IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOUGLAS MARSHALL, et al.,	:	Case No. 2:21-cv-04336-GEKP
Plaintiffs,	:	
v.	:	
PETER C. AMUSO, et al.,	:	
Defendants.	:	

PLAINTIFFS' BRIEF
IN SUPPORT OF MOTION TO COMPEL DEPOSITIONS AND OTHER DISCOVERY

In accordance with Rules 26, 30, 33, 34, and this Court's directives during the Initial Pretrial Conference (IPTC) on discovery, Plaintiffs hereby move to compel interrogatory responses, and partial depositions of no longer than two hours each of Peter Amuso, Cherissa Gibson, Christine Toy-Dragoni, and William Gretzula and other related discovery.

The solicitors have refused to answer *any* interrogatories, including regarding their authority to enforce Policy 903. The Pennsbury (non-solicitor) defendants have given only limited interrogatory answers regarding conversations about policy enforcement. Documents produced in discovery show that at least three such conversations took place, but factual gaps remain. Plaintiffs previously suggested limited depositions on these issues, but Defendants have instead given incomplete answers (Pennsbury) or stonewalled completely (solicitors).

During the IPTC, this Court indicated that it was not allowing Plaintiffs to take any depositions as of right[1] and Plaintiffs should make a request for depositions, if warranted by other information developed in discovery. Plaintiffs now do so.

I. WHETHER THE SOLICITORS WERE AUTHORIZED TO ENFORCE POLICY 903 AND BY WHOM IS AN UNRESOLVED MATERIAL ISSUE IN THIS CASE

The solicitor defendants and Pennsbury are taking opposing views on whether the solicitors were authorized to enforce Policy 903 or otherwise interrupt or terminate the Plaintiffs' public comments. *Compare* Kolde Decl., Ex. C, *with* ECF No. 81-2 at 3:15-19.[2] Each set of defendants is trying to shift the blame for the obvious rights violations to the other set. The solicitors claim they were acting on behalf of the board and district, while the Pennsbury defendants appear to claim it was all the solicitors acting on their own.

This issue of authorization to enforce Policy 903, and knowledge about such discussions, is relevant to nominal damages and whether any particular individual defendant was personally involved in a decision to violate civil rights; or was possibly acting for personal reasons, outside the scope of their authority. *See* Third Circuit Model Civil Jury Instructions 4.3 (elements of § 1983 claim), 4.4 (Action under Color of State Law), 4.4.3 (§ 1983 conspiracy); 4.6.1 (Liability in Connection with the Actions of Another). It might also reveal malice or ill will toward a plaintiff. *Id.* 4.8.3 (punitive damages can be warranted if defendant acted maliciously or wantonly; a "violation is malicious if it was prompted by ill will or spite"). Put simply, if any individual defendant asked the solicitors to get involved in enforcement or otherwise suggested or acquiesced to it, they are potentially

---

[1] The Rule 30(a)(1) creates a baseline presumption that any party may take up to 10 depositions "without leave of court." To-date, Plaintiffs have taken zero depositions.

[2] The Pennsbury defendants also assert that Peter Amuso unilaterally censored written comments. Ex. C at 2 (answer to interrogatory 6).

liable. Conversely, if the solicitors were acting ultra vires, that may have other liability implications.

II. EMAILS PRODUCED IN DISCOVERY INDICATE THAT AT LEAST AMUSO AND GIBSON AND POSSIBLY OTHERS HAD A PLAN TO "DEAL WITH" DOUG MARSHALL

Defendants have been dragging their feet on discovery, refusing to answer targeted interrogatories and disclosing documents behind schedule. Kolde Decl. ¶¶ 4, 7. The solicitors did produce an April 14, 2021 email string involving Peter Amuso, Cherissa Gibson, Christin Toy-Dragoni, and then-Superintendent William Gretzula. *Id.* ¶ 6, Ex. A. In the emails, Amuso and Gibson discuss plans to "deal with" Doug Marshall's future public comment in accordance with several conversations, including one that took place in executive session. Ex. A at 3. Peter Amuso indicates that "as promised" he is monitoring the public-comment sign-up sheet. *Id.* There are also further discussions about having follow-up conversations, including the superintendent and school-board president. *Id.* at 1-2. Notably, the email is dated the month before the infamous "You're done"-May-2021-school-board meeting.

Plaintiffs' counsel asked both defense counsel to provide further information about these conversations and the plan to "deal with" Doug Marshall, including any notes. Kolde Decl. ¶¶ 8-12, Ex. B, C (see highlighting). The parties conferred on June 10, 2022, in accordance with Local Civil Rule 26.1(f). *Id.* ¶ 9, Ex. D (see highlight re post-conference email). Pennsbury's defense counsel indicated he would provide further information in his interrogatory answers and Mr. Dadamo also indicated that he would respond to interrogatories 8 and 9 to the solicitors concerning their authority to enforce Policy 903. *Id.; see also* Ex. E (excerpts from discovery requests including interrogatories 8 and 9 to both parties).

III. DEFENDANTS' INTERROGATORY ANSWERS HAVE BEEN NON-EXISTENT ON THE ONE HAND AND EVASIVE AND INCOMPLETE ON THE OTHER

The solicitor defendants *never* provided *any* interrogatory answers regarding their authority to enforce Policy 903 (or any other topic), despite agreeing to do so, and initiating multiple unilateral extensions. *Id.* ¶¶ 13-15, Ex. D (see highlighting).

The Pennsbury defendants provided their interrogatory answers on June 13, 2022. *Id.* ¶ 11, Ex. C at 4. Their response was evasive and provided minimal detail about the executive session, who was present, what was discussed; and also glossed over the details of the discussion between Peter Amuso and Cherissa Gibson about "dealing with" Doug Marshall. Ex. C at 2-3 (see highlighting). No notes or other documents related to the April 8 executive session were produced, nor did defendants indicate that they had attempted to obtain notes from then-Superintendent Gretzula, who was reported to be a prolific note taker. Kolde Decl. ¶¶ 8, 12.

IV. PARTIAL TARGETED DEPOSITIONS AND OTHER DISCOVERY IS WARRANTED

It is apparent that the defendants have decided to resist and slow-walk discovery across the board, including on issues that go to the core of who was involved in the censorship in this case. Doing so serves to run out the clock before the July 25 hearing and starve Plaintiffs of evidence. While both parties have provided some documents consisting of emails referencing the Plaintiffs, the Pennsbury defendants are not telling the complete story via their interrogatory answers and the solicitors have not provided *any* interrogatory answers.

We know from the emails that conversations about "dealing with" Doug Marshall took place, but we don't know what was said in those conversations. People may have made a plan or authorized a certain course of action or at least discussed various ideas.

The issue of authorization and discussions about policy enforcement goes to the question of individual liability and may also touch upon the existence of a § 1983

conspiracy and malice to support punitive damages. At least, Plaintiffs are entitled to know more about what happened and who said what.

The best way to address the defendants' failure to cooperate with discovery is to allow for limited[3] depositions of defendants Gibson, Amuso, Toy-Dragoni, and non-defendant then-Superintendent Gretzula. All of these people were involved in the April 14 email thread that discussed "dealing with" Doug Marshall. They were also all likely present at the April 8 executive session. This will allow Plaintiffs to attempt to fill the gaps left by the documents.

Plaintiffs are requesting partial depositions of up to two hours each on the topic of discussions about the enforcement of Policy 903 against Plaintiffs or any other commenter in 2021, including specifically the April 14 email string and April 8 executive session. Plaintiffs are also requesting the promised interrogatory answers and the production of any documents related to the April 8 executive session including Gibson's training materials and any notes from the session, including those from then-Superintendent Gretzula be produced by July 11, 2022. In light of the hearing set for July 25, Plaintiffs request that any depositions be ordered to be completed by no later than July 18, 2022 in Philadelphia.

[3] Rule 30(d)(1) limits depositions to "one day of 7 hours." Due to the posture of this case, Plaintiffs request to be relieved of the one-day requirement. Information may be learned in the depositions that would warrant exceeding the two hour limit with a successive deposition.

Dated: June 28, 2022

Respectfully submitted by,

s/Endel Kolde
Endel Kolde (pro hac vice)
Alan Gura (pro hac vice)
INSTITUTE FOR FREE SPEECH
1150 Connecticut Avenue, N.W., Ste 801
Washington, DC 20036
202.301.3300
dkolde@ifs.org
agura@ifs.org

s/Michael Gottlieb
Michael Gottlieb
PA Bar No. 36678
VANGROSSI & RECHUITTI
319 Swede Street
Norristown, PA 19401
610.279.4200
mikem1a1@aol.com