

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
FLINT DIVISION**

KAMRYN RANDLE, an individual,

Plaintiff,

vs.

LADEL LEWIS, EVA WORTHING,
JUDY PRIESTLY, DENNIS
PFEIFFER, QUINCY MURPHY,
WILLIAM KIM, and WILLIAM
METCALFE, in their official and
individual capacities,

Defendants.

Hon. _____

Civil Action No.: _____

**COMPLAINT
AND JURY DEMAND**

COMPLAINT AND JURY DEMAND

This action alleges, inter alia, violations of the First Amendment, 42 U.S.C. § 1983, and 42 U.S.C. § 1985, as well as violation of the Michigan Open Meetings Act, MCLS § 15.261, et seq., by members of the City Council of the City of Flint, Michigan, infringing upon the rights of Plaintiff as arising under those aforesaid bodies of law.

Plaintiff, KAMRYN RANDLE, by and through her attorneys, Lento Law Group, P.C., and by way of Complaint, brings this action for damages and other legal and equitable relief against Defendants LADEL LEWIS, EVA WORTHING, JUDY PRIESTLY, DENNIS PFEIFFER, QUINCY MURPHY, WILLIAM KIM, and WILLIAM METCALFE (collectively, “Defendants”), alleging as follows:

INTRODUCTION

1. The City Council of the City of Flint, Michigan has gained nation-wide recognition, but unfortunately, not in a positive way.
2. A wealth of video segments from various Council meetings have gone viral online on social media – predominately on Facebook and TikTok – due largely to the complete and utter chaos that unfolds at nearly every Council meeting.
3. Whether a Special Affairs Committee meeting headed by Councilwoman Ladel Lewis acting as Chairwoman, or a general City Council Meeting headed by Council President Allie Herkenroder, the Flint City Council has become notorious for its inequal application of Council rules, personality conflicts which impede City business, and the sheer frequency with which Council meetings descend into a circus-like spectacle.
4. The Budget Adoption City Council Meeting of Monday, June 5, 2023, was a recent example of just this dysfunction.
5. What made June 5th's meeting unique, however, was that, rather than it being a particular Councilman or Councilwoman facing the despotic and dictatorial caprices of Council leadership, rather, it was a private citizen and member of the public in attendance at this particular meeting, who found both her Constitutional rights and her rights as arising under Michigan law, under attack from various members of the Flint City Council.

JURISDICTION AND VENUE

6. This is an action for damages against the Defendants, who at all times, were acting under color of State law, and in vindication of Plaintiff's civil rights secured by 42 U.S.C. § 1983, 42 U.S.C. § 1985, the Michigan Open Meetings Act, MCLS § 15.261, *et seq.*, and the First Amendment to the United States Constitution.

7. This Court has original subject-matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 & 1343.

8. This Court also has supplemental jurisdiction over Plaintiff's related state claims pursuant to 28 U.S.C. § 1367(a), as such claims are so closely related to the Title IX claims that they form part of the same case or controversy and arise out of a common nucleus of operative fact.

9. Venue is proper in this district pursuant to 28 U.S.C. 1391(b)(1) & (b)(2), as, upon information and belief, all Defendants reside in this district and the events giving rise to Plaintiff's claims as complained of herein occurred within this district.

PARTIES

10. At all times relevant hereto, Plaintiff KAMRYN RANDLE, is an adult resident citizen of the County of Genesee, State of Michigan, with a residential address of 1122 Stocker Avenue, Flint, Michigan 48503.

11. At all times relevant hereto, Defendant LADEL LEWIS is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 4024 Winona Street, Flint, Michigan 48504. Said Defendant is sued in both her official and individual capacity.

12. At all times relevant hereto, Defendant EVA WORTHING is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 1001 E. Hemphill Road, Flint, Michigan 48507. Said Defendant is sued in both her official and individual capacity.

13. At all times relevant hereto, Defendant JUDY PRIESTLY is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 3805 Lorraine Avenue, Flint, Michigan 48507. Said Defendant is sued in both her official and individual capacity.

14. At all times relevant hereto, Defendant DENNIS PFEIFFER is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 2015 Lincoln Drive, Flint, Michigan 48503. Said Defendant is sued in both his official and individual capacity.

15. At all times relevant hereto, Defendant QUINCY MURPHY is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 322 E. Myrtle Avenue, Flint, Michigan 48503. Said Defendant is sued in both his official and individual capacity.

16. At all times relevant hereto, Defendant WILLIAM KIM is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 10681 Lone Oak Circle,

Grand Blanc, Michigan 48439. Said Defendant is sued in both his official and individual capacity.

17. At all times relevant hereto, Defendant WILLIAM METCALFE is, upon information and belief, an adult resident citizen of the County of Genesee, State of Michigan, with a residential address for service of process believed to be 10681 Lone Oak Circle, Grand Blanc, Michigan 48439. Said Defendant is sued in both his official and individual capacity.

GENERAL ALLEGATIONS

18. Plaintiff hereby repeats all of the allegations contained in the Complaint thus far above and incorporates same as if fully set forth at length herein.

19. On June 5, 2023, Plaintiff, KAMRYN RANDLE, was present at the Flint City Council meeting.

20. Being a resident of the City of Flint, apart from having an interest herself in the goings-on of the City, Plaintiff was also there as support staff for Councilman Eric Mays and his attorneys, recording the meeting, as is her right, in the interest of transparency.

21. It is important to note that the Flint City Council meetings are commonly recorded by members of the public in attendance, who record with all manner of electronic videotaping equipment: camera, camcorders, camera-phones, etc.

22. That is to say, that there was nothing unique about the fact that Plaintiff chose to record the meeting, nor was there anything unique or unusual about Plaintiff's

camera specifically, as compared to other cameras that have been used to record Flint City Council meetings in the past.

23. Beginning at the 3:42:45 time code, per the City's recording of the City Council Meeting of June 5, 2023, which the City Council has uploaded to its YouTube channel¹, Councilwoman Eva Worthing calls a Point of Order.

24. After Council Chair Ladel Lewis asks Ms. Worthing, "What's your point?", Ms. Worthing proceeds to say, referring to Plaintiff, "Can we tell the person with the camera to turn off the light? I'm sensitive to light, and I've dealt with it this whole meeting, but it's in my eyes."

25. Chair Lewis then proceeded to ask Plaintiff to turn off the light on Plaintiff's camera and the meeting resumed.

26. Importantly, the light that Ms. Worthing and Chair Lewis were referring to was not a bright studio light intended to brighten the scene being recorded, rather it was merely an operational light on the camera itself, indicating that the camera was turned on and actively recording.

27. In other words, there was no way – certainly, at least, no way known to Plaintiff, who had never operated this particular camera before – to shut off the light, but continue recording.

28. Thus, by demanding that Plaintiff turn off the light, Ms. Worthing and Chair Lewis were, essentially, demanding that Plaintiff stop recording the public meeting.

¹ <https://www.youtube.com/watch?v=OmRCFtoOMIA>

29. Shortly after Chair Lewis's initial request to Plaintiff, she then interrupted the meeting, interjecting, "Please hold."

30. Referring to Plaintiff, Chair Lewis said, "Ma'am, can we please get rid of the light?"

31. Realizing that there was no way to shut the light without shutting the camera off entirely, a member of Lento Law Group, P.C. – the firm Councilman Eric Mays hired to represent him in connection with the continued censorship and potentially unconstitutional conduct he faces from various members of the City Council – interjected, stating, "This is a public meeting. She sat here through this whole meeting with the light. This is a public meeting."

32. At this, Councilwoman Worthing called a Point of Order, stating that the gentleman was out of order.

33. "That's crazy!" a member of the public can be heard saying in response.

34. "So we will not disturb the functioning of the meeting," Chair Lewis says, "Knowing that some people are sensitive to light, certain light can cause seizures, and it is bright, so if you could please turn off the light."

35. Another audience member is then heard protesting Chair Lewis's command, in response to which Lewis instructs her to not get out of order.

36. Having repositioned herself out of the direction of Ms. Worthing's line of sight, given that she was specifically the Councilperson who complained that the light was bothering her, over three hours into the meeting, Plaintiff then asked, Chair Lewis, "Is this better?"

37. “No,” said Chair Lewis in response, “if we can’t turn off the light, I’m going to have to ask for you to cease recording or leave the meeting.”

38. The gentleman from law firm then responded, “If the Officer wants to escort her out, he can do that.”

39. Referring to the man, Ms. Worthing then chimed in, saying, “Mays’ lawyer would love for something to happen.”

40. “Ok,” Chair Lewis responded, “So we need to move on with this meeting, so if we could just order the camera to go outside so we can continue City business,” whereupon Lewis then called for Officer Metcalfe to intervene.

41. Councilwoman Judy Priestly and Councilman Quincy Murphy then proceeded with continuing the meeting, during which time City Attorney Kim and Chair Lewis were continuously not focused on the discussion being had, but were instead whispering to one another, presumably about the Plaintiff and her associate.

42. At time code 3:49:14, Chair Lewis interrupts Councilman Murphy, asking that he, “Please hold,” whereupon she again addresses Plaintiff, saying, “Ma’am, you are definitely welcome to record, but please cease and desist with the light.”

43. Understanding, as did Plaintiff’s associate, that there was no way for Plaintiff to record without the light being on, Councilman Mays then called a Point of Order, stating, “The State law allows anybody to record in this public meeting, and so, if ya’ll are going to make an issue of somebody recording a public meeting, I think that’s a problem. Whether its Channel 12, 25, or a private citizen, they all have the same rights to record, and I don’t think it addresses whether a light is on or not.”

44. Immediately, Chair Lewis denied Councilman Mays' Point of Order, and in turn, Mr. Mays proceeded to appeal the ruling of the Chair.

45. Despite Mays exercising his right as a Councilman to appeal a ruling of the Chair, Chair Lewis then threw her hands up and said, "As we waste time, and not pass the budget, is there a second?"

46. Councilwoman Jerri Winfrey-Carter then seconded Mays' appeal.

47. Reframing the specific ruling being appealed, Chair Lewis stated, "So it has been moved and properly seconded that the Chair ruled that the audience member could freely record but cease and desist with the light per the request of a council member."

48. This is an internally contradictory ruling, given that if Plaintiff must "cease and desist with the light," then Plaintiff is not being permitted to "freely record."

49. Mr. Mays then proceeded to make his argument, as follows:

Yeah, I appeal the ruling of the Chair. I don't know which council member objected to the light, but I think that the State law supersedes that particular council member or whoever it was. I'm understanding from the attorneys that attorney Kim gave them a card and said that if this is an issue, deal with him or talk to him or something. We don't mind that. We don't mind talking about it in another arena called a court of law. I've been in Council meetings for ten years and I've seen [Channel] 25, 5, 12, and all of them come in here, and so whatever councilmember objected while I was out of the room, and whatever went on while I was out of the room, I appreciate you seconding the appeal because I think the Chair, the City Attorney, and any councilmember who objected to a recording device is wrong. I've read the State law. It ain't said nothing about a light. So, I'm going to be voting, "Yes", to reverse the ruling of the chair. And I'm going to be voting, "Yes", in favor of the public's recording devices. And I'm going to be voting,

“Yes”, in favor of the State law that says folks can record these meetings. And so, I think ya’ll are kind of overstepping your bounds, and I’m the one who will speak up in this arena, and if it don’t get corrected in this arena, I have no fantasy that it’ll end up in court. Thank you.

50. Chair Lewis then gave Ms. Worthing the floor to make her argument, as follows:

I get migraines. I am sensitive to light. You can ask Paul, you can ask Janelle, who’s here. I frequently ask her for Tylenol. And Paul had been turning off the front lights. I don’t know if you all notice, but they used to be down on us all the time, and so, I’ve had a headache this whole time. I’ve tried to just deal with it, but if this is going to be consistent, I need to be able to do my job. And she can record, the light doesn’t have to be shining in my face. I have a right to be able to do my job.

51. Ms. Worthing then asked City Attorney Kim, “Mr. Kim, is there a legal issue with this?”

52. City Attorney Kim responded:

No, there is not. The Open Meeting Act and State law does permit an audience member to record, but there is nothing that allows them to disrupt the meeting by shining bright lights at the members. That would be within the discretion of this body, through the Chair’s ruling, as may or may not be upheld by this body to allow for that kind of behavior.

53. Ms. Worthing then continued:

I mean, I don’t know if anyone’s noticed, but I have a headache, and I’ve tried to cover my face to just not be subjected to the light. I’m really not trying to cause problems, but I do object to the fact that a lawyer went over and told her to shine it right in my face again. That was appalling.

54. Knowing that Ms. Worthing completely mischaracterized the events that had just transpired, Mr. Mays then made a Request for Information, questioning, “Did the speaker just make an allegation that a lawyer told [Plaintiff] to shine the light in her face?”

55. Interrupting Mays, Ms. Worthing says, “Yes. It heard it with my ears. He (meaning Plaintiff’s associate) went over to [Plaintiff] and told her to do it again.”

56. Audible expressions of confusion can be heard from the public in response to Ms. Worthing’s accusation.

57. Chair Lewis then asked if there was anyone else who wanted to speak on the appeal.

58. Councilwoman Tonya Burns then made her statement, as follows:

If there is a special accommodation that should be made, then they should have been made prior. I’m not feeling sympathetic to her need at all, because she’s not sympathetic to anyone else’s need. According to State law, it states:

“The right of a person to attend a meeting of a public body includes the right to tape record, to videotape, to broadcast live on radio, and to telecast live on television, the proceedings of a public body at a public meeting.”

It does not speak to light. So, if she is seeking a special accommodation, she can sit next to Mr. Mays. She’s done it before. In between Mr. Murphy and Mr. Mays. The light isn’t bothering her. I’m tired of accommodating her and her nonsense. You accommodate her all the time. She tells you how to rule and how you can’t rule. This is ridiculous. She can move right over there. The light’s shining on me too. I’m not complaining. I’m dealing with it. [Plaintiff] has a right to record. We’re in a public forum. We’re trying to get through the budget and we’re blowing the budget because

the light is shining on her? No, this is part of you working in public office. We deal with it. You move on. You move on. Paul put a camera right in my face, ya'll thought it was cool. He ran up here and put a camera in my face as a matter of fact. And it was okay. Because he wanted to get my opinion. Paul puts the camera on me and Ms. Winfrey-Carter every single time he thinks something is getting ready to be said. So, I ain't thinking about her. I'm so sick of her and her little shenanigans, it just drives me crazy. [Plaintiff] has the right to be here. And attorney Kim, it doesn't speak to light in the camera. People be in here all the time. Channel 12 was here with a camera. 12, 25, 5, they've been here. Their lights are huge! They're huge! We don't have any rule in Council Rules, our Charter, in the State law – there's nothing that says "light", and we have to accommodate a councilman because "the light is just bothering me." It doesn't state that. It doesn't state that. So, when we talk about being able to freely record, this is the public's place and time. This is an open meeting. We're bound by those laws. Ya'll interpret laws, I don't even know how ya'll interpret them. Ya'll interpret them, because you don't follow the rules that you put in and don't understand them.

59. An audible, "thank you" can be heard from a member of the public, followed by applause at Ms. Burns' words.

60. Ms. Burns then concluded:

If [Plaintiff] wants to record, record all day long. Ya'll thought it was cool when Paul ran up here and puts things on Facebook. No. Let's get this meeting on... We've got ten minutes to get out of here, and she's worried about a light in her face.

61. Following Ms. Burns' statement, Ms. Winfrey-Carter then made a statement, as follows:

I support the appeal, and you know what? I'm tired of it. I'm tired of... this privilege, okay? And I'm going to call it what it is: it's white privilege. Every time – and you can get upset, Judy Priestley, you can get upset – but I'm tired of

it. It doesn't make sense. Now, she said in the first part of this meeting, that light has been shining all night, and she didn't say a word. It's ridiculous. And everybody's supposed to, "Oh, Ms. Worthing, oh, she's so this and that." No. I will not, I will not, support the Chair's decision on this because, no, deal with it. And Paul, you can shine a light, you can shine a camera in my face right now, because I said what I said. Let's come in here and do this job. Let's do the work. Thank you.

62. After Ms. Winfrey-Carter's statement, Councilman Murphy made a statement on the appeal as well, stating:

Well, maybe the light was bothering her. When I looked at the young lady (Plaintiff), it seems as if she was trying to get the light turned off. If she's anything like me, sometimes, I'm trying to figure out how to turn the light off. And it looked like she was trying to figure out how to turn the light off, because I was just doing it the other day and I was trying to learn how to turn my flashlight off, and I don't even know how to turn the volume up on my phone. But anyway, we're spending a lot of time on light. She turned the light off. They didn't say she couldn't record, so let's be clear with that. We got this budget that we need to be getting passed, so we need to move along with this meeting. So, I'm ready to vote on this. She turned the light off, she's still able to record. Let's move on with this meeting.

63. Once Councilman Murphy concluded, Ms. Priestley made her remarks, as follows:

Ms. Burns mentioned [the media] when they're here. They don't have their lights on during the meeting. When you go out in the hall and you interview with them, they have their lights on. During the meeting, they don't. As someone who also suffers from migraines, having the light – if you're sensitive to light – and my sister is sensitive to smell – your lotion that you've got on tonight, I thought it smelled really great, but if it was my sister here, she'd have been home with a migraine. So anyways, Ms. Worthing, I understand your concern, but I do think that we need to get going on

with this meeting, and (to Plaintiff) I appreciate the fact that you tried to take off the light, I really do, and you tried to move, and it just, it went into my eyes, which I wouldn't... but you're sensitive to it, and I understand that. And no one is saying she can't record. Having the light is actually disrupting the meeting because Ms. Worthing hasn't been able to stay in here, because she's left – I've watched her leave several times and be gone, and then come back.

64. At this last remark by Ms. Priestly, a member of the public, interjected, but the precise contents of her speech are largely unintelligible on the video provided via the City Council's YouTube channel.

65. Mr. Mays then made a Request for Information, asking Ms. Priestly to clarify her position, essentially.

66. He asked, "So, Ms. Priestly, to you, this is a vote for all recordings to have no lights from now and in the future Council meetings?"

67. Mrs. Priestly did not respond.

68. Ms. Burns then made a Request for Information as well, stating, "Ms. Priestly, that is simply not true. They were right up there with the big light all night."

69. Ms. Worthing then called a Point of Order in response to Ms. Burns' comment, saying, "That's not a Request for Information."

70. Chair Lewis then issued Ms. Burns a warning.

71. In response, Mr. Mays then proceeded to appeal the ruling of Chair Lewis as to the warning.

72. Seemingly ignoring Mr. Mays' appeal of the first warning, Chair Lewis then proceeded to issue a second warning to Ms. Burns, and Ms. Burns herself responded by appealing the ruling of the Chair as to the second warning.

73. Chair Lewis then reframed the issue on appeal, stating, "As we continue, Ms. Burns took the floor without having the floor."

74. Mr. Mays then called for a Point of Order, which Chair Lewis initially proceeded to talk over, but after Mr. Mays called for a Point of Order again, Lewis finally acknowledged it and asked, "What's your point?"

75. Cognizant of the procedural disfunction caused by Chair Lewis' disregarding of Mays' appeal of the first warning issued, Mays stated, "Earlier you said, finish one appeal, and then go to the next one. Why are you so eager to get to that appeal now? We're on an appeal, and you're jumping to Ms. Burns' appeal. Earlier you set the precedent, you said, you do the first appeal, then you do the second and the third."

76. At this, Chair Lewis began to speak over Mr. Mays, and abruptly ended both appeals as to Ms. Burns' warnings entirely, without entertaining either appeal, without allowing the appellants to speak on the appeals, and without a vote.

77. Instead, Chair Lewis brought the meeting back to a vote on the original appeal – the issue as to the light on Plaintiff's camera and her ability to record the meeting.

78. Before allowing the vote to proceed, to clarify, Mr. Mays called for a Request for Information from Chair Lewis, asking, "So the Chair told [Plaintiff] to leave the meeting and stop recording for some reason or another. Is that what I'm understanding?"

79. Chair Lewis responded by saying, “As I said, and as we continue to listen, everyone has the opportunity to record. However, when the light is a distraction, we cannot.”

80. Given that Chair Lewis did not make clear whether she was ignoring the appeals as to Ms. Burns’ warnings or holding them until after the underlying appeal regarding the light on Plaintiff’s camera concluded, Ms. Burns interjected, seeking to clarify as to why she did not get to speak with regards to the appeal.

81. This led to Chair Lewis proceeding to make a series of derisive and sarcastic off-handed comments to herself and to City Clerk Davina Donahue seated beside her.

82. Chair Lewis’ improper comments instigated a heated exchange between Ms. Burns and herself, as well as between herself and Ms. Winfrey-Carter, who both insisted that Chair Lewis was out of order.

83. Mr. Mays then called for a Point of Order as to what had just transpired, asking, “Madam Chair, are you saying to these councilmembers that a chair can never be out of order, and there is no way to control the chair when the chair is out of order. Is that what you’re proffering to this Council?”

84. Chair Lewis proceeded to ignore Mr. Mays’ Point of Order, asking the Clerk for roll call on the vote.

85. In response, Mr. Mays again called for a Point of Order, stating:

Because if you’re proffering that to this Council, that the chair can’t be out of order, I’m going to appeal your ruling, and we can get into that. The Chair can be out of order in the rules that I know, unless they changed. It says that if the Chair is out of order and on a Point of Order that the Chair shall be removed. Now we’re almost at the end of this

meeting. There will be no dictatorship here. A chair can be removed. So I would ask that you temper everything you're doing and saying and understand that a Chair can be out of order. And there's rules where the Chair can be removed. Do you agree or disagree?

86. Chair Lewis did not answer Mr. May's question and proceeded once again to ask the Clerk for roll call as to the vote.

87. Clerk Donahue proceeded to do roll call, calling for the votes of the individual Councilmembers as to overturning the Chair's ruling to have Plaintiff either stop recording or be removed from the meeting.

88. The vote, unsurprisingly, was three in favor of overturning the Chair's ruling (Mays, Winfrey-Carter, and Burns) to five opposed (Murphy, Priestly, Lewis, Pfeifer, and Worthing), and thus, the ruling of the Chair stood.

89. Following the vote, Councilman Pfeifer moved to adjourn, and having sufficient votes, the meeting was so adjourned.

COUNT I
INFRINGEMENT ON FREEDOMS OF SPEECH & ACCESS
FIRST & FOURTEENTH AMENDMENT
As to Defendants Ladel Lewis, Eva Worthing, Judy Priestly, Dennis Pfeiffer, Quincy Murphy, and William Kim
(42 U.S.C. § 1983)

90. Plaintiff realleges and incorporates by reference all prior and subsequent paragraphs as if fully stated herein.

91. The First Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

92. As incorporated to the States through the Fourteenth Amendment, the First Amendment provides protection to, and opportunity for, free speech in public forums and the freedom to access said forums.

93. Enshrined in these First Amendment rights is the right to record in various public fora.

94. Within the Sixth Appellate Circuit, the scope of the right to record in public fora appears to vary depending on the particular forum at issue.

95. For example, it is well-settled that the First Amendment guarantees the right of public access to criminal trials, including the right to listen, take notes, and to disseminate and publish what an individual observes at the proceeding. *See, Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555,575-80 (1980); *see also, Somberg v. Cooper*, 582 F.Supp.3d 438, 443 (E.D. Mich. Jan. 26, 2022).

96. “The First Amendment’s right to access criminal proceedings has been expanded to several other proceedings outside of the criminal-judicial context.” *Somberg*, *supra.* at 443; *see also, Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695 (6th Cir. 2002).

97. For matters outside of the trial phases of criminal proceedings, many cases have consistently applied the two-part “experience and logic” test articulated in *Richmond Newspapers*, *supra.*, and its subsequent line of cases. *See, e.g., Press-Enter. II*, 478 U.S. at 13 (preliminary hearings); *Press-Enter. I*, 464 U.S. at 501-04, (voir dire examination and juror selection); *United States v. Simone*, 14 F.3d 833, 842 (3d Cir. 1994) (post-trial examination of juror for potential misconduct); *United*

States v. Smith, 787 F.2d 111, 116 (3d Cir. 1986) (transcripts of sidebars or chambers conferences concerning evidentiary rulings); United States v. Criden, 675 F.2d 550, 554 (3d Cir. 1982) (pretrial suppression, due process and entrapment hearings).

98. The Sixth Circuit, in Detroit Free Press v. Ashcroft, explains, “The Richmond Newspapers two-part test has also been applied to particular proceedings outside the criminal judicial context, including administrative proceedings.” *supra*, at 695.

99. Even further, the Sixth Circuit, opined, “[W]e believe that there is a limited First Amendment right of access to certain aspects of the executive and legislative branches.” *Id.*

100. Regarding the first prong of the two-part test laid out in Richmond Newspapers – “experience” – the Sixth Circuit explained that, “[T]he case for a right of access has special force when drawn from an enduring and vital tradition of public entree to particular proceedings or information.” *Id.* at 589.

101. Put another way, because a “tradition of accessibility implies the favorable judgment of experience,” Globe Newspaper, 457 U.S. at 605 (quoting Richmond Newspapers, *supra*. at 589) [the Court must] consider . . . whether the place and process have historically been open to the press and general public.” Press-Enter. II, 478 U.S. at 8.

102. With this first prong in mind, the “place and process” at issue here is the Flint City Council, specifically, the Budget Adoption meeting of Monday, June 5, 2023.

103. Such Flint City Council meetings have traditionally been open to the public, and in fact, such openness is mandated by the City's Charter, specifically, Sec. 1-404, and by the Michigan Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq.*

104. Thus, both historical precedent and the laws unpinning such precedent, weigh in Plaintiff's favor with regard to the "experience" prong of the Richmond Newspaper two-part test.

105. With regards to the second prong – "logic" – this prong asks, "whether public access plays a significant positive role in the functioning of the particular process in question." Press-Enter. II, 478 U.S. at 8-9.

106. As the Sixth Circuit explained in Detroit Free Press v. Ashcroft, "public access acts as a check on the actions of [the public body] by assuring us that proceedings are conducted fairly and properly... [and] Second, openness ensures that government does its job properly; that it does not make mistakes." *supra*, at 703-704.

107. Underlying the right of access, is "the common understanding that a major purpose of the [First] Amendment was to protect the free discussion of governmental affairs" and "to ensure that this constitutionally protected 'discussion of government affairs' is an informed one." Globe Newspaper Co. v. Superior Court for Norfolk Cnty., 457 U.S. 596, 604-05, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982).

108. Public scrutiny also "fosters an appearance of fairness" and "permits the public to participate in and serve as a check upon the judicial process." Id. at 606.

109. With these principles in mind, the ability of Plaintiff to access the public forum and to record the goings-on of the Flint City Council, clearly serves a significant

positive role in the Council's functioning in that it reinforces the openness of the Council meetings, subjects its members to public scrutiny, and ensures that the discussion of government affairs which takes place at this meetings can be disseminated to the public at-large, thus fostering an informed citizenry, particularly for those not in attendance.

110. "Public access [] helps inform the public of the affairs of the government. Direct knowledge of how their government is operating enhances the public's ability to affirm or protect government's efforts. When government selectively chooses what information it allows the public to see, it can become a powerful tool for deception." Detroit Free Press v. Ashcroft, supra. at 704-705.

111. Thus, it appears clear that Plaintiff's access to the Flint City Council meeting of June 5, 2023, served a significant positive role in the Council's functioning for the foregoing reasons, weighing in Plaintiff's favor with regard to the "logic" prong of the Richmond Newspaper two-part test.

112. Thus, having satisfied both prongs of the Richmond Newspaper two-part test, a First Amendment right of access attaches to the Flint City Council meetings, with regards to Plaintiff's right to be present and record.

113. Even so, admittedly, the right of access is not absolute.

114. Utilizing the Richmond Newspaper logic-experience test, the Sixth Circuit made clear that, the right which attaches where the access sought has "historically been open to the press and general public... and public access plays a significant

positive role in the functioning of the particular process in question” is a “*qualified right*”. United States v. Miami Univ., 294 F.3d 797, 821 (6th Cir. 2002).

115. To the extent that Plaintiff’s right to attend and record the Flint City Council meeting may be construed as a speech right, rather than an access right, the foregoing principle that such a right is a qualified right is consistent with the principle that the government can impose, time, place, and manner restrictions on free speech.

116. Even so, those time, place, and manner restrictions, like restrictions on the qualified right to access, must nonetheless be “narrowly tailored to serve a significant governmental interest.” Lexington H-L Servs. v. Lexington-Fayette Urban Cty. Gov’t, 879 F.3d 224, 228 (6th Cir. 2018) (as to time, place, and manner restrictions); *see also*, Somberg, *supra*. at 444, and Eu v. San Francisco Cnty. Democratic Cent. Comm., 489 U.S. 214, 109 S. Ct. 1013, 103 L.Ed. 2d. 271 (1989) (as to access restrictions) (“The right to access, like many aspects of the First Amendment, is not absolute. For a state action to survive a First Amendment challenge, the enforced regulation must be narrowly tailored to advance a compelling state interest.”)

117. The action taken against Plaintiff in this matter – her expulsion from the Flint City Council meeting of June 5, 2023, for recording the meeting with a camera which had a light on it, and thus, allegedly caused Councilwoman Eva Worthing to suffer a migraine – neither advanced nor served a significant or compelling governmental interest, nor was Plaintiff’s expulsion from said public meeting narrowly tailored.

118. The compelling governmental interest implicated by the facts at hand would be the continued business of the Flint City Council meeting.

119. Plaintiff's expulsion from the meeting for recording the meeting with a camera which had a light on it, and thus, allegedly caused Councilwoman Eva Worthing a migraine, does not advance this compelling governmental interest because: (1) Ms. Worthing was able to continue on with the meeting with Plaintiff so recording for over three-and-a-half hours, without complaint; (2) Ms. Worthing's own attendance at the meeting was not intrinsically necessary for the meeting to continue, as it could continue – and often does – in her absence; and (3) Ms. Worthing has no way of knowing, definitively, whether Plaintiff's camera light was, in fact, the cause of her alleged migraine.

120. Plaintiff's expulsion cannot be said to advance the functioning of the Council when the Council functioned, unimpeded, for nearly the entire duration of the June 5th meeting, despite Plaintiff being present and recording with her camera light on.

121. Further, Plaintiff's expulsion cannot be said to advance the functioning of the Council when the Council can, and often does, function without Ms. Worthing.

122. Further, Plaintiff's expulsion cannot be said to advance the functioning of the Council when Ms. Worthing truly has no way of knowing with certainty that Plaintiff's camera light was the cause of her alleged migraine, thus making Plaintiff's expulsion unnecessary.

123. Additionally, the expulsion of Plaintiff cannot be said to have been narrowly tailored in that there were less restrictive means available to accomplish the same goal.

124. Assuming *arguendo* that Ms. Worthing was, in fact, suffering from a migraine, and that said migraine was, in fact, caused by Plaintiff's camera light shining in Ms. Worthing's eyes – miraculously from all the way across a large and already well-lit room – the simplest and least restrictive method of rectifying the problem, short of Plaintiff shutting the light off – which in this case was not possible without Plaintiff also ceasing recording – was to request that Plaintiff relocate elsewhere in the room where her camera's light would not be within Ms. Worthing's line of sight.

125. In fact, after realizing that she could not shut off the light without turning the camera off entirely, Plaintiff did just that, and repositioned herself – a fact which Councilwoman Priestly even acknowledged (*see*, ¶ 60) – to direct the camera light elsewhere and away from Ms. Worthing.

126. Another less restrictive means of resolving the situation would have been simply to request that Plaintiff simply cover the light on her camera, however, such a request was not made.

127. Despite these unrestrictive methods of alleviating Ms. Worthing's concern, Chairwoman Ladel Lewis nonetheless continued on with the procedure to expel Plaintiff from the meeting entirely.

128. Therefore, the expulsion of Plaintiff from the June 5, 2023, Flint City Council meeting, by Chair Lewis and those Councilmembers who, along with Lewis, voted in favor of Plaintiff's expulsion – Defendants Murphy, Priestly, Pfeiffer, and Worthing – and by City Attorney William Kim, who endorsed this course of action (*see*, ¶¶ 48-

49) in spite of countervailing legal precedent as cited herein, neither advanced a compelling governmental interest, nor was narrowly tailored in its scope.

129. Rather, the facts – especially considering (1) the timing of Ms. Worthing’s request (when Councilman Mays was out of the room), (2) the haste and indignancy with which Chair Lewis made up her mind on the issue of Plaintiff’s expulsion (rather than the less restrictive alternatives), and (3) the Councilmembers’ knowledge that Plaintiff was support staff of Councilman Mays’ legal team – make clear that the Council’s action was nothing more than an arbitrary, capricious, vindictive, despotic, and needlessly restrictive infringement on Plaintiff’s First Amendment rights, as aforesaid.

COUNT II
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS
As to Defendants Ladel Lewis, Eva Worthing, Judy Priestly, Dennis
Pfeiffer, Quincy Murphy, and William Kim
(42 U.S.C. § 1985)

130. Plaintiff realleges and incorporates by reference all prior and subsequent paragraphs as if fully stated herein.

131. As the Sixth Circuit opined in Taylor v. Streicher, 465 Fed. Appx. 414, 419 (6th Cir. 2012), the elements of a claim arising under 42 U.S.C. § 1985 are, “(1) a conspiracy involving two or more persons, (2) for the purpose of depriving, directly or indirectly, a person or class of persons the equal protection of the laws and (3) an act in furtherance of that conspiracy (4) that causes injury to person or property, or a deprivation of a right or privilege of a United States citizen.” (quoting, White v. Trapp, 93 F. Appx. 23, 26 (6th Cir. 2004)).

132. A plaintiff making a claim under 42 U.S.C. § 1985 must also allege that the conspiracy was motivated by “some racial, or perhaps otherwise class-based, invidiously discriminatory animus.” Bartell v. Lohiser, 215 F.3d 550, 559-60 (6th Cir. 2000).

133. At all times relevant hereto, the Defendants named in this Count conspired so as to deprive Plaintiff of the equal protection of the laws, specifically, Plaintiff’s rights as arising under the First Amendment, as alleged more completely in Count I herein, and which Plaintiff specifically incorporates in its entirety by reference.

134. The Defendants named in this Count acted in furtherance of that conspiracy by voting – as to Defendants Murphy, Priestly, Pfeiffer, and Worthing – to unjustly expel Plaintiff from an open public meeting, and as to City Attorney William Kim, by offering a legal opinion endorsing Plaintiff’s expulsion despite countervailing legal precedent which Defendant Kim should have been aware of.

135. By acting in this manner, these Defendants deprived Plaintiff of her rights as arising under the First Amendment, and as articulated more fully in Count I herein.

136. Given the history of the Council – specifically, the great deal of public animosity between the Defendants named in this Count and Councilman Eric Mays – it is clear that the conspiracy was discriminatorily motivated by Plaintiff’s political affiliation given the Defendants’ knowledge that Plaintiff was associated with Mr. Mays and his legal team.

137. In fact, it is evident that the very reason Plaintiff was targeted by the Defendants – amongst all of the other individuals present within the City Council

chamber on June 5, 2023, who were also recording the proceedings and who also had lights on their cameras or camera phones – is solely because Plaintiff was in attendance and filming, solely at the request of Mr. Mays and/or his legal team, an association which was known or became apparent to the Defendants, and as evidenced by Ms. Worthing’s own statement that, “Mays’ lawyer would love for something to happen.” (*See*, ¶ 36).

138. Thus, the Defendants have violated 42 U.S.C. § 1985, causing Plaintiff to suffer an unjust deprivation of her constitutional rights as arising under the First Amendment.

COUNT III
NEGLIGENCE *PER SE*
VIOLATIONS OF THE MICHIGAN OPEN MEETINGS ACT
As to Defendants Ladel Lewis, Eva Worthing, Judy Priestly, Dennis
Pfeiffer, Quincy Murphy, and William Kim
(MCLS § 15.261, *et seq.*)

139. Plaintiff realleges and incorporates by reference all prior and subsequent paragraphs as if fully stated herein.

140. The Michigan Open Meetings Act (hereinafter, the “MI OMA”), codified at MCLS § 15.261, *et seq.*, provides in relevant part at § 15.263(1), as follows:

All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. *The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting.* The exercise of this right does not depend on the prior approval of the public body. However, a public body *may establish reasonable rules and*

regulations in order to minimize the possibility of disrupting the meeting. (Emphasis added).

141. The Defendants named in this Count, as members of the Flint City Council, a public body to whom the provisions of the MI OMA apply, have violated the above-cited section of the MI OMA in expelling Plaintiff from the City Council meeting of June 5, 2023, and by denying her the ability to freely record the meeting, as articulated with more detail earlier herein.

142. Recall, Plaintiff's expulsion from the June 5, 2023, City Council meeting was precipitated by Plaintiff's recording of the meeting on her camera which had a light on it indicating the camera was in operation, and said light allegedly caused Councilwoman Eva Worthing a migraine, leading her to request of Chair Ladel Lewis that Plaintiff either shut the light or be removed from the meeting.

143. Given that Plaintiff could not shut the light without ceasing recording entirely, Chair Lewis began a procedure to expel Plaintiff from the meeting, which expulsion, upon appeal, the Defendants named in this Count voted to uphold.

144. While MCLS § 15.263(1) makes clear that the public body retains the right to "establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting," the Flint City Council has adopted no such rules or regulations regarding lights on cameras or other recording devices.

145. In fact, the "Rules Governing Meetings of the Flint City Council" are silent on the recording of Council meetings entirely.

146. Guidance can instead be found in the Flint City Charter, specifically, Sec. 1-404, which simply provides that, "As required by law, the City, its officials and

employees shall comply with, the Open Meetings Act (citation omitted), as amended, and the Freedom of Information Act (citation omitted), as amended”.

147. Thus, there is nothing which has been promulgated by the Flint City Council or the City at large, restricting the rights of the public, and as relevant here, specifically, Plaintiff, with regards to lights on cameras or other recording devices at open meetings of a public body.

148. To the extent that the Council’s ruling to expel Plaintiff for her inability to turn off her camera light (which, again, she could not do without ceasing recording) may be constructed as a “rule or regulation”, said ruling was certainly not *reasonable* under the attendant circumstances.

149. Clarifying the nature of what constitutes “reasonable rules and regulations” under MCLS § 15.263(1), then-Michigan Attorney General, Frank J. Kelly wrote in Office of Attorney General Opinion No. 6499, dated February 24, 1998, that, “It is my opinion, therefore, that a [public body] may establish reasonable regulations governing the televising or filming by electronic media of a [] hearing open to the public in order to minimize any disruption to the hearing *but may not prohibit such coverage.*” (Emphasis added). Plaintiff respectfully requests that the Court take judicial notice of this opinion, a true and correct copy of which is annexed hereto as **EXHIBIT “A”**.

150. Writing in the context of a Board of Education meeting, Attorney General Kelly wrote, “While the board must meet in open or closed session in accordance with the

teacher's request, it has no statutory authority to exclude the electronic media from covering a hearing which is open to the public." (Ex. "A").

151. The June 5, 2023, Flint City Council meeting was just such an open public meeting, and it is clear that the Defendants named in this Count had no authority, statutorily or otherwise, to expel Plaintiff from said open public meeting on the basis of her camera's light.

152. Finally, the light itself on Plaintiff's camera certainly cannot be found to have been a genuine distraction as again, the light was on, and the meeting proceeded without issue for over three-and-a-half hours before Ms. Worthing finally decided to voice her concern that the light was allegedly causing her a migraine – a concern which appears disingenuous given its convenient timing, coinciding with Councilman Mays having excused himself from the room.

153. As members of the Flint City Council, a public body to whom the provisions of the MI OMA apply, the Defendants had a duty to comply with the MI OMA's provisions and comport their behavior in accordance therewith.

154. Plaintiff, as a resident citizen of the State of Michigan, then in attendance at an open public meeting, was, at all times, within the class of persons whom MCLS § 15.263(1) was intended to protect.

155. Further, the type of harm which befell Plaintiff, and which was perpetrated by the Defendants – expulsion from an open public meeting for exercising her right to record same – is precisely amongst the types of harm contemplated by the MI OMA and which MCLS § 15.263(1) was intended to prevent.

156. Thus, as a direct and proximate result of the conduct of the Defendants named in this Count, said conduct being negligent *per se* in violation of the MI OMA, and specifically, MCLS § 15.263(1), Plaintiff was thereby caused to sustain damages.

COUNT IV
NEGLIGENCE
As to Defendant William Kim

157. Plaintiff realleges and incorporates by reference all prior and subsequent paragraphs as if fully stated herein.

158. At all times relevant herein, Defendant William Kim, as City Attorney for the City of Flint, Michigan, has a duty, whether arising under common law, statute, or the *Michigan Rules of Professional Conduct*, and by virtue of his post, to provide competent legal services to the City of Flint, and as relevant to the instant matter, provide legal opinions to the members of the Flint City Council, upon their request for same, that are accurate and consistent with prevailing legal precedent.

159. As articulated more fully in Count I herein, which Plaintiff specifically incorporates by reference, Defendant Kim, upon request by Councilwoman Eva Worthing, proffered a verbal legal opinion which was inconsistent with law, endorsed unconstitutional governmental action on the part of the City Council, and facilitated the unjust infringement of Plaintiff's rights as arising under the First Amendment.

160. In so doing, Defendant Kim breached his duty of care as owed both to the City of Flint as City Attorney, and as to the Plaintiff as a public servant.

161. But-for this Defendant Kim's breach in this manner – in other words, had Defendant Kim proffered an oral legal opinion to Ms. Worthing that was consistent

with the controlling law – Plaintiff would not have been caused to suffer the harm alleged herein.

162. Furthermore, it is reasonably foreseeable that a City Attorney who offers incorrect legal opinions which are relied upon by City officials in the execution of their duties, could cause harm to members of the public as a result.

163. Therefore, as a direct and proximate result of the conduct of Defendant Kim as aforesaid, said conduct being negligent, Plaintiff was caused to suffer damages.

COUNT V
ASSAULT
As to Defendant William Metcalfe

164. Plaintiff realleges and incorporates by reference all prior and subsequent paragraphs as if fully stated herein.

165. At the Flint City Council meeting on June 5, 2023, following the commands of Chair Ladel Lewis, Defendant William Metcalfe, assaulted Plaintiff.

166. Defendant Metcalfe, being the Flint Police Officer present at the subject City Counsel meeting, approached Plaintiff at the behest of Chair Lewis and intentionally and unlawfully threatened to forcibly remove Plaintiff from the City Council meeting.

167. This threat by Defendant Metcalfe was made under circumstances which created in Plaintiff a well-founded fear of imminent peril, those circumstances being the fact that Defendant Metcalfe was armed, aggressive and/or confrontational in his demeanor, and was a larger, white, male, in contrast to Plaintiff as an unarmed, petite, African American, female.

168. Given Defendant Metcalfe's stature, armed nature, position of authority, and the fact that he was acting on the command of Chair Lewis, Defendant Metcalfe had the apparent present ability to carry out the threat if not prevented.

169. As a result of the foregoing, Plaintiff had the apprehension that physically injurious contact by Defendant Metcalfe was imminent, and thus, was so assaulted by him.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, KAMRYN RANDLE, demands judgment against the Defendants, LADEL LEWIS, EVA WORTHING, JUDY PRIESTLY, DENNIS PFEIFFER, QUINCY MURPHY, WILLIAM KIM, and WILLIAM METCALFE, for the following damages:

- 1) For judgement against the Defendants jointly, severally, and alternatively, for general, compensatory, punitive, and exemplary damages, with interest;
- 2) Reasonable attorney's fees and costs of suit pursuant to 42 U.S.C. 1988, and
- 3) For such other further relief as the Court may deem equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Respectfully Submitted,

LENTO LAW GROUP, P.C.



Dated: June 8, 2023

JOHN A. FERNANDEZ, ESQUIRE
MI State Bar No. P68029
(Admitted in the E.D. of Michigan)
LENTO LAW GROUP, P.C.
The Ferris Wheel
615 Saginaw Street
Flint, MI 48502
T: (810) 962-8200 | F: (810) 962-8201
jfernandez@lentolawgroup.com
Attorney for Plaintiff

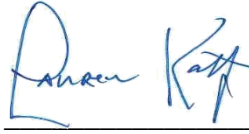
LENTO LAW GROUP, P.C.



Dated: June 8, 2023

JOSEPH CANNIZZO JR., ESQUIRE
AL State Bar No. 3584057X
(Admitted in the E.D. of Michigan)
LENTO LAW GROUP, P.C.
Chase Corporate Center
1 Chase Corporate Center, Suite 400
Birmingham, AL, 35244
T: (385) 485-0600 | F: (313) 992-1122
jcannizzo@lentolawgroup.com
Attorney for Plaintiff

LENTO LAW GROUP, P.C.



Dated: June 8, 2023

LAWRENCE A. KATZ, ESQUIRE
NJ State Bar No. 027051988
(Admitted in the E.D. of Michigan)
LENTO LAW GROUP, P.C.
3000 Atrium Way, Suite 200
Mt. Laurel, NJ 08054
T: (856) 652-2000 | F: (856) 375-1010
lakatz@lentolawgroup.com
Attorney for Plaintiff

EXHIBIT

“A”

[[Previous Page](#)] [[Home Page](#)]

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6499

February 24, 1988

OPEN MEETINGS:

Regulation of electronic recording of tenure hearing open to public

SCHOOLS AND SCHOOL DISTRICTS:

Regulation of televising or filming by electronic media of teacher tenure hearing open to the public

A board of education may establish reasonable regulations governing the televising or filming by the electronic media of a teacher tenure hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.

Honorable D. J. Jacobetti

State Representative

The Capitol

Lansing, Michigan

You have requested my opinion on a question which may be stated as follows:

May the board of education prohibit or otherwise regulate the televising or filming of a hearing conducted pursuant to the Teacher Tenure Act where the teacher requests that the hearing be public but subsequently objects to the televising or filming of the hearing, including the giving of testimony, on grounds that such televising and filming could be disruptive and interfere with the conduct of the hearing?

Boards of education must conduct their meetings in accordance with the School Code of 1976, 1976 PA 451, Sec. 1201, MCL 380.1201; MSA 15.41201, and the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq; MSA 4.1800(11) et seq. Under Act 267, Secs. 3 and 8, meetings of public bodies are to be open to the public unless they fall within a specific exception.

The Open Meetings Act defines a 'meeting' as 'the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.' Act 267, Sec. 2(b). It is understood that in the situation giving rise to your inquiry, the board provided notice of the tenure hearing as a public meeting.

Letter opinion of the Attorney General (Senator Joseph M. Snyder, February 22, 1978) states that:

'[In] order to effectuate the clear purpose of the Open Meetings Act, which is to allow the public to view the manner in which public officials conduct the business of government, it is clear that the portion of a meeting where the public officials receive the essential data by which they will make their ultimate decisions is an integral part of the deliberation stage of the meeting.'

Tenure hearings may be conducted in closed session at the request of the teacher. The Teacher Tenure Act, 1937 Ex Sess PA 4, MCL 38.71 et seq; MSA 15.1971 et seq, provides that '[t]he hearing shall be public or private at the option of the teacher affected.' Act 4, art IV, Sec. 4. Similarly, the Open Meetings Act permits a public body to meet in closed session to 'consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing.' Act 267, Sec. 8(a). As both statutes allow a concerned party to

request and receive a closed hearing, it has long been recognized that 'hearings under the Teacher Tenure Act fall within the provisions of closed meeting exceptions provided for in section 8(a) of the Open Meetings Act . . . ' OAG, 1977-1978, No 5183, p 21, 31-32 (March 8, 1977). See Royal Oak School Dist v Schulman, 68 Mich App 589, 593, n 1; 243 NW2d 673 (1976).

Thus, a teacher who had not previously requested the hearing to be closed--as was apparently the case in this instance--upon learning of the presence of cameras, could block the televising or filming of the hearing simply by requesting that the meeting be closed to the public. If the request for a closed hearing is later rescinded, however, the Open Meetings Act provides that the proceeding will thereafter be open to the public. Act 267, Sec. 8(a).

While the board must meet in open or closed session in accordance with the teacher's request, it has no statutory authority to exclude the electronic media from covering a hearing which is open to the public. On the contrary, in a 1986 amendment to Act 267, Sec. 3, the Legislature expressly provided that:

'The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.'

In assuring that a person's right to tape or broadcast a public meeting 'shall not be dependent upon the prior approval of the public body,' the clear purpose of the amendment is to forbid a public body from barring access to a public meeting by the electronic media.

OAG, 1985-1986, No 6353, p 255, 257 (April 11, 1986), states:

'It is a well established rule of statutory construction that the Legislature is presumed to have intended the meaning that is clearly expressed; accordingly, an unambiguous statute does not require interpretation and must be enforced as it is written. Soap & Detergent Association v Natural Resources Commission, 415 Mich 728, 738; 330 NW2d 346 (1982). To the extent that such enforcement may lead to an undesirable result in at least some instances, the Legislature may wish to consider appropriate amendatory legislation.'

It is my opinion, therefore, that a board of education may establish reasonable regulations governing the televising or filming by the electronic media of a teacher tenure hearing open to the public in order to minimize any disruption to the hearing but it may not prohibit such coverage.

Frank J. Kelley

Attorney General

[[Previous Page](#)] [[Home Page](#)]

<http://opinion/datafiles/1980s/op06499.htm>

State of Michigan, Department of Attorney General

Last Updated 11/10/2008 15:49:34