UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
FLINT DIVISION

BEVERLY BIGGS-LEAVY, an individual, Plaintiff, vs. LADEL LEWIS, in her 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, as well as violation of the Michigan Open Meetings Act, MCLS § 15.261, et seq., by Ladel Lewis, a member of the Flint City Council, infringing upon the rights of Plaintiff as arising under those aforesaid bodies of law.

Plaintiff, BEVERLY BIGGS-LEAVY, 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 Defendant LADEL LEWIS, 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 YouTube, Facebook, and TikTok – due largely to the complete and utter chaos that unfolds at nearly every Council meeting.

3. The City Council & Specials Affairs Committee meeting of Monday, August, 14, 2023, was a recent example of just this dysfunction.

4. What made this meeting unique, however, was that, rather than it being a particular Councilman or Councilwoman facing the despotic and dictatorial caprices of Council leadership, it was instead 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 an out-of-control Chairperson on the Flint City Council.

JURISDICTION AND VENUE

5. This is an action for damages against the Defendant, 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, the Michigan Open Meetings Act, MCLS § 15.261, *et seq.*, and the First Amendment to the United States Constitution.

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

7. 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.

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

PARTIES

9. At all times relevant hereto, Plaintiff BEVERLY BIGGS-LEAVY, is an adult resident citizen of the County of Genesee, State of Michigan, with a residential address of 744 E. Philadelphia Blvd., Flint, Michigan 48505.

10. 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.

GENERAL ALLEGATIONS

11. 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.

12. On August 14, 2023, Plaintiff, BEVERLY BIGGS-LEAVY, was present at the meetings of the Flint City Council, which consisted of a regular Council meeting as well as a Special Affairs Committee meeting.

13. Defendant, LADEL LEWIS, (hereinafter, "Lewis") is a Councilwoman on the Flint City Council, currently occupying the position of Vice-President, and she is also the Chairwoman of the Special Affairs Committee.

14. As there is presently no Council President following the resignation of former Council President Allie Herkenroder in early July 2023, Councilwoman Lewis, as Vice-President, headed the regular Council meeting and the proceeded to chair the Special Affairs Committee meeting.

15. Prior to the subject incident which will be complained of herein, at all times leading up thereto, from nearly the very beginning of the evening's Council meeting, Defendant Lewis adopted a needlessly aggressive tone towards her fellow Councilmembers and towards the public, which pervaded the meeting and seemed to create an air of hostility.

16. Defendant Lewis made this hostility explicitly manifest during numerous instances throughout the evening's meeting, for instance, during one exchange with a member of the public who was giving his remarks during the Public Comment portion of the meeting.

17. For the Court's edification, during the Public Comment portion of a Flint City Council meeting, members of the public who wish to address the Council are invited up to a lectern with a microphone and a countdown timer is set for three (3) minutes in which they have to speak.

18. The gentleman – a professor from Wayne State University – gave an impassioned and articulate speech, and just as his three minutes was elapsing, he informed Defendant Lewis that he was on his last sentence.

19. Rather than simply letting the man conclude, Defendant Lewis adopted a needlessly cocky tone of voice and said, “No sir, no sir, you had three minutes.”

20. While it is true that each public speaker’s comments are limited to three minutes, speakers are permitted – whether intentionally or inadvertently – to run over their time to finish their thought.

21. Defendant Lewis’ silencing of the man was just another example of her inequal application of Council rules as against an individual with whom she takes personal umbrage.

22. Defendant Lewis yet again allowed her personal feelings towards a member of the public to influence her conduct as Chairwoman with regards to the Plaintiff herein, Mrs. Beverly Biggs-Leavy.

23. For background, as such history is relevant here, Mrs. Biggs-Leavy is a community organizer, who is one – among many – of the numerous individuals working on the recall effort to have Defendant Lewis removed from her seat on the Flint City Council.

24. Mrs. Biggs-Leavy’s involvement and participation in the recall effort against Defendant Lewis is no secret to those in Flint, especially to those with an active interest in the goings-on for the Flint City Council.

25. In fact, following the approval of the recall language at the end of June 2023, Mrs. Biggs-Leavy is one of several Flint residents coordinating efforts to garner the necessary signatures – about 800 – required to trigger a recall election for Defendant Lewis' seat on the Council.

26. Given this history, it is reasonable to conclude – and it seems apparent from the events that unfolded, as will herein be described – that Defendant Lewis held a personal animus towards Mrs. Biggs-Leavy, likely in connection with her efforts to aid in removing her from the Council.

27. The subject incident began when non-party Doug Matthews, a resident from Flint's 7th Ward, began speaking during the Public Comment portion of that evening's Council meeting.

28. During Mr. Matthew's comments, he began to verbally attack the prior gentlemen – the professor from Wayne State University previously mentioned herein (*see* ¶¶ 16-21) – turning to address him directly, rather than addressing the Council, pointing at him accusatorily, and remarking, "And let me just say one thing to our out-of-town academic who's coming in here and criticizing what we're trying to put together: Where's his [unintelligible]? Where's his solution? What's he bringing to the table?"

29. At this verbal attack and violation of the Council's rules of decorum by Mr. Matthews, almost immediately chaos erupted in the Council chamber as the audience became vocal in response to Mr. Matthew's improper conduct.

30. Rather than calling Mr. Matthews out of order, Defendant Lewis proceeded to call the Wayne State professor out of order, to which he replied, "Nonsense".

31. The outcry from the members of the public in attendance in the audience over Defendant Lewis' unjust conduct caused Lewis to finally declare, "Order in the chambers."

32. Even Councilman Dennis Pfeiffer, who, until very recently, regularly sided with Councilwoman Lewis on most Council issues, but has since seemingly veered away from her to a degree, perhaps due to changing political winds, had to point out the hypocrisy with which Councilwoman Lewis was conducting herself in failing to rule Mr. Matthews out of order.

33. Councilman Pfeiffer called a point of order, to which Defendant Lewis hastily responded, "What's your point?"

34. Shaking his head in disgust, Councilman Pfeiffer responded, "That's a decorum violation," referring to Mr. Matthews' conduct, "That's a decorum violation, Madam Chair."

35. Applause could be heard from the audience in response to Councilman Pfeiffer's words, and one resident in attendance could be heard saying, "Thank you. Thank you, Pfeiffer."

36. In a tone that can only be described as self-satisfied, Councilwoman declared in response, "Denied."

37. This denial of Councilman Pfeiffer's point of order was following by a dictatorial diatribe by Defendant Lewis against the Wayne State professor, again

accusing him of having been out of order, and defending Mr. Matthews despite his blatant decorum violation.

38. Following this, Councilwoman Jerri Winfrey-Carter, in recognition of Defendant Lewis' bad call with respect to denying Councilman Pfeiffer's point of order related to Mr. Matthews' decorum violation, appealed the ruling of the Chair (Lewis).

39. "That's fine," Defendant Lewis replied condescendingly.

40. "Any support?" Lewis asked, seeking the required second.

41. "Any support?" she asked again.

42. Just as Defendant Lewis began to say, "That dies for no support," Councilwoman Tonya Burns interjected and expressed her support for Councilwoman Winfrey-Carter's motion.

43. "Moving on," Defendant Lewis said, ignoring Councilwoman Burns.

44. This led to a chaotic back-and-forth between Defendant Lewis and Councilwoman Burns, with Burns calling a point of order indicating to Lewis that she did not acknowledge her support of Winfrey-Carter's appeal.

45. Explaining her delay in not immediately seconding Winfrey-Carter's appeal, Burns told Defendant Lewis, who had been eating throughout the meeting, "You're chewing. We can't even understand what you're saying."

46. Once again, in dictatorial fashion, Defendant Lewis declared, "Denied," with great delight.

47. Immediately, Councilwoman Burns appealed the ruling of the Chair (Lewis), with Councilwoman Winfrey-Carter supporting.

48. As Defendant Lewis gathered herself to initiate the appeal proceedings, for reasons that are unclear, Councilwoman Eva Worthing then proceeded to take out her cellphone and begin recording the Wayne State professor who had been standing off to the side of the Council chamber.

49. In response, he began recording Worthing right back.

50. The act by Worthing prompted outcry from the audience, at which Defendant Lewis, addressing the public, stated, “Excuse me! You have freedom to record. Councilmembers have freedom to record. So let’s proceed with the meeting and we will not go back and forth.”

51. Following this, Councilwoman Winfrey-Carter began making her case in support of her appeal, outlining the fact that Mr. Matthews was, in fact, out of order, despite Defendant Lewis’ denial of Councilman Pfeiffer’s point of order calling out his decorum violation.

52. Councilwomen Worthing and Mushatt offered their opinions on the appeal, unsurprisingly (if you are familiar with the politics of the Flint City Council) defending Defendant Lewis’ ruling, and finally, Councilman Quincy Murphy offered his opinion.

53. During Councilman Murphy’s remarks, he referenced the fact that the Councilman from Flint’s 1st Ward – Councilman Eric Mays – was not present at the evening’s meeting.

54. For background, Councilman Mays – who is beloved within the City of Flint and has a massive following, both locally in Flint and nationally due to his viral online presence – is serving a thirty (30) day suspension from his seat on the Council, a matter which is being actively litigated as unlawful.

55. In response to Councilman Murphy's remark, "And that's why he's (Mays) not here now," Plaintiff, Mrs. Biggs-Leavy exclaimed, "Oh, he'll be back."

56. This recitation of the facts leading up to this point, although lengthy, is necessary, because all of the chaos, the back-and-forth, and the hostility from Defendant Lewis to those in attendance that evening – for example, her fellow Councilwoman Tonya Burns, and members of the public such as the Wayne State professor – seemingly served to make Defendant Lewis increasingly frustrated as the evening went on, finally culminate in Lewis taking out her frustration and directing same upon the Plaintiff herein.

57. In response to Mrs. Biggs-Leavy's comment, which by no means was the first time someone from the audience had interjected that evening, and was certainly not disruptive, Defendant Lewis addressed her, saying, "Excuse me, so that is like the third time that you have spoken out. That is your warning."

58. As Mrs. Biggs-Leavy had done no such thing, and astounded at the fact that Defendant Lewis would utter such a blatant fabrication, chastising her publicly before everyone in attendance for something she had not done, Mrs. Biggs-Leavy protested, voicing her objection to Defendant Lewis' salacious remark.

59. Defendant Lewis responded, "You are out of order, and you are removed from this meeting," whereupon Lewis then directed the Flint Police Officer in attendance to remove Mrs. Biggs-Leavy from the meeting.

60. Critically, Defendant Lewis then proceeded to tip her hand as to the fact that she did, in fact, know precisely who Plaintiff was, stating, "Please escort Mrs. Beverly Biggs-Leavy out of the room..."

61. Ironically, the only disruption to the meeting which occurred during the subject exchange with Mrs. Biggs-Leavy was the one caused by Defendant Lewis herself, in wrongfully ordering Mrs. Biggs-Leavy be removed, for had Defendant Lewis ignored Mrs. Biggs-Leavy's comment that Councilman Mays would be back – as she had ignored plenty of other comments from members of the public in attendance – the meeting would have continued on uninterrupted.

62. Instead, a combination of factors including: (1) her growing frustration and hostility as the evening went on, (2) her personal animus towards Mrs. Biggs-Leavy in light of her efforts to recall her, and (3) her personal animus towards Councilman Mays, whom Mrs. Biggs-Leavy was defending in so speaking out, all coalesced to cause Defendant Lewis to grossly overreact and exact revenge upon Plaintiff in violation of her rights as arising under Michigan's Open Meetings Act and the First Amendment to the United States Constitution.

63. Plaintiff implores the Court to watch and take judicial notice of the events of the Flint City Council meeting of August 14, 2023, as recorded and made publicly

available on the City Council's YouTube channel via the link provided in the footnote[1].

64. The relevant timecodes, for the Court's convenience are as follows:

a. The Wayne State professor's public comment: 41:46 to 46:13.

b. The beginning of Doug Matthews' public comment: 54:37 to 57:22.

c. The public outcry in response to Mr. Matthews, Defendant Lewis' defense of Mr. Matthews, Councilman Pfeiffer's Point of Order, the subsequent appeals by Councilwomen Winfrey-Carter & Burns with respect to Defendant Lewis' rulings, and the comments by Councilman Quincy Murphy: 57:23 to 1:05:55.

d. The comment by Plaintiff and the Defendant Lewis' vindictive removal of Plaintiff from the meeting: 1:05:56 to 1:07:15.

COUNT I
INFRINGEMENT ON FREEDOMS OF SPEECH & ACCESS
FIRST & FOURTEENTH AMENDMENT
As to Defendants Ladel Lewis
(42 U.S.C. § 1983)

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

66. 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.

[1] https://www.youtube.com/watch?v=QVbJuRdJzao&t=2985s

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

68. 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).

69. "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).

70. 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).

71. 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.

72. 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.

73. 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.

74. 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.

75. With this first prong in mind, the "place and process" at issue here is the Flint City Council, specifically, its open public meeting of August 14, 2023.

76. 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*.

77. 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.

78. 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.

79. 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.

80. 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).

81. 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.

82. With these principles in mind, the ability of Plaintiff to access the public forum that is 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

governmental affairs which take place at these meetings are observable by an interested citizenry, thus fostering an informed public.

83. "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.

84. Thus, it appears clear that Plaintiff's access to the Flint City Council meeting of August 14, 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.

85. 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.

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

87. 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).

88. To the extent that Plaintiff's right to attend a 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.

89. 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 for survive a First Amendment challenge, the enforced regulation must be narrowly tailored to advance a compelling state interest.")

90. That said, only a time, place, and manner restriction which is *content-neutral* must be narrowly tailored to serve a significant governmental function. Lexington, supra. at 228.

91. As opposed to this intermediate level of scrutiny, time, place, and manner restrictions which are *content-based* are "subject to the most exacting form of scrutiny, in which a court asks whether the regulation is necessary to serve a compelling state interest and whether it is narrowly drawn to achieve that end."

92. Here, the time, place, and manner restriction at issue was Defendant Lewis' order as Council Chairperson to remove Plaintiff from the August 14, 2023, Council

meeting, following Plaintiff's remark in reference to Councilman Eric Mays, stating specifically, "Oh, he'll be back."

93. Defendant Lewis' order to stifle Plaintiff's speech and remove her from the meeting was not content-neutral as evidenced by the attendant circumstances leading up thereto, namely that:

a. Plaintiff's speech was no more egregious in volume or duration than other exclamations, interjections, or comments made by other members of the public in attendance, and those individuals were not similarly silenced and removed by Defendant Lewis; and

b. The content of Plaintiff's speech positively referenced and/or defended a political rival of Defendant Lewis, causing Defendant Lewis to retaliate by taking more drastic action against Plaintiff than she would for speech not in defense of Councilman Mays.

94. Thus, Defendant Lewis' order silencing and removing Plaintiff, having been enacted at least in-part based upon its content ("in-part" because it was also enacted on the basis of the identity of the Plaintiff and her recall effort against Defendant Lewis), must have been both (1) necessary to serve a compelling state interest, and (2) narrowly drawn to achieve that end.

95. Defendant Lewis' order to silence and remove Plaintiff from the August 14, 2023, Council meeting was neither necessary to serve a compelling state interest, not narrowly drawn to achieve that end.

96. Defendant Lewis' order to silence and remove Plaintiff from the August 14, 2023, Council meeting was not necessary to serve a compelling state interest because ultimately Defendant Lewis could have simply ignored Plaintiff's comment, as she had with every other audience comment up to that point, in that she did not act to remove those individuals.

97. Had Defendant Lewis taken no action against Plaintiff whatsoever in connection with Plaintiff's comment, the compelling state interest of proceeding with the City Council meeting as planned would still have been effectuated.

98. Further, Defendant Lewis' order to silence and remove Plaintiff from the August 14, 2023, Council meeting was not narrowly drawn to achieve the compelling state interest of proceeding with the City Council meeting as planned, as (1) a least restrictive means was available in that Defendant Lewis could only have ordered that Plaintiff remain silent as opposed to simultaneously ordering that she be removed, and (2) the means employed by Defendant Lewis did not advance the state interest as reacting as Defendant Lewis did actually caused a significantly longer interruption and significantly greater disruption to the meeting's proceedings than had Defendant Lewis taken no action at all.

99. In other words, Defendant Lewis' order to silence and remove Plaintiff from the August 14, 2023, Council meeting ran counter to the compelling state interest and only served to advance Lewis' own personal agenda of retribution against Plaintiff.

100. Thus, Defendant Lewis' self-serving and retaliatory content-based abridgement of Plaintiff's freedom of speech and her freedom to access an open public meeting was nothing more than an arbitrary, capricious, vindictive, despotic, and needlessly restrictive infringement on Plaintiff's First Amendment rights, as aforesaid.

COUNT II
FIRST AMENDMENT RETALIATION CLAIM
FIRST & FOURTEENTH AMENDMENT
As to Defendants Ladel Lewis
(42 U.S.C. § 1983)

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

102. As aforementioned, Plaintiff, is a community organizer, who is one – among many – of the numerous individuals working on the recall effort to have Defendant Lewis removed from her seat on the Flint City Council.

103. In fact, following the approval of the recall language at the end of June 2023, Plaintiff is one of several Flint residents coordinating efforts to garner the necessary signatures – about 800 – required to trigger a recall election for Defendant Lewis' seat on the Council.

104. These political activities by Plaintiff are of the type of constitutionally-protected conduct safeguarded by the First Amendment.

105. An adverse action was taken against Plaintiff by Defendant Lewis that would deter a person of ordinary firmness from continuing to engage in such

constitutionally-protected conduct, in that Defendant Lewis silenced Plaintiff and ordered Plaintiff be removed from the August 14, 2023, Flint City Council meeting.

106. This adverse action by Defendant Lewis against Plaintiff was motivated at least in part by the Plaintiff's protected conduct; in other words, Defendant Lewis retaliated against Plaintiff at the August 14, 2023, meeting, at least in part due to Plaintiff's efforts to have Defendant Lewis recalled and removed from her seat on the Flint City Council.

107. As such, Defendant Lewis has violated Plaintiff's First Amendment rights as Lewis, a government official, has subjected Plaintiff to retaliatory action for Plaintiff's having engaged in constitutionally-protected conduct.

COUNT III
VIOLATION OF THE MICHIGAN OPEN MEETINGS ACT
As to Defendant Ladel Lewis
(MCLS § 15.261, *et seq.*)

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

109. The Michigan Open Meetings Act (hereinafter, the "MI OMA" or "the Act"), 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.

110. Despite the aforecited provision of the MI OMA, the Act does contemplate the exclusion of individuals from open public meetings.

111. Specifically, MCL 15.263(6) provides:

> A person must not be excluded from a meeting otherwise open to the public *except for a breach of the peace actually committed at the meeting.*
>
> (Emphasis added)

112. As justification for her removal of Plaintiff, Defendant Lewis explained that Plaintiff was being removed from the meeting for violating "the disorderly person City Code subsection." (*See*, the link at fn. 1, timecode 1:07:06 to 1:07:10).

113. By this, presumably Defendant Lewis is referring to Flint City Code of Ordinances §31-12 "Disorderly Conduct and Disorderly Persons".

114. As the Michigan 1st District Court of Appeals made clear in RPF Oil CO. v. Genesee Cty., 330 Mich. App. 533, 538-9 (2019):

> State law may preempt a local government's law either through a direct conflict or through "occupying the field of regulation which the municipality seeks to enter." Thus, an ordinance is preempted if it is "in direct conflict with the state statutory scheme"... [L]ocal governments may regulate matters of local concern only in a manner and to the degree that their regulations do not conflict with state law. A local regulation directly conflicts with a state statute if the regulation "permits what the statute prohibits or prohibits what the statute permits."
>
> (Internal citations omitted)

115. As an initial matter, nothing in Flint City Code of Ordinances §31-12 "Disorderly Conduct and Disorderly Persons" authorizes the Flint City Council or Defendant Lewis as a member thereof to remove a member of the public from an open public meeting for disorderly conduct, rather, §31-12 is purely definitional,

setting forth sixteen (16) discrete actions which would constitute a disorderly conduct offense, but setting forth no punishment in connection therewith.

116. Additionally, Flint City Code of Ordinances §31-12 "Disorderly Conduct and Disorderly Persons", specifically, in the manner in which is being utilized by Defendant Lewis – as a justification for removing members of the public from an open public meeting – conflicts with MCL 15.263(6) in that §31-12 permits what MCL 15.263(6) prohibits; in other words, §31-12 permits the exclusion of members of the public from an open public meeting for grounds other than solely "a breach of the peace actually committed at the meeting," as provided for in MCL 15.263(6).

117. Flint City Code of Ordinances §31-12 "Disorderly Conduct and Disorderly Persons" is therefore in direct conflict with MCL 15.263(6) and is thus preempted by same.

118. Given this, regarding the sole basis under MCL 15.263(6) upon which an individual may be excluded from an open public meeting – "a breach of the peace actually committed at the meeting," – importantly, "a breach of the peace" is not defined within the body of the MI OMA.

119. The definition of "a breach of the peace" under the MI OMA was an issued directly addressed at length by an unpublished opinion out of the Michigan 1st District Court of Appeals, Cusumano v. Dunn, 2020 Mich. App. LEXIS 5652, a full copy of which is annexed hereto as **EXHIBIT "A"**.

120. The appellate court in Cusumano looked to numerous other Michigan state court cases throughout time which sought to define a "breach of the peace", for example, *inter alia*:

a. People v. Bartz, 53 Mich. 493, 495 (1884); Davis v. Burgess, 54 Mich. 514 (1884); and People v. Loveridge, 75 Mich. 488, 491-494 (1889), which together "indicate that the kind of conduct that constitutes a 'breach of the peace' includes abusive vile, and excessive acts that are grossly inconsistent with civil conduct acceptable in the community." Cusumano, supra. at 12;

b. Yerkes v. Smith, 157 Mich. 557, 560 (1909), in which the Michigan Supreme Court stated that, "there can be no breach of the peace within the meaning of the law that does not embrace some sort of violent as well as dangerous conduct";

c. Regents of Univ. of Mich. V. Washtenaw Co. Coalition Against Apartheid, 97 Mich. App. 532 (1980), which found a breach of the peace in connection with "confrontational conduct which required physical and forceful expulsion by law enforcement officials"; and

d. City of Owosso v. Pouillon, 254 Mich. App. 210, 220 (2002), a case involving a defendant who made "grotesquely exaggerated speech when he publicly spoke out against abortion while standing on city property near a dentist's office and a church where mothers were dropping off their children for daycare and preschool," and nonetheless,

the Court of Appeals concluded that, "such conduct had no tendency to incite an imminent breach of the peace".

121. In summarizing its analysis of the definitions of "breach of the peace" from the aforementioned cases and others, the Court of Appeals in Cusumano opined that:

> All of these cases indicate that a "breach of the peace" constitutes seriously disruptive conduct involving abusive, disorderly, dangerous, aggressive, or provocative speech and behavior tending to threaten or incite violence. These cases clarify that under Michigan law a "breach of the peace" goes well beyond behavior acceptable in civil society.

122. Given these prior interpretations of a "breach of the peace" in the context of the MI OMA, it is clear that Plaintiff's remark in reference to Councilman Eric Mays, simply stating, "Oh, he'll be back," was not speech that was seriously disruptive, nor did Plaintiff manifest behavior threatening or inciting violence, nor did Plaintiff require physical and forceful expulsion by law enforcement (she was escorted by an officer, but she did not resist and went peaceably), and nor did Plaintiff's conduct go "well beyond behavior acceptable in civil society".

123. In sum, Plaintiff's conduct as alleged herein simply was not of the type, caliber, nature, or quality, that could justly be called a "breach of the peace".

124. As such, as MCL 15.263(6) only permits the exclusion of persons from a meeting otherwise open to the public for a "breach of the peace actually committed at the meeting," in so removing Plaintiff despite her conduct not rising to the level

of a "breach of the peace" as that phrase has come to be defined by Michigan courts, Defendant Lewis has violated MCL 15.263(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, BEVERLY BIGGS-LEAVY, demands judgment against the Defendant, LADEL LEWIS, for the following damages:

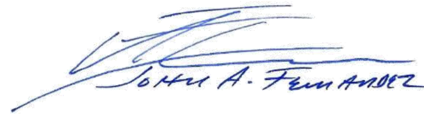
1) General, compensatory, punitive, and exemplary damages, with interest;
2) Reasonable attorney's fees and costs of suit pursuant to 42 U.S.C. 1988 and/or MCL § 15.273,
3) Statutory exemplary damages of not more than $500.00 total per MCL § 15.273; and
4) For such other further relief as the Court may 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: August 17, 2023

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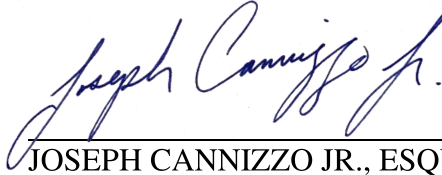

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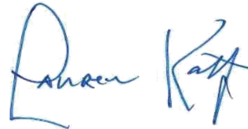

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Attorney for Plaintiff

EXHIBIT "A"

Cusumano v. Dunn

Court of Appeals of Michigan

August 27, 2020, Decided

No. 349959

Reporter

2020 Mich. App. LEXIS 5652 *; 2020 WL 5079615

FRANK CUSUMANO, Plaintiff-Appellant, v JANET I. DUNN, Defendant-Appellee.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: [*1] Macomb Circuit Court. LC No. 2018-004207-CZ.

Judges: Before: REDFORD, P.J., and METER and O'BRIEN, JJ.

Opinion

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition under *MCR 2.116(C)(10)* for defendant and dismissal of his action brought under the Open Meetings Act, *MCL 15.261 et seq.*, related to his expulsion by defendant from a Macomb Township Board of Trustees (Board) public meeting. We reverse.

I. FACTUAL BACKGROUND

Plaintiff, a citizen of Macomb Township, attended the Board's September 12, 2018 public meeting presided over by defendant, the Macomb Township Supervisor and Chair of the Board, and participated during the public comment portions of the meeting. Near the end of the meeting during the Supervisor's Comments portion, defendant read a letter received by the Board from an attorney in which the attorney indicated plaintiff had filed a quo warranto action against Dino Bucci, a Board trustee,[1] seeking his removal from office. In the letter to the Board, the attorney essentially demanded the Board appoint and pay for an attorney to defend Bucci in the quo warranto action. When defendant concluded reading the letter into the record, she directly addressed plaintiff, who was sitting in the public **[*2]** seating area of the board meeting room: "So, thank you, Mr. Cusumano, you probably have cost us another few thousand dollars."

Plaintiff rose from his seat and while he walked to the lectern requested to speak, but defendant struck her gavel and emphatically declared, "Sit down, your time to speak is over." At the lectern, plaintiff said, "I want to state that that is untrue, he's not named in his official capacity, number one. Number two, Karen Spranger also—" but defendant cut him off and stated that the meeting would move on to the Clerk's Comments. Plaintiff turned from the lectern but hesitated before walking back to his seat, turned back and stated, "I just wish that this board would act appropriately and professionally." Defendant struck the gavel as plaintiff returned to his seat and stated, "That's enough. Deputy, would you please remove this man." Plaintiff asked defendant to explain the legal basis for his removal but she declined to respond and waved her arm signaling the deputy to eject plaintiff from the public meeting. The deputy looked at plaintiff and gestured to him to walk to the exit. Plaintiff said nothing further, obeyed the directive, calmly walked to the exit **[*3]** and out of the public meeting accompanied by the deputy who remained with plaintiff in the hallway until the meeting's end, and then escorted plaintiff out of the building.

Plaintiff sued defendant alleging that, because he had not breached the peace at the Board's September 12,

[1] A federal grand jury indicted Bucci on November 15, 2017, on eighteen counts of conspiracy, bribery, embezzlement, extortion, mail fraud, and money laundering, in connection with public contracts in Macomb Township and the Macomb County Department of Public Works. Plaintiff sued Bucci on August 10, 2018, alleging that Bucci committed crimes before obtaining his current Board position making him ineligible to assume the position and disqualifying him from the office. In May 2020, Bucci pleaded guilty to conspiracy to commit extortion and conspiracy to commit bribery and theft concerning programs that received federal funds.

2018 public meeting, she intentionally violated the Open Meetings Act, ***MCL 15.263(6)***, by removing him from the meeting. After conducting discovery, the parties filed cross motions for summary disposition. The trial court held a brief hearing, granted defendant summary disposition, and dismissed plaintiff's lawsuit against defendant.

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152, 159; 934 NW2d 665 (2019)*. A motion under *MCR 2.116(C)(10)* tests the factual sufficiency of a claim. *Id. at 160*. When considering a motion under *MCR 2.116(C)(10)*, the trial court must consider all substantively admissible evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.; Maiden v Rozwood, 461 Mich 109, 121; 597 NW2d 817 (1999)*. "A motion under *MCR 2.116(C)(10)* may only be granted when there is no genuine issue of material fact." *El-Khalil, 504 Mich at 160* (citation omitted). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* (citation **[*4]** and quotation marks omitted). Further, we review de novo questions of statutory interpretation. *Mich Ass'n of Home Builders v City of Troy, 504 Mich 204, 211; 934 NW2d 713 (2019)*.

III. ANALYSIS

Plaintiff first argues that the trial court erred because genuine issues of material fact existed regarding whether plaintiff committed a ***breach of the peace*** justifying his removal from the meeting. We agree. For the reasons explained in this opinion, we conclude that a genuine issue of material fact exists whether plaintiff committed a ***breach of the peace*** at the meeting, and therefore, the trial court erred by granting defendant summary disposition.

This case involves an issue of statutory interpretation of a provision of the Open Meetings Act. This Court recently explained in *Farris v McKaig, 324 Mich App 349, 353-354; 920 NW2d 377 (2018)* (quotation marks and citations omitted):

> In reviewing questions of statutory interpretation, we must discern and give effect to the Legislature's intent. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. When interpreting an undefined statutory term, the term must be accorded its plain and ordinary **[*5]** meaning. Consulting a lay dictionary is proper when defining common words or phrases that lack a unique legal meaning, but when the statutory term is a legal term of art, the term must be construed in accordance with its peculiar and appropriate legal meaning.

The Open Meetings Act provides, "[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public." *MCL 15.263(1)*. Moreover, "[a]ll persons shall be permitted to attend any meeting except as otherwise provided in this act." *Id.* "A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only." *MCL 15.263(5)*.

The Open Meetings Act, also, specifically limits exclusion of persons from public meetings. ***MCL 15.263(6)*** provides that "[a] person shall not be excluded from a meeting otherwise open to the public except for a ***breach of the peace*** actually committed at the meeting." Under *MCL 15.273(1)*, "A public official who intentionally violates this act shall be personally liable in a civil action for actual and **[*6]** exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action."

We find no ambiguity in the plain language of ***MCL 15.263(6)***. Under this statutory provision, a public body, including a local legislative or governing body as provided under *MCL 15.262(a)* such as the Board, may not exclude any person from a public meeting "except for a ***breach of the peace*** actually committed at the meeting." ***MCL 15.263(6)***. The Open Meetings Act, however, does not define the term "***breach of the peace***." The term "***breach of the peace***" is a legal term of art that must be construed in accordance with its peculiar and appropriate legal meaning. *Farris, 324 Mich App at 354*. "When a statutory term is not statutorily defined, this Court turns to its dictionary definition to determine the term's plain and ordinary meaning." *Yoches v Dearborn, 320 Mich App 461, 470; 904 NW2d 887 (2017)* (citation omitted). *Black's Law Dictionary* (11th ed) defines the legal term "***breach of the peace***" as "[t]he criminal offense of creating a public disturbance or engaging in disorderly conduct,

particularly by making an unnecessary or distracting noise."[2] That definition gives some meaning to the term but does not fully explain how the term "***breach of the peace***" must be understood **[*7]** for purposes of *MCL 15.263(6)*.

Michigan caselaw, however, lends clarity to the meaning of this legal term. In *People v Bartz, 53 Mich 493, 495; 19 NW 161 (1884)*, our Supreme Court stated:

> The term "***breach of the peace***" is generic, and includes riotous and unlawful assemblies, riots, affray, forcible entry and detainer, the wanton discharge of fire-arms so near the chamber of a sick person as to cause injury, the sending of challenges and provoking to fight, going armed in public without lawful occasion, in such manner as to alarm the public, and many other acts of a similar character. The wanton discharge of fire-arms in the public streets of a city is well calculated to alarm the public, and cause them to be apprehensive of individual safety; and I think the recorder was entirely correct when he instructed the jury that such act constituted a ***breach of the peace***.

In *Davis v Burgess, 54 Mich 514; 20 NW 540 (1884)*, our Supreme Court considered and discussed what conduct constituted a "***breach of the peace***" by explaining:

> Did the language and conduct of the plaintiff on that occasion amount to a ***breach of the peace***? The answer to this question must necessarily determine the decision in this case. **[*9]** The offense, whatever its character, was committed in the presence of the officers in the public street in a city, in the presence of citizens. The language used was not only vile and profane, but forbidden under penalties both by the by-laws of the city and the statutes of our state. It was against decency and public morals, of the most aggravating character, well calculated to arouse the passions and induce personal violence, which was threatened if the officer laid hands upon the offender.
>
> Now, what is understood by "a ***breach of the peace***?" By "peace," as used in the law in this connection, is meant the tranquillity enjoyed by citizens of a municipality or community where good order reigns among its members. It is the natural right of all persons in political society, and any intentional violation of that right is "a ***breach of the peace***." It is the offense of disturbing the public peace, or violation of public order or public decorum. Actual personal violence is not an essential element in the offense. If it were, communities might be kept in a constant state of turmoil, fear, and anticipated danger from the wicked language and conduct of a guilty party, not only destructive of the **[*10]** peace of the citizens, but of public morals, without the commission of the offense. The good sense and morality of the law forbid such a construction. I think the language and conduct of Davis in this case, as it appears on the record, shows him guilty of a ***breach of the peace***, and in the act of committing it at the time he was arrested. The court should have submitted the defendant's case, as he made it, to the jury under proper instructions, to ascertain the truth of the facts as stated by him and his witnesses. This the court did not do, and the failure was error. [*Id. at 517-518*.]

A few years later our Supreme Court had occasion again to consider what constituted a "***breach of the peace***." In *People v Loveridge, 75 Mich 488, 491-494; 42 NW 997 (1889)*, our Supreme Court explained:

> It is a significant fact that very few, and it may

---

[2] *Black's Law Dictionary* (11th ed) provides by further example:

> "A ***breach of the peace*** takes place when either an assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult is not enough: thus at common law a householder could not give a man into custody for violently and persistently ringing his door-bell. It is the particular duty of a magistrate or police officer to preserve the peace unbroken; hence if he has reasonable cause to believe that a ***breach of the peace*** is imminent he may be justified in committing an assault or effecting an arrest." RFV Heuston, *Salmond on the Law of Torts* 131 (17th ed. 1977).
>
> "The beginning of our criminal justice . . . was concerned very largely with the problem of keeping the peace. Because of this fact all early indictments included some such phrase as "against the peace of the King"; and until recent statutory provisions for simplification, indictments in this country were thought to be incomplete without some such conclusion as "against the peace and dignity of the state." As a result of this history all indictable offenses are sometimes regarded as deeds which violate the public peace, and hence in a loose sense the term "***breach*** **[*8]** ***of the peace***" is regarded as a synonym for crime." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 477 (3d ed. 1982)].

perhaps be said that none, of the recognized books of authority on the criminal law contain any such title as "***Breach of the Peace***," with a definition of it. The books almost universally divide crimes into classes; and breaches of the peace, so far as they are found defined at all, are found either as offenses against the lives and persons of individuals, or as public disturbances, except where for certain reasons they are made **[*11]** felonies. But there is a class referred to in the decisions and commentaries which seems to fix the nature of the offenses which may be so classed, beyond doubt.

One of the primary objects of the creation of the office of conservators and justices of the peace was to prevent breaches of the peace, by putting persons under bonds for keeping the peace, or for their good behavior, which includes breaches of the peace, and more. The ***breach of the peace*** threatened was the occasion for requiring such security. Any ***breach of the peace*** committed afterwards forfeited the recognizances. The rulings under these heads give us the most reliable information of what was meant by the term "***breach of the peace***." The present case is very plainly excluded by all the reliable authorities from that category. The only cases of ***breach of the peace***, not involving open disturbance in public places, and to the actual annoyance of the public at large or persons employed and actually engaged in public functions, require personal violence, either actually inflicted or immediately threatened. There are, in some of the definitions, references to language tending to provoke a ***breach of the peace***, and relator's claim **[*12]** is based on this; but the authorities have very plainly held that this covers nothing that is not meant and adapted to bring about violence directly. It is laid down, very positively, that insulting and abusive language does not come within the rule, but it must be threats of immediate violence, or challenges to fight, or incitements to immediate personal violence or mischief. It has always been recognized that, in a certain sense, slander is actionable chiefly for the reason that it has a provoking tendency; but slander, no matter how offensive, is not indictable, and it is not recognized as ground for requiring security to keep the peace. No words whatever, from their offensiveness and inciting tendency, are held to be breaches of the peace, with or without other circumstances not involving personal violence.

Bartz, Davis, and *Loveridge* indicate that the kind of conduct that constitutes a "***breach of the peace***" includes abusive, vile, and excessive acts that are grossly inconsistent with civil conduct acceptable in the community. In Yerkes v Smith, 157 Mich 557, 560; 122 NW 223 (1909), our Supreme Court stated that "there can be no ***breach of the peace*** within the meaning of the law that does not embrace some sort of violent as well as **[*13]** dangerous conduct."

In In re Gosnell, 234 Mich App 326, 336; 594 NW2d 90 (1999), this Court explained:

> Moreover, the common-law definition of ***breach of the peace*** is instructive. In the lead opinion in People ex rel Ware v Branch Circuit Judge, 75 Mich 488, 492-493; 42 NW 997 (1889) (CAMPBELL, J., joined by CHAMPLIN, J.), Justice CAMPBELL explained that breaches of the peace typically involved open disturbance in public places.

Additionally, in Dearborn Heights v Bellock, 17 Mich App 163, 168-169; 169 NW2d 347 (1969), this Court explained:

> A "***breach of the peace***" has been defined in Michigan as any intentional violation of the natural right of all persons in a political society to the tranquillity enjoyed by citizens of a community where good order reigns among its members. Davis v Burgess (1884), 54 Mich 514. Such a disturbance must be outside the ordinary course of human conduct . . . [,] unreasonable disturbances.
> * * *
>
> "The offense consists in voluntary and not involuntary conduct or that necessary for the protection of a person or his property. Whether or not a given act or state of conduct amounts to a ***breach of the peace*** depends upon the circumstances attending the act or conduct, such as the identities and relationships of the complaining and accused parties and the occasion for the act or conduct." 6 McQuillin, *Municipal Corporations* (3d ed.), s 24.101. [*Id. at 169*.]

In City of Owosso v Pouillon, 254 Mich App 210, 220; 657 NW2d 538 (2002), a case in which this Court concluded that the defendant made **[*14]** grotesquely exaggerated speech when he publicly spoke out against abortion while standing on city property near a dentist's office and a church where mothers were dropping off their children for daycare and preschool, this Court

concluded that such conduct had no tendency to incite an imminent ***breach of the peace***. As part of its analysis of what constituted a "***breach of the peace***," this Court quoted *Cantwell v Connecticut, 310 U.S. 296, 301-309; 60 S Ct 900; 84 L Ed 1213 (1940)*, for the observation that,

> in practically all [***breach of the peace*** cases], the provocative language which was held to amount to a ***breach of the peace*** consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument. [*Id.*]

In *Regents of Univ of Mich v Washtenaw Co Coalition Against Apartheid, 97 Mich App 532; 296 NW2d 94 (1980)*, this Court considered the defendant's appeal of the trial court's entry of a declaratory judgment in the plaintiff's favor and order denying the defendant's request for injunctive relief. The case arose from the plaintiff's attempts to conduct a public meeting at which the defendant's supporters attended to protest the university's **[*15]** investment holdings in corporations doing business in South Africa, which at the time enforced apartheid, a system of segregation and discrimination on grounds of race. The plaintiff held a scheduled meeting at which "[a]pproximately 50 unidentified members of the [Washtenaw County Coalition Against Apartheid], along with approximately 150 unidentified supporters, appeared at the meeting and disrupted it to the extent that the Regents could not conduct its business." Because of the disruption, the plaintiff recessed the meeting. The next day it reconvened the meeting but supporters of the same organization disrupted the meeting again by conduct that resulted in two arrests because of confrontations. *Id. at 534-535*. The plaintiff sued for a declaratory judgment, injunction and other relief, including permission to hold its meeting at another location in a closed session. The plaintiff moved for partial summary declaratory judgment and the trial court granted the motion.

On appeal, this Court addressed whether the trial court erroneously interpreted the Open Meetings Act "to permit plaintiff to exclude from a meeting those members of the general public committing a ***breach of the peace***, to recess the **[*16]** meeting for a brief period of time, and to remove the meeting to another location conditioned upon an announcement of the new location and time of reconvening." *Id. at 537-538*. This Court noted that ***MCL 15.263(6)*** prohibited exclusion of a person from a public meeting unless the person committed a ***breach of the peace*** at the meeting. *Id. at 538*. Although this Court did not recite a definition of "***breach of the peace***" or expressly state that the defendant's supporters committed a "***breach of the peace***," it indicated that the defendant's supporters breached the peace at the meetings by their confrontational conduct which required physical and forceful expulsion by law enforcement officials. *Id. at 540*.[3]

All of these cases indicate that a "***breach of the peace***" constitutes seriously disruptive conduct involving abusive, disorderly, dangerous, aggressive, or provocative speech and behaviors tending to threaten or incite violence. These cases clarify that under Michigan law a "***breach of the peace***" goes well beyond behavior acceptable in a civil society.

In this case, the record reflects defendant directed her statement to plaintiff personally. Although defendant did not expressly ask for plaintiff's response to her comment, plaintiff asserts **[*17]** the comment as an invitation to respond. Likewise, plaintiff asserts the record demonstrates he refrained from making an abusive, dangerous, aggressive, or provocative outburst. Instead, he argues that he approached the lectern to address the Board regarding the matter raised by defendant and calmly attempted to clarify what he considered incorrect in defendant's characterization of his quo warranto lawsuit against Bucci. Defendant declined to recognize plaintiff and admonished him to be seated. Plaintiff briefly continued speaking before acquiescing.

The record reflects that the trial court granted defendant summary disposition based upon its incorrect

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[3] In *Holeton v Livonia, 328 Mich App 88, 99; 935 NW2d 601 (2019)*, this Court considered whether a city council member violated the plaintiff's First Amendment rights by asking the plaintiff to leave a city council meeting after the plaintiff failed to comply with a rule requiring members of the public to direct all comments to the city council chair. This Court commented that removing the plaintiff from the city council meeting for a mere rule violation "might have amounted to a violation of Michigan's [Open Meetings Act]." *Id.* This Court, however, did not define the term "***breach of the peace***" or determine whether a violation of ***MCL 15.263(6)*** occurred because the issue presented and decided concerned constitutional grounds rather than Open Meetings Act issues. *Id. at 100*.

conclusion that plaintiff's indecorum warranted his expulsion from the public meeting. The trial court essentially concluded that, as a matter of law, plaintiff breached the peace.

The record below, however, does not support the trial court's conclusion. The facts of this case indicate that reasonable minds might differ on whether plaintiff committed a ***breach of the peace***. Accordingly, we conclude that the trial court erred by granting defendant summary disposition because a genuine issue of material fact exists requiring determination **[*18]** by a jury whether plaintiff committed a ***breach of the peace*** as defined herein.

Defendant argues that plaintiff violated Board rules or policy, the mere violation of which warranted his expulsion from the public meeting. Defendant also contends that the Board had an established practice of allotting only two periods for public comment that limited individuals to speak for three minutes, and by violating that common practice, plaintiff could be removed from the meeting. Defendant argues that plaintiff knew of that practice but violated it, warranting his expulsion. We disagree.

The record reveals the Board never formally adopted rules governing the manner in which its meetings were to be conducted. No evidence indicates the Board ever established and recorded rules as permitted under *MCL 15.263(5)* to limit public comment. Defendant cannot rely upon unwritten rules or policy for her action.[4] Further, although, under *MCL 15.263(5)*, public bodies may establish and enforce recorded rules that limit public comment, see *Lysogorski v Bridgeport Charter Twp, 256 Mich App 297; 662 NW2d 108 (2003)*, such authority does not nullify ***MCL 15.263(6)***'s prohibition against exclusion of any person from a public meeting except for a "***breach of the peace***" at the meeting.

Plaintiff also argues that the trial court erred **[*19]** by granting defendant summary disposition because she intentionally violated the Open Meetings Act which entitled him to damages. Defendant argues that plaintiff cannot establish that she intentionally violated the Act. The trial court, however, did not address or decide this issue, and therefore, it is not ripe for our review. Moreover, because a genuine issue of fact exists regarding whether plaintiff committed a "***breach of the peace***," as defined herein, that factual issue must first be decided by a jury. If the jury determines that plaintiff did not breach the peace at the Board meeting, then it must decide whether defendant intentionally violated the Open Meetings Act by expelling plaintiff contrary to ***MCL 15.263(6)***. *MCL 15.273(1)* provides, "A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action." An intentional violation of the Open Meetings Act requires specific intent. *People v Whitney, 228 Mich App 230, 254; 578 NW2d 329 (1998)*. "Intent can be inferred from the totality of the circumstances." *Guardian Indus Corp v Dep't of Treasury, 243 Mich App 244, 255; 621 NW2d 450 (2000)*. "[T]he most probative evidence of intent consists of objective evidence **[*20]** of what actually happened rather than descriptive evidence of the subjective state of mind of the actor." *Id.* Whether defendant intentionally violated the Open Meetings Act is a question for the jury to decide and the principles indicated above must govern its determination.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ James Robert Redford

/s/ Patrick M. Meter

/s/ Colleen A. O'Brien

End of Document

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[4] We are cognizant that a public body may indicate through a published agenda the order and manner in which it will conduct its business at a public meeting and through parliamentary procedure may approve and adopt such agenda and conduct the meeting according to rules established and recorded by the public body in such agenda as permitted under *MCL 15.263(5)*. References to an agenda for the Board's September 12, 2018 public meeting can be found in submissions by defendant in the lower court record in this case, but a copy of such agenda is not part of the lower court record. We are unable, therefore, to ascertain the contents of the agenda and discern whether it specified rules established and recorded by the Board as permitted under *MCL 15.263(5)*. Regardless whether rules have been adopted, the mere violation of such cannot automatically constitute a "***breach of the peace***," and expulsion solely for not abiding by such rule, without more, violates ***MCL 15.263(6)***'s prohibition against exclusion of any person from a public meeting.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
BEVERLY BIGGS-LEAVY, an individual

DEFENDANTS
LADEL LEWIS, in her official and individual capacities

(b) County of Residence of First Listed Plaintiff ______
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant ______
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
LENTO LAW GROUP, P.C.
The Ferris Wheel
615 Saginaw Street, Flint, MI 48502
T: (810) 962-8200 | F: (810) 962-8201
John A. Fernandez, Esq.
Joseph Cannizzo Jr., Esq.
Lawrence A. Katz, Esq.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*
- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

CONTRACT
☐ 110 Insurance; ☐ 120 Marine; ☐ 130 Miller Act; ☐ 140 Negotiable Instrument; ☐ 150 Recovery of Overpayment & Enforcement of Judgment; ☐ 151 Medicare Act; ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans); ☐ 153 Recovery of Overpayment of Veteran's Benefits; ☐ 160 Stockholders' Suits; ☐ 190 Other Contract; ☐ 195 Contract Product Liability; ☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation; ☐ 220 Foreclosure; ☐ 230 Rent Lease & Ejectment; ☐ 240 Torts to Land; ☐ 245 Tort Product Liability; ☐ 290 All Other Real Property

TORTS
PERSONAL INJURY: ☐ 310 Airplane; ☐ 315 Airplane Product Liability; ☐ 320 Assault, Libel & Slander; ☐ 330 Federal Employers' Liability; ☐ 340 Marine; ☐ 345 Marine Product Liability; ☐ 350 Motor Vehicle; ☐ 355 Motor Vehicle Product Liability; ☐ 360 Other Personal Injury; ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY: ☐ 365 Personal Injury - Product Liability; ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability; ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY: ☐ 370 Other Fraud; ☐ 371 Truth in Lending; ☐ 380 Other Personal Property Damage; ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☒ 440 Other Civil Rights; ☐ 441 Voting; ☐ 442 Employment; ☐ 443 Housing/ Accommodations; ☐ 445 Amer. w/Disabilities - Employment; ☐ 446 Amer. w/Disabilities - Other; ☐ 448 Education

PRISONER PETITIONS
Habeas Corpus: ☐ 463 Alien Detainee; ☐ 510 Motions to Vacate Sentence; ☐ 530 General; ☐ 535 Death Penalty
Other: ☐ 540 Mandamus & Other; ☐ 550 Civil Rights; ☐ 555 Prison Condition; ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881; ☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act; ☐ 720 Labor/Management Relations; ☐ 740 Railway Labor Act; ☐ 751 Family and Medical Leave Act; ☐ 790 Other Labor Litigation; ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
☐ 462 Naturalization Application; ☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158; ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
☐ 820 Copyrights; ☐ 830 Patent; ☐ 835 Patent - Abbreviated New Drug Application; ☐ 840 Trademark; ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
☐ 861 HIA (1395ff); ☐ 862 Black Lung (923); ☐ 863 DIWC/DIWW (405(g)); ☐ 864 SSID Title XVI; ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant); ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act; ☐ 376 Qui Tam (31 USC 3729(a)); ☐ 400 State Reapportionment; ☐ 410 Antitrust; ☐ 430 Banks and Banking; ☐ 450 Commerce; ☐ 460 Deportation; ☐ 470 Racketeer Influenced and Corrupt Organizations; ☐ 480 Consumer Credit (15 USC 1681 or 1692); ☐ 485 Telephone Consumer Protection Act; ☐ 490 Cable/Sat TV; ☐ 850 Securities/Commodities/ Exchange; ☐ 890 Other Statutory Actions; ☐ 891 Agricultural Acts; ☐ 893 Environmental Matters; ☐ 895 Freedom of Information Act; ☐ 896 Arbitration; ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision; ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*
☒ 1 Original Proceeding; ☐ 2 Removed from State Court; ☐ 3 Remanded from Appellate Court; ☐ 4 Reinstated or Reopened; ☐ 5 Transferred from Another District *(specify)*; ☐ 6 Multidistrict Litigation - Transfer; ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. 1983
Brief description of cause:
Violations of Plaintiff's First Amendment rights (42 U.S.C. 1983), and related State-law claims.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $ $1,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE ______ DOCKET NUMBER ______

DATE
August 17, 2023
SIGNATURE OF ATTORNEY OF RECORD
[signature]

FOR OFFICE USE ONLY
RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______