email exchange with Liz

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1 Pyden.
 2 Q. There is, let me direct you to one particular comment
 3 you made. You criticized Mr. Bednard in an email
 4 exchange, I think you indicated about not letting you
 5 talk as much as you wanted to talk and you indicated
 6 the first two are for free. Does that ring a bell
 7 with you?
 8 A. Are you talking about the Sixth Circuit Court
 9 decision regarding Open Meetings Act in school board
 10 meetings and parents being interrupted when they are
 11 giving public comment?
 12 Q. No.
 13 A. Then what is it that you're speaking of?
 14 Q. We can get the email out, but where you talked with
 15 him and you specifically directed to Frank Bednard,
 16 you said, amongst other things you said, the first
 17 two are for free, referencing the first two times you
 18 stopped me from speaking, they are for free...
 19 A. That went to --
 20 Q. Do you recall that?
 21 A. That went to every board member including Mr. Roberts
 22 the Superintendent.
 23 Q. But did you say, Frank, when you, the first two are
 24 for free?
 25 A. Yes, I did.

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1 Q. And he might have perceived that as a threat, meaning
 2 there's going to be some cost to me. What did you
 3 mean by indicating to him the first two are for free?
 4 A. Okay. First and foremost, Frank is a retired
 5 sergeant from the Macomb County Sheriff's office from
 6 what I'm told.
 7 Q. We can agree on that.
 8 A. Frank knows very well what Michigan Compiled Law is.
 9 Very well what a threat is. The threat was, if any,
 10 if you want to call it a threat, a veiled threat,
 11 don't interrupt me again. And here's the legal
 12 backing I have as to why you cannot interrupt me
 13 anymore.
 14 Q. Okay.
 15 A. If you get physical violence out of that, I'm sorry,
 16 especially since he was a sergeant and he knows
 17 better.
 18 Q. I don't get anything from it because it just said the
 19 first two are for free... and you just said a bunch
 20 of things that weren't in that email and I just, how
 21 he perceived it, whether he perceived that as a
 22 threat and not understanding what cost he would incur
 23 if you didn't allow him what he wanted I -- so I just
 24 was wondering what you meant by the first two are for
 25 free?

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1 A. That if he were to continue to interrupt me, that I
 2 would seek legal action.
 3 Q. And apparently you do perceive that he saw that as
 4 some threat to him?
 5 A. Why wouldn't he?
 6 Q. Why wouldn't he? I agree with you. Yes.
 7 A. I mean we're two opposite ends of the spectrum.
 8 Q. When you spoke to the board, you spoke to the board
 9 during what is generally referred to as the public
 10 comment portion of the board meeting on the agenda;
 11 is that right?
 12 A. Yes.
 13 Q. And as I understand it, the board had a policy or
 14 practice of everybody can indicate that they wish to
 15 speak, indicate who they are and their commentary is
 16 limited in time; is that right?
 17 A. Yes.
 18 Q. And my understanding is that is five minutes; is that
 19 right?
 20 A. I believe so. I don't recall how long the time frame
 21 was.
 22 Q. And you were allowed to go past that time period on a
 23 number of times being cautioned that your time is up,
 24 please wrap it up, but that was the manner in which
 25 the board attempted to proceed; is that right?

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1 A. I don't recall them ever telling me that my time was
 2 up.
 3 Q. Do you object to the manner in which you were allowed
 4 to address the board?
 5 A. How do you mean?
 6 Q. In any way.
 7 A. I don't understand your question. That's what I'm
 8 trying to say.
 9 Q. Well, you indicate that you want to speak. They call
 10 people up in order. You approached the podium and
 11 addressed the board and did so a number of times and
 12 it's in your Complaint of different occasions that
 13 you did so; is that correct?
 14 A. I was able to address the board, yes.
 15 Q. Do you object in any fashion as to the manner in
 16 which you were subject to the board? Do you feel in
 17 any way you were improperly or in violation of your
 18 First Amendment Rights, prevented from expressing
 19 your views?
 20 A. Yes, when I was interrupted.
 21 Q. Go ahead. If you can tell me when, where and how and
 22 by whom.
 23 A. Two consecutive meetings I believe that I went to,
 24 and I don't remember the exact dates, but the first
 25 meeting when I was speaking about my family history I

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1 was interrupted at least two times that I can recall.
 2 And the follow-up meeting after --
 3 Q. Let me stop you there. That meeting you were
 4 interrupted in what fashion?
 5 A. I was mid sentence and I was told to stop from the
 6 best of my recollection.
 7 Q. Okay. Because --
 8 A. I don't know.
 9 Q. -- your time was up?
 10 A. No, it was not. I was well within my time.
 11 Q. So you don't know why you were told to stop?
 12 A. No.
 13 Q. And that would be the first time you spoke?
 14 A. At the public meeting? Yes.
 15 Q. At the meeting, yes.
 16 A. That was the first in public meeting that I had been
 17 to.
 18 Q. What other time and in what other fashion were you
 19 interfered with in expressing your thoughts or
 20 comments?
 21 A. Are we speaking of this first meeting, or are we
 22 talking about the second meeting that I was
 23 interrupted?
 24 A. Well, I want to make sure that I cover completely the
 25 first meeting you were speaking and you were told to

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1 stop. Why or how were you told to stop and what else
 2 was it that you were prevented from saying?
 3 A. I don't remember his exact verbiage.
 4 Q. His being?
 5 A. Frank.
 6 Q. Go ahead.
 7 A. I can recall at least two. It could have been three
 8 times. I don't know without looking at the video
 9 that he was interjecting.
 10 Q. Okay. Are we at different meetings now?
 11 A. No, this was the first that we're speaking of, the
 12 first in-person meeting that I attended.
 13 Q. Go ahead.
 14 A. Okay. That's the first in-person meeting. The
 15 second in-person meeting he interrupted me again and
 16 I think I was actually giving praise to parents that
 17 came to school board meetings to talk because it's
 18 not easy.
 19 Q. Okay.
 20 A. I know I was at least interrupted once or twice
 21 during that one.
 22 Q. Interrupted in what fashion?
 23 A. That he interrupted me, telling me, to the best of my
 24 knowledge that I was either cautioned or I needed to
 25 stop.

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1 Q. Okay. You don't understand that to be in relation to
 2 any time limitations at all?
 3 A. No, it was not. I was well within my time.
 4 Q. And not in relation at all to the manner in which the
 5 verbiage you were using?
 6 A. No.
 7 Q. Any other times?
 8 A. Without looking at any other specific videos, not
 9 that I can recall.
 10 Q. Okay. Other than what you just described and the
 11 emails sent to the Department of Justice and the
 12 emails sent to your Harper Woods Police Chief, any
 13 other complaints that you have as would relate to
 14 your First Amendment Rights and these two board
 15 members at the school district?
 16 A. What do you mean?
 17 Q. Is there anything that we haven't covered that you're
 18 complaining about?
 19 A. You mean other than the way my children were treated?
 20 Q. We're not talking about the way your children were
 21 treated. We're talking about your expression of your
 22 thoughts, your statements, your First Amendment
 23 Rights which I understand this case to be limited to?
 24 A. Anything that you guys missed, I'm sure Mr. Delie
 25 will pick up.

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1 Q. But you can't think of anything else as we sit here
 2 today?
 3 A. As of right now, no.
 4 Q. Okay. We talked about this a bit but I just want to
 5 make sure we're clear on the matter. In Paragraph 60
 6 of your Complaint you say that Frank Bednard's email
 7 was an official act of the board. And we know that
 8 he as an individual sent an email to the Department
 9 of Justice. And as you indicated, it was also
 10 received by other members of the board and by the
 11 superintendent.
 12 I just want to understand as best as
 13 you understand it how you believe that to constitute
 14 that one individual's communication to whomever, how
 15 you attribute that or describe it as an official act
 16 of the board?
 17 MR. DELIE: Objection calls for a
 18 legal conclusion. Also argumentative. You may
 19 answer.
 20 A. So you want to know why I think the board is in with
 21 Mr. Bednard? Is that how I'm understanding your
 22 question?
 23 BY MR. MULLINS:
 24 Q. No. I'm specifically looking at what you said in
 25 your Complaint. And you said that his, one person,

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1 wrote a letter which was sent out to other board
 2 members, to the superintendent, and it was directed
 3 to the Department of Justice. I think we can all
 4 agree on that.
 5 I'm asking you how you consider that,
 6 you seem to have some understanding of municipal or
 7 school board law. You've lectured Mr. Bednard on
 8 that in your email and myself here as to what the law
 9 calls for. I'm trying to understand from you, if you
 10 know, why you would consider that to be an official
 11 act of the board as opposed to an individual
 12 expression on the part of Mr. Bednard?
 13 A. Mr. Bednard was the President of the Chippewa Valley
 14 Board and School District. As president, he is the
 15 spokesperson for the board.
 16 Q. So, whatever he says is an action of the board. What
 17 he says goes?
 18 A. Yes.
 19 Q. And if the other five members of the board disagreed
 20 with what he said, or for that matter any four
 21 members of the board disagreed with what he said, it
 22 would still be an official action of the board even
 23 though the majority of the board disagreed with him?
 24 A. Yeah. Show me that they disagreed.
 25 Q. I'm sorry?

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1 A. Show me that they disagreed.
 2 Q. Or show me that they agreed.
 3 A. Yeah, he acted upon the board. He is the president
 4 and he is the spokesperson for the seven people on
 5 the board.
 6 Q. You're not aware of any action taken by any of the
 7 other six members of the board other than being
 8 passive recipients of his communication?
 9 A. Repeat your question.
 10 Q. He sent out an email that was copied to them as well
 11 as Mr. Roberts. Are you aware of any of those other
 12 six members of the board or Mr. Roberts or anybody
 13 from the administration taking any action to affirm
 14 or further the singular act of that individual, Mr.
 15 Bednard, sending out that email?
 16 A. I wouldn't have that information.
 17 Q. And don't?
 18 A. Why would I?
 19 Q. I'm just asking you. Your attorney might have told
 20 you. Somebody else, you said somebody informed you
 21 of this or you might have heard or been at a school
 22 board meeting two months after this where they
 23 resolved to affirm his, you know -- you're not aware
 24 of anything like that?
 25 A. Actually a couple of months after this had come out,

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1 there was one school board member that publicly
 2 apologized for the actions of the board with regards
 3 to the actions taken.
 4 Q. So the only thing you're aware of is that Frank
 5 Bednard indicated his communication to the Department
 6 of Justice and the other school board members said I
 7 don't agree with what he did or what he said.
 8 A. One.
 9 Q. So as to the -- so that takes, we've got two
 10 opposing, if you will, opinions on the board and what
 11 the other five opinions might be, you don't know?
 12 A. No. They sure didn't say they didn't not agree with
 13 him publicly.
 14 Q. They didn't do anything?
 15 A. No.
 16 MR. MULLINS: Okay. Why don't we take
 17 a break for a moment?
 18 (Whereupon a recess was held off the
 19 record from 1:43 to 2:06 p.m.)
 20 MR. MULLINS: I have no further
 21 questions.
 22 E X A M I N A T I O N
 23 BY MR. DELIE:
 24 Q. I just have a few quick follow-ups, Sandra, if I can.
 25 A. Okay.

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1 Q. Earlier you were asked about emails that you sent to
 2 the board. Do you recall that testimony?
 3 A. Yes.
 4 Q. And I believe you said, and please correct me if I'm
 5 wrong, something along the lines of you always email
 6 the board in its entirety, all of its members?
 7 A. Yes.
 8 Q. Occasionally there would be follow up from those
 9 emails; correct?
 10 A. Yes.
 11 Q. And sometimes that was one-on-one with a board
 12 member?
 13 A. To the best of my knowledge, yes.
 14 Q. Let's do -- do you recall the opposing counsel asked
 15 you some questions about an email to the board where
 16 you said the first two were free?
 17 A. Yes.
 18 Q. And that email in particular, can you explain what
 19 your intent behind that email was?
 20 A. My intent was not to continue to be interrupted when
 21 I spoke.
 22 Q. And did you include anything in that email other than
 23 your own language? Did you attach anything? Was
 24 there any hyperlinks? Anything like that?
 25 A. There was a link to a Federal Sixth Circuit Court's

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1 decision regarding parents being interrupted during
 2 school board meeting open comment.
 3 Q. And what was your intent in including that?
 4 A. My intent was, please stop interrupting me or face
 5 legal action.
 6 Q. Thank you. I'm going to go in a different direction
 7 and ask you a few specific questions regarding you
 8 and Ms. Pyden. Have you ever directed any
 9 individuals to travel to Ms. Pyden's home?
 10 A. No.
 11 Q. Have you ever suggested to anyone the idea that they
 12 should travel to Ms. Pyden's home?
 13 A. No.
 14 Q. Have you ever threatened Ms. Pyden with violence?
 15 A. No.
 16 Q. Have you ever threatened Defendant Bednard with
 17 violence?
 18 A. No.
 19 Q. Have you ever threatened any of the other Defendants,
 20 so any other members of the school board at the time?
 21 A. No.
 22 Q. Other than email or social media, have you ever
 23 contacted members of the board outside of public
 24 meeting?
 25 A. Absolutely not.

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1 Q. Have you ever been disciplined at work due to your
 2 activity on social media?
 3 A. Not to the best of my knowledge, no. Not that I
 4 recall.
 5 MR. DELIE: That's all I have.
 6 R E - E X A M I N A T I O N
 7 BY MR. MULLINS:
 8 Q. Do you understand that Ms. Pyden was concerned about
 9 the fact that people were coming to her home and
 10 parking outside of it and she felt threatened by that
 11 fact during this period of time that this controversy
 12 was going on?
 13 MR. DELIE: Objection calls for
 14 speculation. You may answer.
 15 A. I can tell you I don't know where she lives. I don't
 16 know where Frank lives. I don't care to know. I
 17 wouldn't direct anybody to do that because I would
 18 believe that would constitute and rise to the level
 19 of harassment. And I have a job that I love and that
 20 I want to keep.
 21 I have three children that I have to
 22 raise and put through college. Unfortunately,
 23 they're not worth my time like that. And
 24 furthermore, I didn't have time between working 10
 25 and 28-hour days. And the days that I did get to

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1 come home to my children, I had to help educate them
 2 because the learning they were receiving remotely
 3 wasn't enough.
 4 And unfortunately math is not my
 5 strong point and my son who graduated from Dakota,
 6 that was his Achilles heel. And I spent many hours
 7 going through YouTube videos to help him with his
 8 math.
 9 With my son, Connor, he had a hard
 10 time understanding anything, so I was there with him
 11 for hours going through his assignments, helping him
 12 with his assignments.
 13 And my kindergartner at the time, even
 14 though he was held back a second time in
 15 kindergarten, I was helping him.
 16 Now you factor in that and keeping
 17 track of a household, doing laundry, cooking dinners,
 18 making sure my home is intact and running
 19 efficiently, not to mention call ins on my days off,
 20 where do I have time? Where do I have the time to
 21 direct anybody to do that?
 22 Q. And I appreciate everything that you just said, but
 23 that's not my question. My question is, are you
 24 aware that Ms. Pyden was concerned about the fact
 25 that people were parking outside of her home during

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1 this period of time of controversy and that appeared
 2 to be related to that?
 3 A. No, I didn't. And if that were the case and they
 4 meant her harm, she should have either called the
 5 police or videotaped what happened.
 6 MR. MULLINS: Very good. I have
 7 nothing further.
 8 MR. DELIE: I believe we're all
 9 finished.
 10 MR. MULLINS: Good. Thanks for
 11 coming.
 12 THE WITNESS: You're welcome.
 13 (Deposition concluded at 2:12 p.m.)
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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

CERTIFICATE OF REPORTER

I, JULIE A. CATKA, Certified Shorthand Reporter, a Notary Public, do hereby certify that I recorded in shorthand the deposition of SANDRA HERNDEN, in the matter of Sandra Hernden versus Chippewa Valley Schools, Frank Bednard and Elizabeth Pyden, and that prior to the taking of said deposition, the witness was first duly sworn, and that the foregoing 60 pages comprise a complete, true, and accurate record to the best of my ability of the testimony of said witness.

Julie A. Catka, CSR-6530, CER-6530

Notary Public, Wayne County, Michigan
Acting in the County of Oakland
My commission expires: October 3, 2025.
Dated: This 2nd day of September 2023

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<p>racial (1) 32:17</p> <p>racism (1) 12:13</p> <p>racist (2) 9:24;25:6</p> <p>Radico (1) 28:21</p> <p>raise (1) 58:22</p> <p>reacted (1) 27:1</p> <p>reaction (2) 24:9;27:5</p> <p>read (4) 27:24;28:13;37:5; 39:7</p> <p>reason (3) 6:18;7:16;19:10</p> <p>recall (26) 7:19;10:21,24;14:19, 21;19:5;23:14,19; 24:11;25:23;26:14; 31:11;32:14;33:18; 42:7,10;43:8;45:20; 47:20;48:1;49:1;50:7; 51:9;56:2,14;58:4</p> <p>receive (2) 11:1;34:25</p> <p>received (11) 10:4,5,14;11:5; 14:25;15:16;22:6; 27:11;29:5;38:15; 52:10</p> <p>receiving (3) 38:7,9;59:2</p> <p>recess (1) 55:18</p> <p>recipients (1)</p>					
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<p>shut (1) 22:25</p> <p>sic (1) 22:7</p> <p>simply (1) 15:21</p> <p>singled (1) 27:23</p> <p>singular (1) 54:14</p> <p>sit (1) 52:1</p> <p>situation (3) 26:13;36:7,8</p> <p>situations (2) 39:10,22</p> <p>six (4) 18:8;38:7;54:7,12</p> <p>Sixth (2) 45:8;56:25</p> <p>six-year-old (2) 20:21;21:7</p> <p>small (1) 12:15</p> <p>Smith (4) 9:15;13:23,24;15:17</p> <p>social (2) 57:22;58:2</p> <p>solemnly (1) 3:5</p> <p>somebody (4) 29:19;41:1;54:20,20</p> <p>somehow (1) 15:14</p> <p>someone (2) 41:12,16</p> <p>sometimes (1) 56:11</p> <p>somewhat (2) 31:6;40:21</p> <p>son (5) 4:23;20:14;22:5; 59:5,9</p> <p>sorry (8) 9:12;13:2;15:9; 18:11;27:3;32:9;46:15; 53:25</p> <p>sound (1) 26:19</p> <p>speak (4) 30:14;36:20;47:15; 48:9</p> <p>speaking (8) 22:4;24:11;45:13,18; 48:25;49:21,25;50:11</p> <p>speaks (1) 36:19</p> <p>specific (8) 8:24;15:3;16:4,17; 25:8;30:13;51:8;57:7</p> <p>specifically (5) 9:9;12:11;15:25; 45:15;52:24</p>	<p>specify (3) 13:14;16:11,15</p> <p>spectrum (1) 47:7</p> <p>speculation (4) 31:16;32:9;40:7; 58:14</p> <p>spent (1) 59:6</p> <p>spoke (10) 23:12,15,18;24:18; 26:13,17;47:8,8;49:13; 56:21</p> <p>spoken (1) 44:10</p> <p>spokesperson (2) 53:15;54:4</p> <p>staff (1) 40:12</p> <p>Stager (2) 9:16,18</p> <p>S-t-a-g-e-r (1) 9:18</p> <p>start (1) 22:23</p> <p>started (2) 4:22;11:20</p> <p>state (2) 4:9;34:25</p> <p>statement (1) 38:12</p> <p>statements (1) 51:22</p> <p>States (1) 3:14</p> <p>station (1) 20:1</p> <p>stay (1) 20:19</p> <p>stayed (2) 13:9;20:20</p> <p>still (1) 53:22</p> <p>stop (7) 49:3,5,11;50:1,1,25; 57:4</p> <p>stopped (1) 45:18</p> <p>storm (1) 20:7</p> <p>story (1) 32:10</p> <p>street (1) 40:24</p> <p>stripped (1) 9:25</p> <p>strong (1) 59:5</p> <p>student (3) 5:2;35:1;40:13</p> <p>stuff (1) 42:6</p> <p>subject (6) 9:4;23:13;24:12; 40:14,15;48:16</p> <p>subjected (3) 9:7,12,13</p> <p>subjective (3) 40:21,22;41:5</p> <p>subjects (4) 23:14,19,19;25:22</p> <p>submitted (1) 28:25</p> <p>suffer (3) 9:1;42:14;44:1</p> <p>suffered (1) 42:20</p> <p>suffering (1) 31:4</p> <p>suggested (1) 57:11</p> <p>superintendent (6) 28:16;37:23;44:20; 45:22;52:11;53:2</p> <p>superiors (1) 13:19</p> <p>supervisor (3) 5:18,19,20</p> <p>supervisors (2) 5:21;13:11</p> <p>support (2) 22:1,6</p> <p>sure (12) 15:17;19:8;31:3; 33:24;41:15;42:8;44:7; 49:24;51:24;52:5; 55:12;59:18</p> <p>surrounding (1) 19:23</p> <p>swear (1) 3:5</p> <p>sweet (1) 16:5</p> <p>sworn (1) 3:10</p>	<p>34:14,18</p> <p>teacher (1) 40:12</p> <p>Ted (2) 9:15,17</p> <p>telling (2) 48:1;50:23</p> <p>testified (1) 3:11</p> <p>testify (1) 28:18</p> <p>testimony (1) 56:2</p> <p>Thanks (1) 60:10</p> <p>theft (1) 8:10</p> <p>though (3) 41:15;53:23;59:14</p> <p>thought (4) 14:16,23;16:1,12</p> <p>thoughts (2) 49:19;51:22</p> <p>threat (16) 40:15,17;41:7,8,19, 20,22,25;42:1;46:1,9,9, 10,10,22;47:4</p> <p>threatened (12) 39:11,23;40:14,15, 18,20;41:1;42:3;57:14, 16,19;58:10</p> <p>threatening (2) 31:23;32:7</p> <p>three (6) 19:2,2,5;33:16;50:7; 58:21</p> <p>tie (1) 7:9</p> <p>Tim (1) 3:20</p> <p>times (8) 41:16;42:1;45:17; 47:23;48:11;49:1;50:8; 51:7</p> <p>tired (1) 4:3</p> <p>today (9) 6:6,19;7:1,14,16;9:8; 22:20;27:4;52:2</p> <p>together (1) 8:23</p> <p>told (11) 10:8;17:21,23;25:18; 28:25;46:6;49:5,11,25; 50:1;54:19</p> <p>took (5) 10:21;20:12;22:7; 35:8;39:24</p> <p>towards (1) 13:13</p> <p>track (1) 59:17</p> <p>transferring (1)</p>	<p>21:4</p> <p>Transparency (3) 23:21,22,22</p> <p>travel (2) 57:9,12</p> <p>treat (1) 17:23</p> <p>treated (4) 13:10,16;51:19,21</p> <p>treatment (1) 16:12</p> <p>tried (2) 27:15;32:10</p> <p>triggered (1) 42:15</p> <p>Troy (1) 3:1</p> <p>truth (3) 3:6,6,7</p> <p>try (1) 3:24</p> <p>trying (11) 7:8;15:5;16:6;21:11; 22:17,21;24:6;26:7; 33:9;48:8;53:9</p> <p>turned (1) 33:21</p> <p>Twenty-five (1) 5:24</p> <p>twice (1) 50:20</p> <p>two (27) 4:23;14:7;19:2;20:4, 19;26:25;27:5;32:24, 25;33:15;42:22;44:23; 45:6,17,17,23;46:3,19, 24;47:7;48:23;49:1; 50:7;51:14;54:22;55:9; 56:16</p> <p>two-and-a-half (1) 5:17</p> <p>type (2) 8:24;35:19</p>
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votes (3)		2023 (1)	

Exhibit B

**CHIPPEWA VALLEY SCHOOLS
BOARD OF EDUCATION – REGULAR MEETING
Chippewa Valley School Administration Building/Virtually Conducted
December 14, 2020**

President Bednard called the meeting to order at 6:31 p.m. and the Pledge of Allegiance was waived.

Present, Virtually: Members Aquino, Bednard, DeMuyneck Zech, Patzert, Pyden, Sobah and Wojtowicz

Absent: None

Also, Present: Mr. Roberts, Mr. Sederlund, Dr. Blanchard, Dr. Brosky, Ms. Licari, Mr. Sibley, Mr. Kozlowski, Ms. Blain, Ms. Monnier-White and Ms. Adlam

Effective October 16, 2020, Governor Gretchen Whitmer signed Senate Bill 1108 amending the Open Meetings Act (OMA) to allow public bodies to conduct electronic “virtual” meetings with remote participation for any reason through the end of 2020, and in 2021 under specific circumstances. This amendment applies retroactively to March 18, 2020.

Recognition/Presentations –

- Superintendent Roberts recognized Mr. Andrew Patzert, who chose not to seek re-election as a board member, for 50 years of service to Chippewa Valley Schools: 32 years as a high school counselor and 18 years as a board member.
- Tony and Lou Fiorvento spoke of their experience working with Mr. Patzert at Chippewa Valley High School.
- Vice-President, Ms. Denise Aquino, spoke of her experience working with Mr. Patzert as a colleague on the Board of Education.
- President, Mr. Frank Bednard congratulated Mr. Patzert on his 18 years as a Board of Education member and referenced Mr. Patzert’s commitment to public education.
- Trustee, Mr. George Sobah, thanked Mr. Andy Patzert for his commitment to Chippewa Valley Schools.
- Ms. Elizabeth Pyden, Secretary, thanked Mr. Patzert for his role as a mentor, and recognized him for his attendance at many school functions.

MOTION #12/08/20 – Moved by Member Patzert and supported by Member DeMuyck Zech to approve the General Consent Agenda to:

- Approve Minutes of the Regular Meeting held on December 07, 2020
- Approve General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$253,705.63
- Approve Wire Transfers, ACH and Payments Report in the amount of \$8,831,530.24
- Approve 2018 Building & Site Payments Report in the amount of \$74,435.00
- Approve Building Activity Check Register in the amount of \$5,147.19
- Approve Personnel Transactions

A roll call vote was taken. Member Patzert, yes; Member DeMuyck Zech, yes; Member Aquino, yes; Member Bednard, yes; Member Sobah, yes; Member Wojtowicz, yes and Member Pyden, yes. **Motion carried.**

From the Community –

1. Dr. Beth Feiten (Director of School & Field Services, Oakland University) formally thanked the Chippewa Valley Schools for their on-going partnership with Oakland University.

Old Business – None

MOTION #12/09/20 - Moved by Member Sobah and supported by Member DeMuyck Zech that the Chippewa Valley Schools Board of Education approve the 2018 Bond Issue Change Order Summary Report for the month of November 2020.

A roll call vote was taken. Member Sobah, yes; Member DeMuyck Zech, yes; Member Aquino, yes; Member Bednard, yes; Member Patzert, yes; Member Wojtowicz, yes and Member Pyden, yes. **Motion carried.**

MOTION #12/10/20 - Moved by Member Aquino and supported by Member Sobah that the Chippewa Valley Schools Board of Education award contracts totaling \$11,203,989.00 to the following contractors for the summer 2021 renovation and sitework projects at various buildings throughout the district:

Bid Category	Contractor	Total
General Trades	M L Schoenherr Construction	\$542,185
Carpentry	BJ Construction	\$496,560
Metal Panels	Liberty Sheet Metal	\$238,700
Roofing	Superior Services	\$827,794
Glass/Glazing	Roseville Glass	\$563,600
Flooring	Floor Craft Floor Covering	\$1,067,319
Painting	Seven Brothers Painting	\$46,115
Lockers	Brainard Enterprise	\$92,700
Food Service Equipment	Stafford-Smith	\$88,678
Mechanical Work	Contrast Mechanical	\$2,068,000
Electrical Work	Great Lakes Power & Lighting	\$538,000
Paving (1)	Asphalt Specialists	\$1,101,500
Paving (2)	T&M Asphalt Paving	\$1,784,300
Paving (3)	T&M Asphalt Paving	\$960,850
Track Surfacing	Startrac Enterprise	\$308,500
Synthetic Turf	AstroTurf	\$369,047
Fencing	Nationwide Construction Group	\$110,141

A roll call vote was taken. Member Aquino, yes; Member Sobah, yes; Member Bednard, yes; Member DeMuyck Zech, yes; Member Patzert, yes; Member Wojtowicz, abstained and Member Pyden, yes. **Motion carried.**

MOTION #12/11/20 - Moved by Member Patzert and supported by Member DeMuyck Zech that the Chippewa Valley Schools Board of Education approve the appointment of Mr. Aaron Harm to the position of District Systems and Desktop Support Coordinator.

A roll call vote was taken. Member Patzert, yes; Member DeMuyck Zech, yes; Member Aquino, yes; Member Bednard, yes; Member Sobah, yes; Member Wojtowicz, yes and Member Pyden, yes. **Motion carried.**

Union Communication –

- Ms. Maryanne Levine (President, CVEA) addressed the Board of Education recognizing Mr. Patzert for his service to the district on as a board member.
- Ms. Kelly Geck (Chairperson, Paraprofessional Unit) thanked Mr. Patzert for his concern for both the paraprofessionals and students.

Administration Reports

Superintendent Roberts reported on the following:

- Introduced Mr. Robert Wojtowicz who has been appointed to fill a board vacancy due to a resignation. This term will expire December 31, 2020.
- Referenced the district's African American Parent Network (AAPN), facilitated by Mr. Harry Weaver, the Chippewa Valley Schools Diversity, Equity and School Culture Consultant.
- Visited the classroom of Erie 1st grade teacher, Molly DeBono. Molly was recognized by WXYZ (Channel 7) and the Michigan Lottery with an Excellence in Teaching Award.

Curriculum Reports – None

Of and by Board Members

- Ms. Aquino recognized Mr. Patzert for his commitment to the district and students. She welcomed new Board members, Dr. Jolene Andriaschko and Mr. Robert Wojtowicz. She wished students, parents, and staff happy holidays.
- Mr. Patzert reflected on the changes in education over his career. He also wished everyone a Happy Hanukkah.
- Mr. Sobah welcomed the new Board members and wished everyone happy holidays.
- Member Pyden wished everyone a very blessed holiday season and a happy 2021. She also welcomed the new Board members.
- Mr. Bednard congratulated and recognized Andy Patzert for his service to the district. He welcomed the two new Board members and wished everyone happiness during the holiday season.

MOTION #12/12/20 – Moved by Member Patzert and supported by Member Aquino to adjourn the meeting.

A roll call vote was taken. Member Patzert, yes; Member Aquino, yes; Member Bednard, yes; Member DeMuyck Zech, yes; Member Sobah, yes; Member Wojtowicz, yes and Member Pyden, yes. **Motion carried.**

Meeting adjourned 7:15 p.m.

Respectfully submitted,

Elizabeth Pyden, Secretary
Board of Education

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

v

Judge Mark A. Goldsmith
Magistrate David R. Grand
No. 22-12313

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and ELIZABETH
PYDEN,

Defendants.

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**ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH
PYDEN, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their
responses to Plaintiff's Interrogatories and Request for Production as follows:

1. Please:
 - a. Identify all employees who participated in the drafting of the DOJ referral
referenced by Defendant Bednard's October 5, 2021 e-mail.
 - b. Identify all employees who may have or are known to have information relating

to the aforementioned DOJ referral.

ANSWER: (a) – none/N/A. (b) Objection. This request is overly broad, vague, not reasonably specific, and doesn't really make sense. This entire matter has been the subject of numerous media stories, so it is impossible to specify "all employees who may have" information relating to the DOJ referral. Defendants can state, however, that no employees of the District were involved in the DOJ referral.

2. Please state whether you have referred any person other than Plaintiff or Mothers for Liberty to the DOJ between February 1, 2020 and the date Plaintiff filed her complaint. If you have made any such referrals, please:

- a. Identify all persons referred by any Chippewa Valley Board of Education, the Chippewa Valley Superintendent, or any other Chippewa Valley Schools administrator.
- b. Identify all employees, who may have or are known to have information relating to the aforementioned DOJ referrals.
- c. Identify the date(s) and times when the aforementioned DOJ referrals were made.
- d. Identify all employees who participated in the drafting of the aforementioned DOJ referrals.
- e. Identify all employees, who may have or are known to have information relating to the aforementioned DOJ referrals.
- f. Identify the name and contact information of any DOJ employee, representative, or agent whom Defendant Bednard sent the referral of October 5, 2021.

ANSWER: (a) N/A. (b) N/A. (c) N/A. (d) N/A. (e) N/A. (f). It was submitted through a “button” on DOJ webpage. No name of specific individual is known.

3. For Donald Brosky, Denise Aquino, George Sobah, Ronald Roberts, Robert Wojtowicz, Jill DeMuyneck Zech, and Kenneth Pearl:

- a. Please state whether you were aware of Defendant Bednard’s intention to refer Plaintiff to the DOJ prior to Defendant Bednard’s October 5, 2021 e-mail titled “FW: Special Attention to Frank”.

ANSWER: No

- b. Please state whether you were aware of Defendant Pyden’s intention to file a complaint with the Harper Woods Department of Public Safety prior to Defendant Pyden’s e-mail of December 11, 2020 titled “Fwd: Face to face return. maybe you should read this.” (sic).

ANSWER: No

- c. Please state whether Chippewa Valley Schools took any adverse action against Defendant Bednard or Pyden for sending the communications referenced by Interrogatory 3.

ANSWER: The School District, an entity, cannot take any “adverse action” against an elected board member. Any actions taken by the Board of Education are memorialized in its minutes, which are publicly available on the District’s webpage.

- d. If Chippewa Valley Schools took any adverse action against Defendant Bednard or Pyden for sending the communications referenced by Interrogatory 3, please describe the action(s) taken, the date they were taken, and when Chippewa Valley Schools voted to take the action(s).

ANSWER: N/A

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. In an e-mail to the Board sent on October 5, 2021 at 11:09AM, Defendant Bednard indicated he had forwarded a complaint about Plaintiff and Mothers of Liberty to the DOJ.

Please:

- a. Produce a copy of the referral referenced by the e-mail, along with any accompanying attachments.

ANSWER: It was submitted utilizing an online “button”/form on the DOJ’s webpage.

Presumably the DOJ would have a copy. Defendants do not have a copy.

- b. Produce a copy of any responses from other Defendant Board members or Chippewa Valley Schools employees to Defendant Bednard’s October 5, 2021 e-mail.

ANSWER: None.

- c. Produce a copy of any communications sent or received by Defendant Board members from October 4, 2021 to October 20, 2021 which reference Plaintiff’s October 4, 2021 e-mail of 9:44pm.

ANSWER: See attached.

- d. Produce a copy of all communications between Defendants and the DOJ which reference Plaintiff.

ANSWER: See attached.

2. Please produce any communications between Chippewa Valley Board of Education Members that reference Plaintiff by name from February 1, 2020 up to the date of the filing of Plaintiff’s complaint.

ANSWER: Objection. Overbroad. In the spirit of cooperation, however, see attached.

3. Please produce any communication between Chippewa Valley Board of Education Members that reference Defendant Pyden's e-mail to the Harper Woods Department of Public Safety prior to Defendant Pyden's e-mail of December 11, 2020 titled "Fwd: Face to face return. maybe you should read this." (sic).

ANSWER: See attached.

4. Please produce any communications between Defendant Pyden and any member of the Harper Woods Department of Public Safety between December 10, 2020 and January 31, 2021. There is no need to produce Defendant Pyden's e-mail of December 11, 2020 sent at 10:35AM.

ANSWER: See attached.

5. Please produce any written policy, practice, or guideline of the Chippewa Valley School District regarding the District's position on reporting members of the public to law enforcement.

ANSWER: All Board Policies and Bylaws are on the District's webpage. Additionally, there are statutes that require and/or encourage school officials to report threatening behavior in some situations.

6. Please produce any communications between Defendants regarding Defendant Bednard's decision to refer Plaintiff to the DOJ on October 5, 2021. Please limit your production to communications sent prior the date Plaintiff filed her complaint.

ANSWER: None.

7. Please produce any communications between Defendants and any outside entity discussing Plaintiff's communications between February 1, 2020 and the date Plaintiff's

complaint was filed.

ANSWER: See attached.

8. Please produce any communications received by Defendants from members of the public indicating they were unwilling to speak at meetings of the Defendant Board due to Plaintiff or “Mothers of Liberty”/Moms for Liberty. Please limit your production to communications between February 1, 2020 and the date Plaintiff’s complaint was filed.

ANSWER: N/A

9. Please produce any communications between members of the Chippewa Valley Board of Education and Ronald Roberts which reference Plaintiff and were sent or received between February 1, 2020 and the date Plaintiff’s complaint was filed.

ANSWER: Objection as this request is overly broad. In the spirit of cooperation, see attached.

10. If any Defendants, or Ronald Roberts have referred any person other than Plaintiff or Mothers for Liberty to the DOJ between February 1, 2020 and the date Plaintiff filed her complaint, please produce a copy of all such referrals.

ANSWER: None

11. For Donald Brosky, Denise Aquino, George Sobah, Ronald Roberts, Robert Wojtowicz, Jill DeMuyneck Zech, and Kenneth Pearl:
 - a. Please provide any communications between yourself and any other member of the Chippewa Valley Board of Education regarding Plaintiff’s October 4, 2021 e-mail entitled “Special attention to Frank” between October 4, 2021 and October 10, 2021.

ANSWER: See attached.


VERIFICATION

Frank Bednard, being first duly sworn, deposes and states that he has read the foregoing answers and objections; that said answers were prepared with the assistance and advice of legal counsel upon whose advice he has relied; that said answers are subject to inadvertent or undiscovered errors and are based on and, therefore, limited by the records and information still in existence, as presently recollected and thus far discovered in preparation of these answers; that consequently Defendants reserve the right to make changes if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and that subject to the limitations set forth herein and above, said answers are true to the best of his knowledge and belief.

CHIPPEWA VALLEY SCHOOLS

By: 
FRANK BEDNARD

Subscribed and sworn to before me this
25th day of May, 2023.


Notary Public, Macomb County, MI
Acting in Macomb County
My Commission Expires: 8/2/2024

Kristin A. Macksoud
NOTARY PUBLIC - STATE OF MICHIGAN
County of Macomb
My Commission Expires 8/3/2024
Acting in the County of Macomb

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020
tmullins@gmhlaw.com
P28021

DATED: May 26, 2023

PROOF OF SERVICE

ELIZABETH BINNO states that on May 26, 2023, she served a copy of the **Answers to Plaintiff's First Interrogatories and Requests for Production of Documents** upon Stephen A. Delie by email @ delie@mackinac.org.

/s/ELIZABETH BINNO

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

v

Judge Mark A. Goldsmith
Magistrate David R. Grand
No. 22-12313

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and ELIZABETH
PYDEN,

Defendants.

Stephen A. Delie (P80209)
Derk Wilcox (P66177)
Mackinac Center for Public Policy
Attorneys for Plaintiff
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Timothy J. Mullins (P28021)
Kenneth B. Chapie (P66148)
John L. Miller (P71913)
Giarmarco, Mullins & Horton, P.C.
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tmullins@gmhlaw.com
kchapie@gmhlaw.com
jmiller@gmhlaw.com

REQUEST TO ADMIT

Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH PYDEN, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their Request to Admit pursuant to FRCP 36 as follows:

1. Admit that your employer did not take any adverse employment action against you relative to the allegations you raised in your lawsuit. If you do not admit this request unequivocally, state in detail the reasons why.

RESPONSE: Plaintiff denies this allegation. Plaintiff admits that she did not suffer any monetary penalty as a result of the investigation triggered as a result of Defendant Pyden's email of

December 11, 2020. Plaintiff further admits that she was not disciplined as a result of that investigation. Plaintiff maintains, however, that the investigation was an adverse employment action in and of itself.

2. Admit that the DOJ, as far as Plaintiff is aware, did not investigate Plaintiff in any manner. If you do not admit this request unequivocally, state in detail the reasons why.

RESPONSE: Plaintiff admits that she does not know whether the Department of Justice acted upon Defendant Bednard's request for an investigation into her conduct. Answering further, Plaintiff's discovery requests are intended to identify employees of the Department of Justice who would be able to definitively answer whether an investigation occurred, is currently ongoing, or is under consideration.

3. Admit that Plaintiff is not seeking economic damages in this lawsuit. If you do not admit this request unequivocally, state in detail the reasons why. Additionally, produce the following:

a. Plaintiff's tax returns for the last five (5) years.

RESPONSE: Plaintiff admits this request insofar as it is referencing economic damages beyond the nominal damages Plaintiff is seeking for the violation of her constitutional rights. To the extent this request includes said nominal damages, Plaintiff denies this request. Plaintiff is not seeking damages other than the aforementioned nominal damages, and any attorneys' fees and costs to which she would be entitled were she to prevail.

Plaintiff objects to the production of her tax returns. Plaintiff's tax returns do not contain any information relevant to any party's claims or defenses, as Plaintiff is not claiming economic damages other than nominal damages. Further, production of Plaintiff's tax returns would be

overbroad and disproportional to the needs of this case, particularly with respect to tax returns pre-dating 2020, which is the earliest date that could conceivably relate to any of the claims or defenses applicable to this matter. Regardless, Plaintiff is seeking only nominal damages, and production of her tax returns would serve no purpose other than to unduly burden or harass Plaintiff. To the extent Defendants can identify particular information within Plaintiff's tax returns that would be relevant, Plaintiff is open to discussing the execution of an affidavit with respect to relevant tax information, to the extent there is any.

4. Admit that Plaintiff is not seeking non-economic damages in this lawsuit. If you do not admit this request unequivocally, state in detail the reasons why. Additionally, produce the following:

- a. The identity of any medical or mental health professional with whom Plaintiff has treated or consulted in the last three (3) years;
- b. The reason for such consultation or treatment; and
- c. Produce all such medical/counseling/therapy records for the last three (3) years.

RESPONSE: Plaintiff seeks only nominal damages, along with any costs or attorneys' fees she would be entitled to if she prevails in this action. Plaintiff is not seeking any additional damages, including non-economic damages.

Plaintiff objects to the production of her medical records. Plaintiff is not claiming an injury based on any medical condition, including psychological conditions. Plaintiff's action is based on the violation of her constitutional rights, namely, prohibited First Amendment retaliation designed to dissuade a reasonable person from engaging in protected activity. As noted by *Hill v. Lappin*, actual deterrence need not be shown. 630 F.3d 472 (quoting *Harbin-Bey v. Rutter*, 420 F.3d 571,

579 (6th Cir. 2005). Plaintiff's medical records are irrelevant to the damages she has claimed and are not relevant to any party's claims or defenses. Given that no claims advance any argument that Plaintiff has suffered any form of medical injury, including psychological, the request that medical records be produced appears to be calculated to harass Plaintiff, or at the very least is disproportional to the needs of this case. To the extent that Plaintiff's admission that she is not claiming a medical injury is insufficient to address Defendants' concerns, Plaintiff is open to discussing the execution of an affidavit with respect to relevant medical information, to the extent there is any.

5. Admit that Plaintiff's employer has previously disciplined her for her public commentary on Facebook. If you do not admit this request unequivocally, state in detail the reasons why.

RESPONSE: Plaintiff denies this request to admit. Answering further, Plaintiff requested a copy of any discipline issued against her for social media activity, and no discipline is noted. The only document referencing Plaintiff's social media activity in her file is a copy of Defendant Pyden's complaint, and the conclusion of Plaintiff's supervisor that she had not violated any departmental rules. Answering further, Plaintiff does recall a conversation with Deputy Chief Strager regarding her activity on Facebook in connection with Plaintiff's nephew's girlfriend, but does not recall whether any discipline resulted from this discussion.

/s/Stephen A. Delie
Mackinac Center Legal Foundation
Attorneys for Plaintiff

DATED: May 17, 2023

PROOF OF SERVICE

Stephen Delie states that on May 17, 2023, he served a copy of Plaintiff's Answers to Defendants' Request to Admit upon Timothy Mullins via email to tmullins@gmhlaw.com.

/s/Stephen A. Delie
Stephen A. Delie (P80209)
Mackinac Center Legal Foundation
Attorneys for Plaintiff
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(989) 631-0900
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Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

v

Judge Mark A. Goldsmith
Magistrate David R. Grand
No. 22-12313

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and ELIZABETH
PYDEN,

Defendants.

Stephen A. Delie (P80209)
Derk Wilcox (P66177)
Mackinac Center for Public Policy
Attorneys for Plaintiff
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Timothy J. Mullins (P28021)
Kenneth B. Chapie (P66148)
John L. Miller (P71913)
Giarmarco, Mullins & Horton, P.C.
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jmiller@gmhlaw.com

ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH PYDEN, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their responses to Plaintiff's Request for Admissions as follows:

1. For Defendant Pyden only:
 - a. In your December 11, 2020 e-mail to Chief Vince Smith, you stated that you did not expect him to take any adverse action against Plaintiff. Please admit that this e-mail was intended to lead to some action being taken to deter Plaintiff from continuing her conduct. If you deny this, please explain your

reasoning for sending this e-mail.

ANSWER: Denied in the manner alleged and because it is untrue. Plaintiff (and/or her proxies) subjected Ms. Pyden to severe and pervasive harassment, which included (1) defamatory and threatening statements, (2) threats to “ruin” Ms. Pyden, (3) calling her obscene names, such as “special kind of stupid,” “libtard,” “bitter bitch,” and “Nazi”, (4) persons parking outside of her home, for the sole purpose of harassing and threatening Ms. Pyden. These actions were directed against Ms. Pyden outside of Board Meetings, as well as at board meetings. Ms. Pyden simply wanted the threatening behavior to stop, and had no intention of Plaintiff’s employer taking any adverse employment action. Defendants now know, however, that Plaintiff has previously been disciplined by her employer for imprudent social media usage. Additionally, law enforcement agencies are tasked with investigating potential threats and/or criminal harassment. Ms. Pyden wanted to make sure her concerns were reported, so that they could be looked into by appropriate authorities, should those authorities believe it appropriate to do so. School employees and officials are routinely criticized (and sometimes sued), for not reporting potential threatening behavior, so Ms. Pyden erred on the side of protecting the safety and welfare of the District’s stakeholders.

- b. Please admit that the e-mail address “elizabethpyden@sbcglobal.net” is one of your personal e-mail accounts.

Admit.

- c. Please admit that BPyden@cvs.k12.mi.us was your official Board of Education e-mail during the time period you were a member of that Board.

Admit.

2. For Defendant Bednard only:

- a. In your October 4, 2021 e-mail title “DOJ Investigations for Threatening/Intimidating behavior at School Board Meetings”, you stated “We know that they have not gained any traction as it is the same 10-15 people that show up every meeting to intimidate, threaten, and harass. Anything that could be done to curb this behavior by these people would be greatly appreciated by our board, administration, and our community.”

Please admit:

- i. The behavior referenced by Defendant Bednard was Plaintiff’s conduct at Board meetings and her communications with the Board;

ANSWER: Denied in the manner alleged and because it is untrue. Plaintiff, and her colleagues affiliated with MOL, engaged in harassing behavior outside of board meetings and directed at single board members, not just the “Board”.

- ii. The statement “Anything that could be done to curb this behavior by these people would be greatly appreciated by our board, administration, and our community” was intended to encourage the DOJ to investigate Plaintiff’s conduct.

ANSWER: Denied in the manner alleged and because it is untrue. Based on guidance from the NASB and the DOJ, I erred on the side of caution. Law enforcement agencies are tasked

with investigating potential threats and/or criminal harassment. I wanted to make sure my concerns were reported, so that they could be looked into by the DOJ if it believed doing so was appropriate. School employees and officials are routinely criticized (and sometimes sued), for not reporting potential threatening behavior.

- (1) If you deny the above, please state the purpose of Defendant Bednard's communications with the DOJ.

ANSWER: See above.

- iii. Defendant Bednard sent this communication to the DOJ or one of its employees, agents, or representatives.

ANSWER: It was submitted through the DOJ webpage.

- (1) If you deny the above, please identify all recipients of this e-mail.
- (2) If you admit the above, please identify the person(s) to whom this communication was sent.

ANSWER: It was sent through a "button" on the webpage.

- b. Please admit that FBednard@cvs.k12.mi.us was your official Board of Education e-mail during the time period you were a member of that Board.

ANSWER: Admit.

3. For all Defendants, please admit:
 - a. Chippewa Valley Board of Educations' policies relating to responding to the COVID-19 pandemic were matters of public policy.

ANSWER: Denied in the manner alleged. This response is too broad and too vague to be admitted as true. The Board Policies that are adopted are on the District's webpage, and

constitute the official Policies of the District pursuant to the Revised School Code. Defendants are uncertain what Plaintiff means by “public policy.”

- b. Citizens who speak during the public comment period of a meeting of the Chippewa Valley Board of Education on matters of Board policy are engaged in activity protected by the First Amendment.

ANSWER: Denied because untrue. Some speech is protected. Some speech is not.

- c. Citizens who correspond with members of the Chippewa Valley Board of Education on matters of Board policy are engaged in activity protected by the First Amendment.

ANSWER: Denied because untrue. Some speech is protected. Some speech is not.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants
101 W. Big Beaver Road, 10th Floor
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tmullins@gmhlaw.com
P28021

DATED: May 26, 2023

PROOF OF SERVICE

ELIZABETH BINNO states that on May 26, 2023, she served a copy of the **Answers to Plaintiff’s Requests for Admissions** upon Stephen A. Delie by email @ delie@mackinac.org.

/s/ELIZABETH BINNO

Exhibit F

2019 WL 6254870

Only the Westlaw citation is currently available.

United States District Court, E.D.
Michigan, Southern Division.

Patrick RABOCZKAY, Plaintiff,

v.

CITY OF TAYLOR, et al., Defendants.

Case No. 19-10255

I

Signed 11/22/2019

Attorneys and Law Firms

Andrew A. Paterson, Jr., Novi, MI, for Plaintiff.

Howard W. Burdett, Jr., Michelle Dean Champane, Howard & Howard Attorneys PLLC, Royal Oak, MI, John C. Clark, Giarmarco, Mullins & Horton, P.C., Troy, MI, for Defendant City of Taylor.

Brandon J. Fournier, Howard Shifman PC, Bingham Farms, MI, Howard W. Burdett, Jr., Michelle Dean Champane, Howard & Howard Attorneys PLLC, Royal Oak, MI, Kenneth M. Gonko, Danielson Group, Chesterfield, MI, Randall A. Pentiuk, Pentiuk, Couvreur, Wyandotte, MI, for Defendant Herman Ramik.

Anthony K. Chubb, Geoffrey S. Wagner, John C. Clark, Giarmarco, Mullins & Horton, P.C., Troy, MI, Howard W. Burdett, Jr., Michelle Dean Champane, Howard & Howard Attorneys PLLC, Royal Oak, MI, for Defendant Rick Sollars.

OPINION & ORDER

(i) GRANTING IN PART DEFENDANT RICK SOLLARS'S MOTION TO DISMISS (Dkt. 40), (ii) GRANTING IN PART DEFENDANT HERMAN RAMIK'S MOTION TO DISMISS (Dkt. 41), (iii) AND GRANTING DEFENDANT CITY OF TAYLOR'S MOTION TO DISMISS (Dkt. 42)

MARK A. GOLDSMITH, United States District Judge

*1 Former City of Taylor police chief John Blair approached Plaintiff Patrick Raboczkay, a retired Taylor police officer,

and asked whether he thought J and M Towing should be awarded the City's exclusive towing contract. Based on his experience as a police officer, Raboczkay told Blair that J and M Towing was untrustworthy and had questionable drivers with criminal records. Blair relayed this information to Defendants Rick Sollars (Mayor of Taylor), and Herman Ramik (a Taylor city council member). According to Raboczkay, Sollars and Ramik received "kick backs" from J and M Towing, and they retaliated against Raboczkay for his statement by causing criminal investigations into his work as a Taylor salvage vehicle inspector and making false public statements about him in the press. Sollars, Ramik, and Defendant City of Taylor have all filed motions to dismiss (Dkts. 40-42). The matters are fully briefed. For the reasons discussed below, Sollars's and Ramik's motions are granted in part; the City of Taylor's motion is granted.

I. BACKGROUND

The following allegations are taken as true for the purposes of the pending motions. Raboczkay served as a City of Taylor police officer from 1997 through 2017. 2d Am. Compl. ¶ 11 (Dkt. 39). He retired in October 2017. *Id.* ¶ 19. Shortly after his retirement, Raboczkay entered into a personal service contract with the City of Taylor and Defendant Sollars to serve as the "CMV Weigh Master/Motor Carrier Officer," performing salvage vehicle inspections on behalf of the City. *Id.* ¶¶ 13-20. For a fee, salvage vehicle inspectors verify that salvaged vehicles do not contain any stolen parts and that the vehicles are street worthy. 4/12/2018 Detroit News Article, Ex. D to Compl. (Dkt. 6-3).

In March 2018, after working hours, then police chief John Blair approached Raboczkay and one of his colleagues to inquire about non-party J and M Towing's reputation. 2d Am. Compl. ¶ 25. The City was considering making J and M Towing its exclusive towing service. *Id.* Blair did not seek Raboczkay's opinion as the City's CMW Weigh Master, but rather sought his opinion as a private citizen "off the record." *Id.* ¶¶ 25-30. Raboczkay told Blair that J and M Towing was not trustworthy and had questionable drivers with criminal records. *Id.* ¶ 31.

Blair subsequently shared Raboczkay's opinion with the City Council, where Sollars and Ramik were in attendance. *Id.* ¶ 32. After the city council meeting, Ramik began sending false and defamatory letters to the Michigan Secretary of State requesting a criminal investigation into the City's salvage

vehicle inspection program; he also urged Sollars to initiate an investigation. *Id.* ¶ 35. According to Raboczka, Ramik has a close relationship with J and M Towing and had been pressuring the City to award J and M Towing its exclusive towing contract. *Id.* ¶ 36. Raboczka alleges that Ramik falsely advised Sollars that Raboczka and his colleague were “going to prison.” *Id.* ¶ 38.

In April, the Michigan Secretary of State informed Raboczka that, based on Ramik's complaint, the salvage vehicle inspection program was under investigation. *Id.* ¶ 39. Raboczka's position was suspended pending the outcome of the investigation. *Id.* ¶ 40. In a statement to the Detroit News, Ramik said that he blew the whistle on two former Taylor police officers, alleging that they had committed fraud by not turning over vehicle-salvage-inspection fees to the City. 4/12/2018 Detroit News Article. In the same article, Blair noted that his department was cooperating with the Secretary of State; the article also quoted Sollars as stating that “concerns were raised that some questionable actions may have occurred” and that “while this investigation is ongoing, the two officers have been placed on administrative leave until further notice.” *Id.* A few days later, Ramik appeared on Fox 2 News and again falsely accused Raboczka of fraud, theft, and embezzlement. 2d Am. Compl. ¶ 43.

*2 In August 2018, Raboczka was cleared of any criminal wrongdoing with respect to the vehicle salvage inspection program. Despite being cleared, Raboczka was not reinstated into his previous position. *Id.* ¶ 98. In December, the City's Human Resources Department offered to meet with Raboczka about entering into a voluntary agreement to resign his position and agree not to sue the City or its officials. *Id.* ¶ 99. Raboczka's attorney contacted the City to resolve matters and to avoid litigation, but the City ignored the request and terminated Raboczka's employment on December 28, 2018. *Id.* ¶¶ 99-102. Raboczka alleges that Sollars ordered the Human Resources Department to terminate Raboczka's employment. *Id.* ¶ 103. According to Raboczka, Sollars and Ramik receive financial “kick backs” from J and M Towing, and their actions against Raboczka were retaliation for speaking out against J and M Towing and threatening to bring this action against them. *Id.* ¶¶ 56, 104-105.

Raboczka filed this action alleging First Amendment retaliation, violation of the Fourteenth Amendment's Equal Protection Clause, and a state law defamation claim against Defendants Sollars and Ramik. There are no claims brought

against Defendant City of Taylor. Sollars, Ramik, and the City of Taylor all filed motions to dismiss (Dkts. 40-42) under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#).

II. STANDARD OF REVIEW

On a motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), “[t]he defendant has the burden of showing that the plaintiff has failed to state a claim for relief.” [Directv, Inc. v. Treesh](#), 487 F.3d 471, 476 (6th Cir. 2007) (citing [Carver v. Bunch](#), 946 F.2d 451, 454-455 (6th Cir. 1991)), cert. denied, 552 U.S. 1311 (2008). To survive a [Rule 12\(b\)\(6\)](#) motion, the plaintiff must allege sufficient facts to state a claim to relief above the speculative level, such that it is “plausible on its face.” [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 570 (2007). The plausibility standard requires courts to accept the alleged facts as true, even when their truth is doubtful, and to make all reasonable inferences in favor of the plaintiff. [Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009); [Twombly](#), 550 U.S. at 555-556.

Evaluating a complaint's plausibility is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” [Iqbal](#), 556 U.S. at 679. Although a complaint that offers no more than “labels and conclusions,” a “formulaic recitation of the elements of a cause of action,” or “naked assertion[s]” devoid of “further factual enhancement” will not suffice, *id.* at 678, it need not contain “detailed factual allegations,” [Twombly](#), 550 U.S. at 555; see also [Erickson v. Pardus](#), 551 U.S. 89, 93 (2007) (“[S]pecific facts are not necessary...”). Rather, a complaint needs only enough facts to suggest that discovery may reveal evidence of illegality, even if the likelihood of finding such evidence is remote. [Twombly](#), 550 U.S. at 556.

III. ANALYSIS

Defendants argue that Raboczka has failed to state a claim for First Amendment retaliation, Equal Protection, and defamation. In his response brief, Raboczka agrees to dismiss his Equal Protection claim. Resp. at 27 (Dkt. 46). The First Amendment and defamation claims will be taken in turn.

A. First Amendment Retaliation

To survive a motion to dismiss a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the defendant

acted under color of state law; and (2) the defendant's conduct deprived the plaintiff of rights secured under federal law. [Bloch v. Ribar](#), 156 F.3d 673, 677 (6th Cir. 1998). Defendants do not dispute that Raboczky alleged that Sollars and Ramik were acting under the color of state law. Defendants dispute whether Raboczky has been deprived any right secured under federal law.

To establish a First Amendment retaliation claim, the plaintiff must show “ ‘(1) he was engaged in a constitutionally protected activity; (2) he was subjected to adverse action or deprived of some benefit; and (3) the protected speech was a ‘substantial’ or ‘motivating factor’ in the adverse action.’ ” [Haddad v. Gregg](#), 910 F.3d 237, 243 (6th Cir. 2018) (quoting [Farhat v. Jopke](#), 370 F.3d 580, 588 (6th Cir. 2004)). Defendants argue that Raboczky has not alleged the first two prongs, but they concede the causation prong by failing to address it.

1. Protected Activity

*3 Defendants argue that Raboczky was speaking as a public employee when he made his statements to Police Chief Blair. Ramik Mot. at 9 (Dkt. 41); Sollars Mot. at 10 (Dkt. 40). Public employees, like Raboczky, are somewhat less protected in the First Amendment retaliation context. For the speech to be protected, a public employee “(1) must have spoken ‘as a citizen,’ and (2) must have addressed matters of public concern.” [Weisbarth v. Geauga Park Dist.](#), 499 F.3d 538, 542 (6th Cir. 2007) (some internal marks omitted). Public employees are not considered to be engaging in protected activity when they make statements within the scope of their official duties. [Garcetti v. Ceballos](#), 547 U.S. 410, 421 (2006). To determine whether Raboczky was speaking as a citizen, the critical question is “whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.” [Lane v. Franks](#), 573 U.S. 228, 240 (2014). Defendants do not dispute that Raboczky's statement is a matter of public concern.

This public employee/private citizen distinction is “challenging,” and “although the Supreme Court has not identified any detailed analysis to decide this question,” the inquiry is meant to be a practical one. [Haddad](#), 910 F.3d at 247 (citing [Mayhew v. Town of Smyrna, Tennessee](#), 856 F.3d 456, 464 (6th Cir. 2017)). The Sixth Circuit has identified several factors, including “the impetus for [the] speech, the setting of [the] speech, the speech's audience, and its general subject

matter.” [Weisbarth](#), 499 F.3d at 546. Raboczky alleges that Blair sought his opinion about J and M Towing outside of work on a matter of public concern unrelated to his job duties. These factors weigh in Raboczky's favor.

Defendants rely heavily on [Weisbarth](#) to support their position that Raboczky was speaking in furtherance of his ordinary job responsibilities. Sollars Mot. at 10-12; Taylor Mot. at 6-8 (Dkt. 42). In [Weisbarth](#), the plaintiff worked as a park ranger for [Gaugua Park District \(“GPD”\)](#). 499 F.3d at 539. GPD hired a consultant to evaluate its “serious morale and performance problems.” [Id.](#) at 540. The consultant rode along with the plaintiff during one of her shifts. [Id.](#) Based on inquiry by the consultant, the plaintiff expressed her personal dislike for nearly all her co-workers. [Id.](#) The consultant identified the plaintiff as a “source of friction” within the GPD, and she was later terminated. [Id.](#)

The [Weisbarth](#) plaintiff brought a First Amendment retaliation claim against her employer based exclusively on her statements made during the consultant's ride-along. [Id.](#) The plaintiff emphasized that the consultant was hired by GPD specifically to evaluate and interview its employees. [Id.](#) at 543. The Sixth Circuit explained that although the plaintiff's speech was not strictly within her job description as a park ranger, the speech corresponded directly to her professional responsibilities. [Id.](#) at 545-546. The panel found that the plaintiff's statement on issues pertaining to employee morale, specifically elicited by the plaintiff's employer, was speech made as an employee pursuant to her official duties. [Id.](#)

Here, unlike the [Weisbarth](#) plaintiff, Raboczky emphasizes that his comments were made outside of work, on matters not related to his job duties. 2d Am. Compl. ¶¶ 25-30. Defendants argue that these allegations are implausible because Raboczky was speaking to his direct supervisor about a company that works directly with vehicles in the City that needed to be “salvaged.” Taylor Mot. at 8.¹ Blair may have been Raboczky's direct supervisor, but there are no allegations that tow companies regularly bring salvaged vehicles to Raboczky for certification such that his position provided special insight into towing operations. Further, Raboczky alleges that his opinion, at least in part, was formed while he was serving as a Taylor police officer. 2d Am. Comp. ¶ 31. And Raboczky was employed as a salvage inspector, not a police officer, when he spoke with Blair. Therefore, [Weisbarth](#) does not help Defendants in this matter.

*4 Raboczky has alleged sufficiently that he was speaking as a citizen to Blair on a matter of public concern.

2. Adverse Action

Ramik argues that he did not take an adverse action against Raboczky, because he lacks the authority to terminate his employment. Ramik Mot. at 11. That may be true, but termination is not the only adverse action Raboczky alleges.

An action is adverse if it “would deter a person of ordinary firmness from continuing to engage in that conduct.” [Fritz v. Charter Twp. of Comstock](#), 592 F.3d 718, 723 (6th Cir. 2010) (citations omitted). “Whether an alleged adverse action is sufficient to deter a person of ordinary firmness is generally a question of fact.” [Wurzelbacher v. Jones-Kelley](#), 675 F.3d 580, 583-584 (6th Cir. 2012) (citing [Bell v. Johnson](#), 308 F.3d 594, 603 (6th Cir. 2002)).

Raboczky alleges that Ramik made false statements to Michigan's Secretary of State that Raboczky had been committing fraud. The investigation caused the City to place Raboczky on administrative leave. Additionally, Ramik made repeated statements to the press describing how Raboczky defrauded the City out of hundreds of thousands of dollars over the course of two to three years. See 4/12/2018 Detroit News Article (“I did some snooping around, and found out these officers weren't turning in the money for these inspections. At \$100 apiece, there are thousands of these that have not been turned in, going back two and three years.”); see also 2d Am. Compl. ¶¶ 43-44 (alleging Ramik made statements to Fox 2 News and the Sunday Times). Publicizing facts damaging to a person's reputation and instigating a criminal investigation are actions that would deter a person of ordinary firmness from making comments on matters of public concern. [Fritz](#), 592 F.3d at 724. Raboczky has alleged an adverse action sufficient to maintain his First Amendment retaliation claims.²

B. Defamation

*5 Raboczky alleges that Sollars defamed him by writing a letter to city officials noting that “questionable actions may have occurred” with respect to the vehicle salvage investigation. 2d Am. Compl. ¶ 146. Raboczky further alleges that Ramik defamed him by (i) calling him a “crook” and a “thief” during a city council meeting, [id.](#) ¶ 154; (ii) sending false and defamatory letters to the Michigan

Secretary of State requesting a criminal investigation, [id.](#) ¶ 134; (iii) advising Sollars that Raboczky was going to be charged with felonies, [id.](#) ¶¶ 135, 137-138; (iv) accusing him publicly of fraud, theft, and embezzlement in the Detroit News, on Fox 2 News, and in the Sunday Times; and (v) again accusing Raboczky publicly of criminal conduct in the Detroit News, even after Raboczky had been cleared of any wrongdoing, [id.](#) ¶¶ 151-152, 157.

There are four elements necessary to establish defamation under Michigan law:

(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication. [Smith v. Anonymous Joint Enter.](#), 793 N.W.2d 533, 540 (Mich. 2010) (citation omitted). Defendants do not address the third and fourth prongs. The first two prongs will be taken in turn.

1. False and Defamatory Statement Concerning the Plaintiff

Raboczky alleges adequately that Ramik made false and defamatory statements concerning Raboczky, but he fails to do so with respect to Sollars.

Raboczky alleges that Ramik's criminal conduct accusations are false and defamatory. Raboczky's allegation that Ramik made false statements is sufficient to survive a motion to dismiss, and accusations of criminal conduct are defamatory per se, see [Burden v. Elias Bros. Big Boy Restaurants](#), 613 N.W.2d 378, 381 (Mich. Ct. App. 2000).

However, Ramik argues that publicly accusing “two Taylor police officers” of criminal conduct is “too ambiguous for anyone—without more—to have suspected that Plaintiff was the subject of the news features.” Ramik Mot. at 16. To support his argument Ramik relies on [Action Auto Glass v. Auto Glass Specialists](#), No. 1:00-CV-756, 2001 WL 1699205 (W.D. Mich. Aug. 21, 2001) (citing [Lins v. Evening News Ass'n](#), 342 N.W.2d 573 (Mich. Ct. App. 1983)). Neither of these cases, both decided after extensive discovery, is persuasive.

As recognized in Lins, where a small group is defamed and the “plaintiff’s identity is readily ascertainable from the content of the publication,” a defamation action can be maintained. Lins, 342 N.W.2d at 578. Here, the allegations do not establish whether Raboczky was one of two vehicle salvage inspectors whose identity was, therefore, readily identifiable from the news articles or whether he was one of a hundred vehicle salvage inspectors whose identity could not be gleaned from Ramik’s public comments. Unlike Action Auto Glass or Lins, cases decided after extensive discovery, Ramik’s motion is limited to the pleadings. Based on the pleadings, Raboczky has made sufficient allegations that he was readily identifiable in the media reports.

Ramik also argues that Raboczky has failed to set forth, verbatim, the defamatory words in the Second Amended Complaint. Ramik Mot. at 15-16. Although it is true that defamation claims must be pleaded with specificity, Ledl v. Quik Pik Food Stores, Inc., 589-590, 349 N.W.2d 529, 532 (Mich. Ct. App. 1984), slander claims (the spoken form of defamation) often cannot be recalled verbatim and, therefore, it is sufficient to plead the substance of the slanderous statement, Royal Palace Homes, Inc. v. Channel 7 of Detroit, Inc., 495 N.W.2d 392, 395 (Mich. Ct. App. 1992). Raboczky has pleaded that Ramik accused him of fraud, theft, and embezzlement, which is the substance of Ramik’s slanderous statements. Thus, Raboczky’s allegations against Ramik satisfy the first prong.

*6 Sollars, on the other hand, has not made any false statements concerning Raboczky. Raboczky alleges that, in a letter to Ramik and other city officials, Sollars acknowledged that the Secretary of State was conducting an audit of the vehicle salvage program and that two police officers had been suspended. The Detroit News quoted Sollars in an April 12, 2018 article:

‘After reviewing some of the files and documents, concerns were raised that some questionable actions may have occurred,’ Sollars wrote. ‘Therefore, while this investigation is ongoing, the two officers have been placed on administrative leave until further notice.’

4/12/2018 Detroit News Article. There is no dispute that Ramik raised concerns over questionable actions allegedly taken by Raboczky and that Raboczky was placed on administrative leave. Raboczky’s defamation claim against Sollars fails at the first prong because Sollars’s statement was true. Truth is an absolute defense to a defamation claim. Porter v. Royal Oak, 542 N.W.2d 905, 909 (Mich. App. Ct. 1995) (citing cases). Because Raboczky did not allege a false

statement by Sollars, his defamation claim against Sollars must be dismissed.

2. Unprivileged Communication to a Third Party

There is no question that Ramik’s statements were made to third parties, but whether Ramik’s statements were privileged is another matter. For the reasons discussed below, it is clear that absolute immunity attaches to Ramik’s statement calling Raboczky a “crook” and a “thief” during a city council meeting, but not to his communications to Michigan’s Secretary of State.

Absolute privilege is a narrow privilege that extends to, among other things, communications made during legislative proceedings, including city council meetings, on matters of public concern. Froling v. Carpenter, 512 N.W.2d 6, 8-9 (Mich. Ct. App. 1993) (citing cases). The rationale for the privilege is to allow persons to express their views boldly during legislative proceedings on matters of public concern and without fear of legal repercussions. Id. at 8. There is no dispute that Ramik made his comment during a legislative proceeding on a matter of public concern (alleged corruption). Therefore, Ramik’s statement was protected by absolute privilege and cannot form a basis for recovery in this action. See Schlinkert v. Henderson, 49 N.W.2d 180, 183 (Mich. 1951).

Ramik also believes that his communications to Michigan’s Secretary of State are protected by absolute privilege. He argues that it is well settled that his communications to Michigan’s Secretary of State, as an investigatory agency, are protected by absolute privilege. He is mistaken. “ ‘Cases of absolute privilege are not numerous, and the courts refuse to extend their number. They are divided into three classes. (1) Proceedings of legislative bodies; (2) Judicial proceedings; and (3) Communications by military and naval officers.’ ” Timmis v. Bennett, 89 N.W.2d 748, 751 (Mich. 1958) (quoting Newell, Slander and Libel (4th ed.), § 351). Ramik’s communications to Michigan’s Secretary of State do not fall into any of these categories. See id. at 753 (noting that the absolute privilege attached to judicial proceedings does not apply when a case is merely being contemplated, because no judicial proceeding is pending).

However, Michigan courts have considered applying absolute privilege in a fourth context: communications to police officers concerning criminal activity. This fourth context

has its genesis in [Shinglemeyer v. Wright](#), 82 N.W. 887, 890-891 (Mich. 1900). In [Shinglemeyer](#), the Michigan Supreme Court left open the possibility that “malicious” statements made to police officers may be actionable in defamation actions. *Id.* at 890. Michigan courts recognize that communications to police officers are privileged, but they have equivocated, based on [Shinglemeyer](#), whether that privilege is qualified or absolute. See [Hall v. Pizza Hut of Am., Inc.](#), 396 N.W.2d 809, 813 (Mich. Ct. App. 1986) (stating that “information given to police officers regarding criminal activity is absolutely privileged,” but finding that the plaintiff’s communication to police officers “enjoyed at least a qualified privilege”); compare [Smith v. Primco Mgmt. Corp.](#), No. 193207, 1997 WL 33344476, at *3 (Mich. Ct. App. July 15, 1997) (concluding “that no more than a qualified privilege attaches to communications made to police officers concerning criminal activity”), with [Eddington v. Torrez](#), 874 N.W.2d 394, 397 (Mich. Ct. App. 2015) (“The simple fact is that [Shinglemeyer](#) created an absolute privilege covering any report of criminal activity to law enforcement personnel in the context of a defamation claim, and [Shinglemeyer](#) remains the law.”).

*7 Ramik relies on the cases finding that absolute privilege attaches to communications with law enforcement officers on criminal matters. But the Michigan Supreme Court has not endorsed such an extension of the privilege. However, the split does not need to be decided in this case, because Ramik did not make his communications to police officers. Ramik communicated with the Secretary of State, and Michigan courts have been reluctant to extend the privilege to communications about criminal activity to anyone other than police officers. See [Schmizzi v. Borrajo](#), No. 248578, 2004 WL 2451932, at *1 (Mich. Ct. App. Nov. 2, 2004) (declining to extend absolute privilege to communications with Michigan’s Secretary of State accusing an individual of criminal activity). Ramik’s communications to the Secretary of State about Raboczky’s alleged criminal activity enjoy, at most, a qualified privilege. However, Ramik has not argued that his communications enjoyed a qualified privilege and, therefore, the matter cannot be resolved by Ramik’s motion to dismiss. With the exception of Ramik’s statement to the city council, none of his statements was protected by absolute privilege.

Footnotes

- 1 It is not clear what “salvaged” means in the context of certifying that vehicles have been legally restored to operational status.

Ramik’s motion is granted in part as to the statement made during the city council meeting.

C. City of Taylor

Raboczky named the City of Taylor in the Second Amended Complaint, but, as noted by the City, he failed to make any allegations against the City. In the response brief, Plaintiff’s attorney, Andrew Paterson, has thoughtlessly lifted a response from another one of his cases, [Anders v. Lievens](#), No. 18-13942, including using Anders’s name, and has made representations in this case that simply are not true. For example, in support of a [Monell](#) claim that has not been alleged, Andrew Paterson represents that the Second Amended Complaint “cites the Defendant City’s charter repeatedly as the ‘policy or custom’ that is the ‘moving force of the constitutional violation’ ” Resp. at 17. However, the words “policy,” “custom,” and “[Monell](#)” do not appear anywhere in Raboczky’s Second Amended Complaint, and there is no [Monell](#) claim in Raboczky’s four-count complaint. The City of Taylor’s motion to dismiss is granted.

IV. CONCLUSION

For the foregoing reasons, Sollars’s motion to dismiss (Dkt. 40) is granted in part. Raboczky’s defamation claim against Sollars is dismissed. The motion is denied in all other respects. Ramik’s motion to dismiss (Dkt. 41) is granted in part. Raboczky’s defamation claim, to the extent it is based on Ramik’s comments during a city council meeting, is dismissed. The motion is denied in all other respects. The City of Taylor’s motion to dismiss is granted (Dkt. 42). Raboczky withdrew his Equal Protection claim and it is, therefore, dismissed.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2019 WL 6254870

- 2 Ramik also argues that because Raboczkay failed to allege that the State investigation against him lacked probable cause, he cannot sustain an action for retaliatory prosecution. Ramik Mot. at 12. However, Raboczkay is not alleging retaliatory prosecution. Therefore, he did not need to allege the investigations lacked probable cause. Ramik also argues that Raboczkay fails to state a claim because he does not support his assertion that Ramik and J and M Towing have a “close personal relationship.” *Id.* at 12-13. But Raboczkay has done more than make unsupported allegations. He also alleges that Ramik had been pressuring the City Council to make J and M Towing its exclusive towing service and that Ramik was receiving “kick backs” from J and M Towing. These detailed factual allegations are specific enough to survive a motion to dismiss. *See Twombly*, 550 U.S. at 555.

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Exhibit G

2021 WL 5040293

Only the Westlaw citation is currently available.
United States District Court, E.D.
Michigan, Southern Division.

Alexander HAGGART, Plaintiff,

v.

CITY OF DETROIT, et al., Defendants.

Case No. 2:19-cv-13394

I

Signed 10/27/2021

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OPINION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [33]

STEPHEN J. MURPHY, III, United States District Judge

*1 Plaintiff Alexander Haggart sued the City of Detroit, Detroit Police Officer Theopolis Williams, and two Detroit firefighters (Chief Patrick McNulty and Deputy Chief Robert Shinske) and filed a complaint that alleged constitutional claims for First Amendment retaliation under 42 U.S.C. § 1983. ECF 1, PgID 4–5, 10; *see also* ECF 34, PgID 475 (explaining that the crux of the complaint was First Amendment retaliation). Plaintiff also asserted a claim under 42 U.S.C. § 1985 for conspiracy to interfere with Plaintiff's civil rights and a malicious prosecution claim against Deputy Chief Shinske. ECF 1, PgID 10–12.

Defendants moved for summary judgment on all claims and asserted qualified immunity defenses. *See* ECF 33, PgID 345 (noting the standard for granting qualified immunity to state actors); *see also* ECF 3, PgID 24 (affirmative defenses).¹

Plaintiff responded to the motion but responded only to the summary judgment arguments about the § 1983 claims against Deputy Chief Shinske and Chief McNulty. *See* ECF 34, PgID 469–74 (“The evidence raises a question of fact as to Shinske and McNulty's motivations....”). The Court will therefore consider the *Monell* claim, § 1983 claim against Officer Williams, the § 1985 claims, and malicious prosecution claim abandoned. *See Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 372 (6th Cir. 2013) (“[A] plaintiff is deemed to have abandoned a claim when a plaintiff fails to address it in response to a motion for summary judgment.”); *see also* ECF 34, PgID 475. Thus, the only remaining claims are the § 1983 claims for First Amendment retaliation against Deputy Chief Shinske and Chief McNulty.

The Court will not hold a hearing on the motion. *See* E.D. Mich. L.R. 7.1(f). For the following reasons, the Court will grant summary judgment to Defendants.

BACKGROUND

Plaintiff moonlights as a freelance photographer. ECF 34-2, PgID 499. Plaintiff photographs the aftermaths of accidents, crimes, and fires and then sells the photos to news agencies. *Id.* at 499–500. Plaintiff also posts the photos on a social media account called Southeast Michigan Fire and Weather. *Id.* at 500–01.

On the night of October 13 and the early morning of October 14, 2017, Plaintiff livestreamed a video on social media. ECF 33-1, PgID 353 (video filed in traditional manner); ECF 34-1, PgID 480. The video shows Plaintiff, a white man, and another white man, driving a vehicle slowly behind a black woman, who is walking on a sidewalk. ECF 33-1 at 0:00–3:30. Plaintiff and the other man in the vehicle claimed that the woman lit a mattress on fire in a building. *Id.* at 3:20–3:30; ECF 34-2, PgID 501. The two men allegedly could not report the woman for arson because the police and fire department were not answering calls. ECF 33-1 at 3:50–4:10. The two men ultimately followed the woman for a mile until she ran into a house. *Id.* at 3:35–3:54. The two men claimed that they “held her at gun point for ten minutes” sometime during the pursuit. *Id.* at 4:35–4:38; 7:30–7:36. At one point, while driving down a street, Plaintiff stated that he had his pistol, even though he should not have been carrying it. *Id.* at 5:38–6:18. Plaintiff even asserted that he “wished he could” shoot the woman. *Id.* at 6:09–6:13. Towards the end of the video, one man asked the other, “You don't have any of the bad shit

I just did on there, do you?” *Id.* at 9:50–9:58. The other man confirmed that he did not. *Id.* at 9:57–10:01. The men then talked about how Plaintiff held the woman at gun point. *Id.* at 9:58–10:16.

*2 The next day, Patrick McNulty, Chief of the Fire Investigation Division, was notified of Plaintiff’s video and began to investigate Plaintiff’s conduct. ECF 34-3, PgID 536. Chief McNulty was concerned that the video showed vigilantism and so he forwarded the video to a sergeant in his office for review. *Id.* at 539–40. Chief McNulty was specifically concerned with Plaintiff’s “admissions made in the video about holding [the woman] at gunpoint” and Plaintiff’s lack of a concealed carry license. *Id.* at 540. “[T]he investigation encompassed the whole act, the arson, the person who committed the arson, and the subsequent detainment or following of th[e] suspect.” *Id.* at 542. Later that same day, Detroit Police took over the investigation, and Chief McNulty was no longer involved in the investigation. *Id.* at 549.

A few days later, Plaintiff posted photos of a Detroit Fire Department vehicle outside a bar in Dearborn, Michigan. ECF 34-2, PgID 500; *see also* ECF 34-1, PgID 480–82. The vehicle belonged to Deputy Chief Robert Shinske. ECF 34-2, PgID 500. The photo went viral, and the local news featured it in a story. *Id.* at 500–01; ECF 34-6; *see also* ECF 34-1, PgID 481.² Deputy Chief Shinske received a five-day suspension because of the photo. ECF 34-5, PgID 604.

Two months later, Plaintiff posted another photo of Deputy Chief Shinske’s department vehicle; the vehicle was smashed into Shinske’s house. ECF 34-2, PgID 513.

Eighteen months later, in June 2019, Deputy Chief Shinske learned that Plaintiff—who was not a Detroit Firefighter—was drinking beer and riding equipment in a firehouse. ECF 34-5, PgID 614–15; ECF 34-9, PgID 674. Under department policy, civilians are only allowed in a firehouse if they are invited but are not allowed after a certain time. ECF 34-4, PgID 580. Drinking is also forbidden inside firehouses. *Id.* at 581; ECF 34-5, PgID 622. Deputy Chief Shinske then banned Plaintiff from entering Detroit firehouses in two June 2019 orders.³ ECF 34-9, PgID 674. Plaintiff later sued Defendants in August 2019. ECF 1, PgID 2.

LEGAL STANDARD

The Court must grant a motion for summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A moving party must identify specific portions of the record that “it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the non-moving party may not simply rest on the pleadings but must present “specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis omitted).

A fact is material if proof of that fact would establish or refute an essential element of the cause of action or defense. *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984). A dispute over material facts is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When considering a motion for summary judgment, the Court must view the facts and draw all reasonable inferences “in the light most favorable to the non-moving party.” *60 Ivy St. Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987) (citations omitted).

DISCUSSION

*3 Qualified immunity is “an immunity from suit rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis omitted). A qualified immunity analysis requires a two-pronged inquiry. First, the Court must consider whether the facts, “when taken in the light most favorable to the party asserting the injury, show the [defendant’s] conduct violated a constitutional right.” *Mullins v. Cyranek*, 805 F.3d 760, 765 (6th Cir. 2015) (citing *Saucier v. Katz*, 533 U.S. 194, 201–02 (2001)). Second, the Court must determine whether the right was “clearly established such ‘that a reasonable official would understand that what he is doing violates that right.’ ” *Id.* (quoting *Saucier*, 533 U.S. at 201–02).

The Court may use its discretion to determine which prong to analyze first. *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). Ultimately, “[p]laintiff bears the burden of showing that defendants are not entitled to qualified immunity.” *Maben v. Thelen*, 887 F.3d 252, 269 (6th Cir. 2018) (citing *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009)). But “courts ‘should not grant summary

judgment on the issue of qualified immunity if there exists a genuine issue of material fact, involving an issue on which the question of immunity turns, such that it cannot be determined before trial whether the defendant did acts that violate clearly established rights.’ ” *Jones v. Clark Cnty.*, 959 F.3d 748, 765 (6th Cir. 2020) (quoting *Flint ex rel. Flint v. Ky. Dept. of Corr.*, 270 F.3d 340, 346 (6th Cir. 2011)).

To establish a First Amendment retaliation claim, a plaintiff must prove three elements. First, a plaintiff must “engage[] in protected conduct.” *Hill v. Lappin*, 630 F.3d 468, 472 (6th Cir. 2010). Second, the defendant must take “an adverse action that is capable of deterring a person of ‘ordinary firmness from continuing to engage in that conduct.’ ” *Id.* (citing *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc)). And third, “the adverse action” must be “motivated at least in part by the [plaintiff’s] protected conduct.” *Id.* (quoting *Thaddeus-X*, 175 F.3d at 394).

For the third prong, “[i]f the defendant can show that he would have taken the same action in the absence of the protected activity, he is entitled to prevail on summary judgment.” *Maben v. Thelen*, 887 F.3d 252, 262 (6th Cir. 2018) (quoting *Thaddeus-X*, 175 F.3d at 399). In other words, a plaintiff must show “but-for causation.” *Hartman v. Moore*, 547 U.S. 250, 260 (2006). But “[c]ircumstantial evidence like the timing of certain actions” may preclude summary judgment on the third prong. *LaPine v. Corizon Inc.*, No. 2:18-cv-10750, 2019 WL 2502735, at *9 (E.D. Mich. June 17, 2019) (Murphy, J.) (citing *Thaddeus-X*, 175 F.3d at 399); see also *Holzemer v. City of Memphis*, 621 F.3d 512, 526 (6th Cir. 2010). The Court will separately address the First Amendment retaliation claims against Chief McNulty and Deputy Chief Shinske.

I. Chief McNulty

Plaintiff has satisfied the first two prongs of a First Amendment retaliation claim against Chief McNulty. First, Plaintiff’s speech was protected. “The First Amendment protects speech that may be ‘fairly characterized as constituting speech on a matter of public concern.’ ” *Lucas v. Monroe Cnty.*, 203 F.3d 964, 973 (6th Cir. 2000) (quoting *Chappel v. Montgomery Cnty. Fire Prot. Dist. No. 1*, 131 F.3d 564, 573 (6th Cir. 1997)). “Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest.” *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (Roberts, C.J.) (cleaned up). When a Detroit Fire Department vehicle is parked outside a bar, it is a matter of public concern.

See *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006) (“Exposing governmental inefficiency and misconduct is a matter of considerable significance.”).⁴

*4 Second, enduring a criminal investigation is an adverse consequence that would deter an ordinary person from engaging in protected conduct.⁵ See *Wurzelbacher v. Jones-Kelley*, 675 F.3d 580, 584 (6th Cir. 2012) (noting that a threatened governmental investigation would deter an ordinary person from engaging in protected conduct) (citing *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 375 (6th Cir. 2011)). Chief McNulty confirmed that he “initiated” “the Haggart investigation.” ECF 34-3, PgID 536–37.

Yet, despite showing the first two prongs against Chief McNulty, Plaintiff cannot prove the third prong. Put simply, Chief McNulty ordered the vigilante investigation *before* Plaintiff ever posted the photos of Deputy Chief Shinske’s work vehicle. Plaintiff thus cannot show a causal link between posting the photos on social media and ordering the investigation. See *Maben*, 887 F.3d at 262. What is more, Chief McNulty had no meaningful role in the investigation after the police department took over, which was also before Plaintiff posted the photos on social media. ECF 34-3, PgID 549. Without evidence that can support a finding on the third prong, no constitutional violation occurred, and thus Chief McNulty is entitled to qualified immunity. The Court will therefore grant Chief McNulty summary judgment.

II. Deputy Chief Shinske

As the Court explained above, Plaintiff has satisfied the first prong of a First Amendment retaliation claim. Under the second prong, Plaintiff must show, at the present stage, that the ban from the fire department property surpasses the threshold of an “inconsequential action[].” *Thaddeus-X*, 175 F.3d at 398 (emphasis omitted).⁶ The inquiry “is an objective inquiry, capable of being tailored to the different circumstances in which retaliation claims arise, and capable of screening the most trivial of actions from constitutional cognizance.” *Id.*

At the present stage, Plaintiff has presented a genuine issue of material fact about the second prong. The Court cannot find, and the parties did not brief, whether the Sixth Circuit has held that a ban from a municipal building, such as a firehouse, would deter an ordinary person from exercising their First Amendment rights. Some federal courts have found that bans from certain public spaces are adverse actions that would

deter an ordinary person from engaging in protected conduct. *See Seum v. Osborne*, 348 F. Supp. 3d 616, 623, 632 (E.D. Ky. 2018) (finding that a ban “from the third floor of the Capitol Annex” would chill the First Amendment expression of an ordinary person, including the plaintiff who was a “citizen advocate”); *Stark v. City of Memphis*, No. 19-2396, 2020 WL 8770177, at *16 (W.D. Tenn. Feb. 18, 2020) (“[A] ban from police property is a serious sanction for a prosecutor—especially a prosecutor who, like [the plaintiff], had an office in a police building.”). Here, Plaintiff is not a firefighter but a freelancer who presumably accesses Detroit firehouses to maintain relationships with firefighters. *See* ECF 34-2, PgID 515; ECF 34-5, PgID 579. At minimum, it is for a jury to determine whether banning Plaintiff from entering firehouses meets the second prong of a First Amendment retaliation claim. *See Bell v. Johnson*, 308 F.3d 594, 603 (6th Cir. 2002) (“Thus, unless the claimed retaliatory action is truly ‘inconsequential,’ the plaintiff’s claim should go to the jury.”) (quoting *Thaddeus-X*, 175 F.3d at 398).

*5 Yet, for the third prong, Plaintiff has again shown no evidence of but-for causation. First, Plaintiff cannot even show a bare temporal proximity link between the two events because the events occurred more than eighteen months apart. *See Coleman v. Bowerman*, 474 F. App’x 435, 437 (6th Cir. 2012) (per curiam) (“In theory, temporal proximity between the protected conduct and the adverse action, standing alone, may be significant enough to create an inference of retaliatory motive.”) (citing *Muhammad v. Close*, 379 F.3d 413, 417–18 (6th Cir. 2004)). Indeed, the timeline shows that Plaintiff’s firehouse bans were unconnected to the social media photos. ECF 34-4, PgID 580 (Deputy Chief Shinske banned Plaintiff because of inappropriate behavior at firehouses); ECF 34-5, PgID 614–15 (same); ECF 34-9, PgID 674 (same). Based on testimony before a Michigan state court, Deputy Chief Shinske explained that he issued the orders in June 2019. ECF 34-9, PgID 674; *see also* ECF 34-10, PgID 707–08. The orders therefore occurred more than eighteen months after Plaintiff’s photos went viral and after Deputy Chief Shinske’s five-day suspension.

Beyond lacking temporal proximity, Plaintiff offered no evidence—other than his belief—that Deputy Chief Shinske was motivated to ban Plaintiff because of the photos. *See* ECF 34-2, PgID 510–13 (hearsay statements of persons who will not testify or are unnamed); *Fed. R. Evid.* 801(c) (definition of hearsay); *Smith v. Campbell*, 250 F.3d 1032, 1038 (6th Cir. 2001) (A plaintiff “offer[ed] no evidence to demonstrate that his [protected activities] played any role in [the adverse

consequence], let alone a substantial role.”). And the evidence shows that Deputy Chief Shinske had a legitimate reason to ban Plaintiff from firehouses based on Plaintiff’s drinking and horsing around on department equipment. ECF 34-5, PgID 614–15; ECF 34-9, PgID 674; *see Adderley v. Florida*, 385 U.S. 39, 47 (1966) (“The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.”).

In all, Plaintiff has failed to show that Deputy Chief Shinske would not have banned him but for posting the photos on social media. Because no evidence shows a but-for causation, Deputy Chief Shinske did not violate Plaintiff’s constitutional rights and is therefore entitled to qualified immunity.

Even if the Court were to find that Deputy Chief Shinske violated Plaintiff’s constitutional rights, the Court would still grant qualified immunity to Deputy Chief Shinske under the second qualified immunity prong. For the second prong, the Court must determine whether Plaintiff’s right against First Amendment retaliation “was clearly established such ‘that a reasonable official would understand that what [s]he is doing violate[d] that right.’ ” *Mullins*, 805 F.3d at 765 (citing *Saucier*, 533 U.S. at 201–02). “A plaintiff can meet his burden under this prong by presenting caselaw ‘with a fact pattern similar enough to have given fair and clear warning to officers about what the law requires.’ ” *Vanderhoeft v. Dixon*, 938 F.3d 271, 278 (6th Cir. 2019) (quoting *Hopper v. Plummer*, 887 F.3d 744, 755 (6th Cir. 2018)). Although the case that a plaintiff cites “‘need not be on all fours’ with the instant fact pattern” the question at issue “must be so settled that ‘every reasonable official would have understood that what he [was] doing violate[d] [the] right’ at issue.” *Id.* (quotations omitted).

Plaintiff has cited no case law that holds retaliating against someone by banning the person from firehouses (or even municipal buildings where the public must be invited to enter) is clearly established as a First Amendment violation. *See* ECF 34, PgID 474. As the Court explained earlier, two district courts within the Sixth Circuit found that banning a person from a State Capitol building and a prosecutor from their office building would deter an ordinary person from exercising their First Amendment rights. *Seum*, 348 F. Supp. 3d at 632; *Stark*, 2020 WL 8770177, at *16. But Plaintiff does not work at the firehouses and department policy prohibits citizens from entering firehouses unless they are invited. ECF 34-2, PgID 510; ECF 34-4, PgID 580. Plaintiff’s bans differ greatly from the bans in *Seum* and *Stark*. Plus, based on the Court’s research, there is no binding Sixth Circuit precedent

that holds a municipal building ban, in which a plaintiff lacks an unfettered right to enter, is an adverse action that would qualify under the second prong of a First Amendment retaliation claim. As a result, Deputy Chief Shinske is also entitled to qualified immunity because the constitutional violation that Plaintiff asserted is not clearly established. The Court will therefore grant summary judgment to Deputy Chief Shinske.

***6 WHEREFORE**, it is hereby **ORDERED** that the motion for summary judgment [33] is **GRANTED**.

IT IS FURTHER ORDERED that the claims against Defendants are **DISMISSED WITH PREJUDICE**.

This is a final order that closes the case.

SO ORDERED.

ORDER

All Citations

Not Reported in Fed. Supp., 2021 WL 5040293

Footnotes

- 1 Because “qualified immunity is an affirmative defense,” defense counsel should in the future explicitly assert that each defendant is asserting qualified immunity as a defense. *English v. Dyke*, 23 F.3d 1086, 1089 (6th Cir. 1994) (citations omitted).
- 2 The parties failed to attach the news article as an exhibit, but it is publicly available. See Randy Wimbley, *Detroit fire chief investigated for taking department car to bar*, Fox 2 Detroit (Oct. 18, 2017) <https://bit.ly/3aF515n> [<https://perma.cc/9ZZV-BBLZ>].
- 3 Oddly, no party offered Deputy Chief Shinske's orders into evidence. Thus, the duration and extent of the ban is unclear. See ECF 34-4, PgID 589.
- 4 Consider also Shawn Ley and Dane Kelly, *Detroit Fire Department report finds 40% of firefighters have witnessed drinking on the job*, Click on Detroit (May 14, 2021) <https://bit.ly/3oKrqwK> [<https://perma.cc/QGE7-XRQW>]; Shawn Ley and Dane Kelly, *Changes put in place in wake of Detroit Fire Department drunk driving incidents*, Click On Detroit (May 7, 2021) <https://bit.ly/2YEtonJ> [<https://perma.cc/68SE-YTSV>]; Robin Murdoch and Jack Nissen, *Detroit fire chief crashed department vehicle while under influence of alcohol, sources confirm*, Fox 2 Detroit (Mar. 1, 2021) <https://bit.ly/2WXHcsT> [<https://perma.cc/93QH-8K4M>].
- 5 Because Chief McNulty had no role in Plaintiff's ban from fire stations, the Court need not analyze the conduct under a First Amendment retaliation claim related to Chief McNulty. ECF 34-4, PgID 581; ECF 34-5, PgID 610.
- 6 No evidence shows that Deputy Chief Shinske was involved in the investigation into Plaintiff. Instead, the evidence showed only that Chief McNulty was the only Fire Department head who directed the investigation before the Detroit Police Department took over. ECF 34-5, PgID 618 (“That's the only time I've ever talked about [Plaintiff] with [Chief] McNulty, was when he mentioned that *after* [Plaintiff's] arrest...” (emphasis added); see also ECF 34-3, PgID 536–37 (Chief McNulty explaining that he began the investigation into Plaintiff)).

Exhibit H



Book	Policy Manual
Section	0000 Bylaws
Title	PUBLIC EXPRESSION OF BOARD MEMBERS
Code	po0143.1
Status	Active
Adopted	July 1, 2003

0143.1 - **PUBLIC EXPRESSION OF BOARD MEMBERS**

The Board President functions as the official spokesperson for the Board.

From time-to-time, however, individual Board members make public statements on school matters:

A. to local media;

B. to local officials and/or State officials.

Sometimes the statements imply, or the readers (listeners) infer, that the opinions expressed or statements made are the official positions of the Board. The misunderstandings that can result from these incidents can embarrass both the member and the Board. Therefore, Board members should, when writing or speaking on school matters to the media, legislators, and other officials, make it clear that their views do not necessarily reflect the views of the Board or of their colleagues on the Board.

A. This bylaw shall apply to all statements and/or writings by individual Board members not explicitly sanctioned by a majority of its members, except as follows:

1. correspondence, such as legislative proposals, when the Board member has received official guidance from the Board on the matters discussed in the letter
2. routine, not for publication, correspondence of the Superintendent and other Board employees
3. routine "thank you" letters of the Board
4. statements by Board members on nonschool matters (providing the statements do not identify the author as a member of the Board)
5. personal statements not intended for publication

B. Copies of this bylaw shall be sent annually to local media by the Board President.