



April 23, 2015

**VIA EMAIL AND FIRST CLASS MAIL**

Williamson County School Board  
c/o William E. Squires  
Williamson County Schools  
1320 West Main, Suite 202  
Franklin, TN 37064

Members of the Williamson County Board of Education:

The ACLU of Tennessee represents six educators from the Hillsboro School, who are being retaliated against for engaging in protected free speech.<sup>1</sup> Certain Williamson County Board of Education ("Board") members have reportedly called for disciplinary action against these educators. The Board also authorized a private attorney to interrogate the educators at public expense. All of these actions have embarrassed, harassed and intimidated private citizens for their speech. Such conduct by the Board violates the First Amendment Free Speech clause of the United States Constitution and Article 1 § 9 of the Tennessee Constitution. This retaliatory conduct must cease.

In September 2014, about 13 faculty and staff from Hillsboro School met to discuss the recent school board election. The meeting was open to all 55 faculty members. The meeting took place in a public park off school property, outside of school hours and no public funds were expended. No one was coerced to attend or admonished for expressing their opinions at the meeting. This meeting was no different from any other meeting of private Williamson County residents and parents gathering to discuss, and criticize, their elected School Board.

One attendee made an audio recording of the meeting. Approximately six months after the meeting was held, someone, for reasons unexplained, released an adulterated version of the audio to unnamed sources, who then informed media of its existence. The version of the audio released removed context from certain statements and deleted any references that the meeting was being held off campus. A media storm of misinformation ensued. Allegations flew that the meeting was mandatory for all faculty – it was not. Claims were made that the meeting occurred on school grounds – it did not. Charges were levelled that the meeting took place during school hours – it did not.

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<sup>1</sup> We have been retained to represent six teachers and administrators from the school. Because of retaliatory actions taken against them, our clients wish to remain anonymous at this time. I will reply with the names of the represented party to counsel for the Board upon request. Obviously an act of retaliation taken against our clients as a result of sending this letter would not only violate the state and federal constitution, but will result in the immediate filing of a lawsuit.

A quick and harmless investigation into these false allegations would have confirmed the truth. Indeed, what occurred was a meeting of private citizens exercising their right to discuss matters of public concern. This should have been the end of the matter. Private citizens, even if public employees by day, are entitled to criticize their elected officials and question their motivations or policies.

But it did not end there. Board members reportedly called for disciplinary action. One Board member, attempting to conduct a private investigation, went to the school and demanded to speak to the administrators.<sup>2</sup> The Board members demanded that Dr. Mike Looney, the Superintendent of Schools, and the Human Resources office not participate in any investigation. Instead, a private law firm, currently representing the Board in a separate matter, was engaged to investigate the participants and meeting.

To that end and at the Board's direction, the private attorney requested four of our clients be interviewed. The four individuals missed a day of school and travelled to Nashville to the lawyer's office. There, the lawyer conducted a four hour interrogation of one client followed by a slightly shorter interview with another. Meanwhile, the other clients sat in the lobby for the entire day and watched the interrogations through the glass window of a conference room. The lawyer asked personal questions about their friends, prior employment, and parents at the school. He explored their relationship with central office administration. He asked them to listen to the audio tape and name all of those present at the meeting. When they refused to name names, they were required to identify their own voices on the audio recording and explain the reason for their statements. One teacher was questioned until 6:15 p.m. in the evening. The attorney said he could continue until 8:00 p.m., but the teacher could not stay. The clients were told that the investigation would continue the following Monday with further interrogations.

Citizens do not relinquish their constitutional rights when they accept employment with the government. Pickering v. Board of Education, 391 U.S. 563, (1968). Public employees have the right to speak out as private citizens on matters of public concerns. Id. A "matter of public concern involves a matter of political, social, or other concern to the community." Jackson v. City of Columbus, 194 F.3d 737, 746 (6<sup>th</sup> Cir. 1999). The Sixth Circuit Court of Appeals has expressly recognized the right to criticize public officials as the "core of First Amendment values."

The discussion held at the meeting in question, without a doubt, concerned matters of political, social or other concerns to the community. A purer form of free speech than a political discussion in a public park could not be imagined. The audio, despite being altered, establishes that the topics of conversation at the meeting dealt with the actions of the School Board as a body, the statements and reported beliefs of individual members and the campaign that had recently occurred for those elected positions.

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<sup>2</sup> The Board of Education and its elected members do not employ the faculty and staff of the Williamson County Schools. The only employee of the Board is the Superintendent.



In Fisher v. Wellington Exempted Village Schools Bd. of Educ., 223 F.Supp.2d 833, 841 (N.D. Ohio), the district court held that criticism of a school board's action in disciplining a teacher was a matter of public concern. An elementary school principal publically criticized the school board for its lax punishment of a teacher, who had exploited and objectified young girls. The court held that it was "plainly obvious" that the disciplinary issue was "a matter of community and societal concern." If the plight of one educator arises to such a level of concern, surely the actions of the School Board meet this criteria.

Our clients plainly exercised their right to speak on matters of public concern. For their efforts, they have been, and continue to be, subjected to official acts by the School Board in retaliation. A First Amendment retaliation claim requires a showing that the employees were subjected to an adverse action or deprived of some benefit which is likely to "deter a person of ordinary firmness from that exercise" of their protected right to speak. Retaliatory conduct need not take the form of a single serious, adverse employment action, such as discharge, demotion or a cut in pay. It may be a collection of small, even ridiculous, actions which, in gross, create a substantial chilling effect on speech. See Bart v. Telford, 677 F.2d 622, 625 (6<sup>th</sup> Cir. 1982). Because "there is no justification for harassing people for exercising their constitutional rights," the effect of harassing conduct need not be great "to be actionable." Id.

In this case, the employees have been subjected to reported threats of disciplinary action and interrogation on topics irrelevant to any legitimate inquiry, including an investigation into the subject and extent of their speech. They feel intimidated, afraid and exhausted. Their school relationships with colleagues, parents, the public, and students have suffered. The educators' level of trust in their School Board has been destroyed. The retaliation for their speech is much more serious than the mere selective enforcement of work place rules as in Bart or minor instances of harassment which would warrant judicial intervention. This activity must stop, both on behalf of these educators and for all WCS educators.

To the extent the Board may claim that it has a right to investigate whether any school administrator engaged in improper conduct separate and apart from free speech, surely that investigation has been completed. Between the several hours of questioning already conducted and the audio tape of the meeting, it is clear that this meeting took place off campus, after school hours and was entirely voluntary. In the six months since the meeting, no complaint was filed by a teacher who did not attend the meeting saying they were threatened or compelled to go. No one has come forward saying they have been disciplined for not attending. The only complaint comes from the person who attended the meeting, participated in the discussion and made the audio recording. Moreover, questions concerning the content of the speech, what teachers attended, and who made which statement has no relevancy whatsoever on whether the meeting was mandatory or occurred on school grounds, used school funds or occurred during school hours. Even more

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ridiculous are questions concerning personal history or the educators' relationship with central office staff.

Our clients, therefore, demand that this matter be placed on the Board's agenda and that it resolve to call off any further investigation into the protected speech of its employees; cease the investigation into irrelevant matters and the nature and character of the protected speech; and retract and condemn all threats by individual Board members calling for the discipline or discharge of employees for speaking on matters of public concern. Furthermore, we ask that the contents of the interrogations conducted this far be kept confidential and that the previously collected testimony regarding personal or incidental school matters shall not lead to further investigation. If we do not receive a favorable or constructive response by May 5, 2015, my clients will have no choice but to file for injunctive relief in the Middle District of Tennessee to protect their constitutional right to free speech and put a stop to the retaliatory conduct.

I would be happy to discuss this matter with a representative of the Board. Please direct any questions you may have of our individual clients regarding this issue to my office. We also ask that the names of the educators involved in the meeting and those who have retained counsel be kept confidential.

Sincerely,



Thomas H. Castelli  
Legal Director